

**TITLE 16C**  
**CRITICAL AREAS\***

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\* Editor's Note: Ord. 13-2007 adopts this title, Title 16C, Critical Areas, which applies to all unincorporated lands under Yakima County's land use jurisdiction. Ord. 14-2007, codified as Title 16D of this code, adopts the Shoreline Master Program, which shall regulate critical areas within shoreline jurisdiction.

## **Chapter 16C.01**

### **GENERAL PROVISIONS**

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#### **16C.01.01 Title and Authority.**

Yakima County Code (YCC) Title 16C is established pursuant to RCW 36.70A.060 (Growth Management Act Natural resource lands and critical areas – Development regulations), RCW Chapter 43.21C (State Environmental Policy Act), RCW 86.16, and federal requirements for eligibility in the National Flood Insurance Program, pursuant to the Code of Federal Regulations (CFR) 44CFR, Parts 59 and 60. This title shall be known as the “Critical Areas Ordinance of Yakima County, Washington.”

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.01.01), 2007).

#### **16C.01.02 Language Interpretation.**

Unless specifically defined in Chapter 16C.02, words, phrases and terms in this title shall be interpreted so as to give them the meaning they have in common usage and to give this title its most reasonable application. “Shall” is mandatory; “may” is discretionary and does not impose a requirement; “should” is always advisory; “include(s)” means includes but not limited to. When not inconsistent with the context, words used in the present tense include the future; the singular includes the plural; and the plural, the singular.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.01.02), 2007).

#### **16C.01.03 Purpose of Title.**

The purpose of Title 16C is the following:

- (1) Designate, protect, and maintain the function and values of critical areas and give special consideration to conservation or protections measures necessary to reserve or enhance anadromous fisheries.
- (2) Ensure a single, uniform system of procedures and standards be applied to development within designated critical areas of unincorporated Yakima County.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.01.03), 2007).

#### **16C.01.04 Intent of Title.**

(1) Title 16C establishes policies, standards, and other provisions pertaining to development within designated critical areas regulated under the provisions of the Growth Management Act (RCW 36.70A), and development regulated under the National Flood Insurance Program and RCW 86.16. Additional purpose and intent for the protection of critical areas is provided in the chapter on each subject. Stream corridors, frequently flooded areas, wetlands, critical aquifer recharge areas, geologically hazardous areas and fish and wildlife habitat areas constitute Yakima County’s critical areas. These areas are of special concern to the people of Yakima County and the state of Washington because they are environmentally sensitive lands, or hazardous areas, which compose an important part of the county’s natural resource base. The policies, standards and procedures of this title are intended to:

- (a) Preserve development options within designated critical areas where such development will not adversely impact critical area values and functions, particularly the functional properties of stream corridors and other hydrologically related critical areas;

- (b) Prevent further degradation of critical areas;
  - (c) Conserve, protect and, where feasible, restore essential or important natural resources.
  - (d) Protect the public health, safety and general welfare;
  - (e) Further the goals and objectives of the Yakima County Comprehensive Plan and all of its elements;
  - (f) Implement the goals and requirements of the Washington Growth Management Act (RCW Chapter 36.70A), and the National Flood Insurance Program;
  - (g) Recognize and protect private property rights;
  - (h) Provide development options for landowners of all existing lots to the greatest extent possible, through the establishment of Adjustment, Reasonable Use provisions and Non-Conforming Use and Facility provisions;
  - (i) Recognize that mining and related uses are an appropriate use within designated critical areas when conducted in a manner consistent with the laws of the state that already govern mining including, but not limited to, the Surface Mining Act, RCW Chapter 78.44.
- (2) In addition, the policies, standards and procedures of this title:
- (a) Are not intended to regulate the operation and maintenance of existing, legally established uses and structures, including but not limited to vegetative buffers on existing uses that have been reduced in width prior to the effective dates of provisions in the Critical Areas Ordinance;
  - (b) Are not intended to result in an unconstitutional taking of private property;
  - (c) Are not intended to retroactively require the restoration of degraded critical areas for properties in a degraded condition prior to the effective dates of provisions in the Critical Areas Ordinance; but rather to utilize restoration as a tool to mitigate impacts of new development;
  - (d) Are not intended to presume that regulatory tools are the only mechanism for protection, but rather integrated with non-regulatory tools in as balanced a manner as possible;
  - (e) Are not intended to prohibit the use of valid water rights.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.01.04), 2007).

#### **16C.01.05 Applicability.**

(1) Except as provided in subsection (3) below, the provisions of this title shall apply to any new development, construction or use within the unincorporated portion of Yakima County designated as a critical area, irrespective of parcel boundaries, outside Shoreline jurisdiction, as determined by the Shoreline Master Program (YCC Title 16D), and upon any land mapped and designated as a special flood hazard area under the National Flood Insurance Program or as a frequently flooded area designated by this title; however, this title does not apply to the situations below, except that the Flood Hazard protection provisions of Chapters 16C.05.20 through 16C.05.72 will continue to apply as determined by the applicability provision in 16C.05.20:

(a) Within critical areas designated by this title or amendments that may later be adopted, there may exist lots, structures and uses which were lawfully established before this title was initially adopted, amended or readopted, as provided below, but which would be subsequently prohibited, regulated or restricted under this title. It is the intent of this title to permit these pre-existing legal nonconformities to continue without requirement to change said nonconformity until such time as conformance is required through permits for development in the future. The adoption and amendment dates of the relevant regulations are provided below:

- (i) Critical Areas Ordinance adopted July 12, 1994 (YCC Title 16A);
- (ii) Critical Areas Ordinance amended October 1, 1995 (YCC Title 16A);

- (iii) Flood Hazard Ordinance adopted June 5, 1985;
  - (iv) Critical Areas Ordinance amended December 15, 2007 (GMA Update - YCC Title 16C);
  - (v) Critical Areas Ordinance amended June 30, 2017 (GMA Update - YCC Title 16C);
  - (vi) Critical Areas Ordinance amended December 17, 2019 (Repeal of 16A).
- (b) Critical areas on federally owned lands are not subject to this title;
- (c) Forest practices, as defined by this title, carried out under a Washington Department of Natural Resources Forest Practice permit are not subject to this title, except those that involve a conversion of forest land to a nonforestry use, involve a conversion option harvest plan, or take place on lands platted after January 1, 1960;
- (d) Livestock grazing on publicly owned land, when carried out under an agreement that includes a resource management plan that will be monitored by a public entity, is not subject to this title;
- (e) Changing agricultural crops within an existing farming operation is not considered new development, construction or use, provided that the existing area under agricultural production is not extended further into a vegetative buffer identified under Section 16C.06.16, and provided that the natural contour of the land subject to this title is not altered by excavation and filling;
- (f) Minor, temporary or transient activities, including those of a recreational nature, that do not alter the environment or require a dedicated staging area, use area, or route are not subject to this title, and including temporary signs (election, sale, rent, etc.);
- (g) Critical areas within the exterior boundaries of the Yakama Nation that are located within the designated Closed Areas or not under County jurisdiction as a result of the Supreme Court decision *County of Yakima et al. v. Confederated Tribes and Bands of the Yakima Indian Nation* (1991) are not subject to this title;
- (h) Mining, as defined by this title, that is carried out under a Washington Department of Natural Resources reclamation permit is not subject to the geologically hazardous areas provisions of this title for erosion hazard areas, oversteepened slope hazard areas, landslide hazard areas and suspected geologic hazard areas. Other critical areas provisions continue to apply.
- (2) Other rules and regulations, including the Yakima County Unified Land Development Code (YCC Title 19), Shoreline Master Program (YCC Title 16D), and the Building and Construction Ordinance (YCC Title 13), shall remain in full force and effect as they apply to a designated critical area. Wherever the requirements of Title 16C conflict with the requirements of the applicable Zoning Ordinance, the Subdivision Ordinance or any other lawfully adopted County rules or regulations, the most restrictive standards shall govern.
- (3) Yakima County opted into the Voluntary Stewardship Program (VSP) as an alternative to regulatory protection of critical areas on agricultural lands. A working group comprised of agricultural groups, environmental groups, and the Yakama Nation developed a work plan that identifies goals and benchmarks to protect critical areas while maintaining the viability of agriculture through voluntary, incentive-based measures (WAC 365-191-010).
- (a) The work plan developed by the VSP working group was approved by the Washington State Conservation Commission on October 30, 2017, therefore the provisions or standards of this title will not apply to agricultural activities prior to July 22, 2011, defined as agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original

facility; and maintaining agricultural lands under production or cultivation (RCW 36.70A.703(1) and RCW 90.58.065).

(b) If the approved work plan by the Washington State Conservation Commission fails to meet goals, benchmarks, or receive adequate funding, the provisions and policies of this title will apply to agricultural activities (RCW 36.70A.735).

(Ord. 10-2019 (Exh. 1) (part), 2019: Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Res. 80-2016 (Exh. A) (part), 2016; Ord. 13-2007 §1 (Exh. A)(16C.01.05), 2007).

#### **16C.01.06 Science and Protection of Anadromous Fish.**

This title has been updated consistent with the requirements for:

- (1) Using the best available science as required by RCW 36.70A.172 (Critical areas – Designation and protection – Best available science to be used) and WAC 365-195-900 through WAC 365-195-920 (BAS Background and purpose);
- (2) Giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish (salmon, steelhead, pacific lamprey etc.) and their habitat, as required by RCW 36.70A.172 (Best available science to be used) and WAC 365-195-925 (Criteria for demonstrating “special consideration” has been given to anadromous fisheries).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.01.06), 2007).

#### **16C.01.08 Administrative Authority.**

(1) The Yakima County Public Services Department – Planning Division shall be responsible for the general administration of this title. The Planning Division Manager or the Manager’s designee shall serve as the Administrative Official of this title, except as noted in Chapters 16C.05.20 through 16C.05.72. The Administrative Official shall establish procedures for implementation of this title.

(a) Where the provisions of these regulations may be unclear in special circumstances, or where judgment must be made because of the nature of the language used, the Administrative Official shall make such interpretations. A separate record of all interpretations shall be kept. To avoid arbitrariness, any earlier interpretation that may relate to a pending action shall be examined by the Administrative Official for its effect or influence on the pending action.

(b) A written request for interpretation of any provision of this title, or any rule or regulation adopted pursuant to this title, may be submitted to the Administrative Official. Each request shall set forth the specific provision or provisions to be interpreted and the facts of the specific situation giving rise to the request for an interpretation. Interpretations shall be processed in accordance with YCC Section 16B.03.070.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.01.08), 2007).

#### **16C.01.09 Severability.**

If any provision of the ordinance codified in this title or its application to any person or legal entity or circumstances is held to be invalid, the remainder of said ordinance or the application of the provision to other persons or legal entities or circumstances shall not be affected.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.01.09), 2007).

## Chapter 16C.02

### DEFINITIONS

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**16C.02.001 Definitions Generally.**

(1) Whenever the words and terms set forth in this chapter appear in this title, they shall be given the meaning attributed to them by this chapter. References to specific provisions of YCC Title 13 and the International Building Codes, statutes and Washington Administrative Code provide greater detail for purposes of administering this title.

(2) Definitions listed in this chapter shall be applied to all critical areas, including Flood Hazard Areas, unless the definition itself identifies the term as applying to Flood Hazard administration, in which case the definition only applies to that situation.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.001), 2007).

**16C.02.005 Abutting.**

“Abutting” means bordering upon, to touch upon, or in physical contact with. Sites are considered abutting even though the area of contact may be only a point.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.005), 2007).

**16C.02.010 Adjacent.**

“Adjacent” means to be nearby and not necessarily abutting.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.010), 2007).

**16C.02.012 Administrative Official.**

“Administrative Official” means the duly appointed planning division manager of the public services department, or his designee, or the relevant decision maker identified in YCC Title 16B (Project Permit Administration); synonymous with “administrator” or “director.”

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.012), 2007).

**16C.02.020 Agricultural Activities.**

“Agricultural activities” means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017).

**16C.02.025 Alluvial Fan.**

“Alluvial fan” is a low, outspread, relatively flat to gently sloping feature, shaped like an open fan or a segment of a cone, deposited by a stream at the place where it issues from a valley upon a plain or broad valley, or where a tributary stream is near or at its junction with the main stream, or wherever a constriction in a valley abruptly ceases or the gradient of the stream suddenly decreases; it is steepest near the mouth of the valley where its apex points upstream, and it slopes gently and convexly outward with gradually decreasing gradient.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.025), 2007).

**Alteration of watercourse.**

“Alteration of watercourse” means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.

**Appeal.**

“Appeal” means a request for a review of the interpretation of any provision of this ordinance or a request for a variance.



**16C.02.030 Applicant.**

“Applicant” means a person, party, firm, corporation, or other legal entity that proposes a development, construction or use on a site.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.030), 2007).

**16C.02.035 Aquifer.**

“Aquifer” means a saturated geologic formation which will yield a sufficient quantity of water to serve as a private or public water supply.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.035), 2007).

**Area of shallow flooding.**

“Areas of shallow flooding” means a designated zone AO, AH, AR/AO or AR/AH (or VO) on a community’s Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. Also referred to as the sheet flow area.

**Area of special flood hazard area.**

“Areas of special flood hazard area” means the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as zone A, AO, AH, A1-30, AE, A99, AR (V, VO, V1-30, VE). “Special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

**ASCE 24.**

“ASCE 24” means the most recently published version of ASCE 24, Flood Resistant Design and Construction, published by the American Society of Civil Engineers.

**16C.02.040 Critical Aquifer Recharge Area.**

“Critical aquifer recharge area” means an area with a critical recharging effect on aquifers used for potable water, or areas where a drinking aquifer is vulnerable to contamination that would affect the potability of the water.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.040), 2007).

**16C.02.042 Bank.**

“Bank” means the land surface above the ordinary high water mark that abuts a body of water and contains it to the bankfull depth.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.042), 2007).

**16C.02.043 Bankfull depth.**

“Bankfull depth” means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the floodplain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.043), 2007).

**16C.02.044 Base Flood.**

“Base flood” for purposes of administering Chapters 16C.05.20 through 16C.05.72 means the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the “100-year flood.” (Ref. IBC 1612.2.)

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.044), 2007).

**16C.02.045 Base Flood Elevation.**

“Base flood elevation” for purposes of administering Chapters 16C.05.20 through 16C.05.72 means the elevation ~~of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the flood insurance rate map (FIRM).~~ to which floodwater is anticipated to rise during the base flood. (Ref. IBC 1612.2.)

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.045), 2007).

**16C.02.046 Basement.**

“Basement” for purposes of administering Chapters 16C.05.20 through 16C.05.72 means any area of the building having its floor subgrade (below ground level) on all sides. (Ref. IBC 1612.2.)

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.046), 2007).

**16C.02.055 Bed.**

“Bed” means the land below the ordinary high water lines of state waters. This definition shall not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.055), 2007).

**16C.02.060 Bedrock.**

“Bedrock” means in-place solid rock.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.060), 2007).

**16C.02.065 Berm.**

“Berm” means a mound of earth material used as a protective barrier or to control the direction of water flow.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.065), 2007).

**16C.02.067 Best Management Practices.**

“Best Management Practices” or “BMPs” means schedules of activities, practices, maintenance procedures, and structural and/or managerial practices that, when used singly or in a combination, prevent or reduce adverse impacts to the environment.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.067), 2007).

**16C.02.070 Bioengineering.**

“Bioengineering” means project designs or construction methods which use live woody vegetation or a combination of live woody vegetation and specially developed natural or synthetic materials to establish a complex root grid within the existing bank which is resistant to erosion, provides bank stability, and maintains a healthy riparian environment with habitat features important to fish life. Use of wood structures or limited use of clean angular rock may be allowable to provide stability for establishment of the vegetation.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.070), 2007).

**16C.02.075 Breakwater.**

“Breakwater” means a fixed or floating off-shore structure that protects the shore from wave action or currents.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.075), 2007).

**16C.02.080 Bulkhead.**

“Bulkhead” means a vertical or nearly vertical erosion protection structure placed parallel to the shore consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.080), 2007).

**16C.02.085 Channel.**

“Channel” means an open conduit, either naturally or artificially created, which periodically or continuously contains moving water, or which forms a connecting link between two bodies of water.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.085), 2007).

**16C.02.090 Channel Migration Zone.**

“Channel Migration Zone” is the area where the stream channel is likely to shift or migrate to over time.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017).

**16C.02.092 Chief Building Official.**

“Chief building official” or “building official” means the manager of the Building and Fire Safety Division of the Department of Public Services or designee.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.092), 2007).

**16C.02.095 Classification.**

“Classification” means the definition of value and hazard categories to which critical areas and natural resource lands will be assigned.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.095), 2007).

**16C.02.100 Clearing.**

“Clearing” means the removal of timber, brush, grass, ground cover or other vegetative matter from a site.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.100), 2007).

**16C.02.110 Compaction.**

“Compaction” means compressing soil through some mechanical means to make it denser.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.110), 2007).

**16C.02.115 Confinement Feeding Operation.**

“Confinement feeding operation” means the use of structures or pens for the concentrated feeding or holding of animals or poultry, including but not limited to horses, cattle, sheep, or swine. This definition includes dairy confinement areas, slaughterhouses, shipping terminal holding pens, poultry and/or egg production facilities and fur farms, but does not include animal husbandry and normal farming practices.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.115), 2007).

**16C.02.120 Construction.**

“Construction” means the assembly, placement, or installation of structures, roadways, transmission lines, and other improvements within a project site.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.120), 2007).

**16C.02.122 Critical Areas.**

“Critical Areas” include the following areas and ecosystems:

- (a) Wetlands;
- (b) Areas with a critical recharging effect on aquifers used for potable water;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017).

**16C.02.125 Designated.**

“Designated” means formal legislative action to identify and describe a critical area.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.125), 2007).

**16C.02.130 Department.**

“Department” means the Yakima County Public Services Department – Planning Division.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.130), 2007).

**16C.02.135 Development.**

“Development” means the division of land into lots or parcels and any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, clearing, paving, excavation or drilling operations, storage of equipment or materials, or any other activity which results in the removal of vegetation or in the alteration of natural site characteristics. For floodplain management purposes, “Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.135), 2007).

**16C.02.140 Dike.**

“Dike” means an embankment to prevent flooding by a stream or other water body. A dike is also referred to as a levee.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.140), 2007).

**16C.02.145 Dock.**

“Dock” means a structure built over or floating upon the water and used as a landing place for boats and other marine transport, fishing, swimming, and other recreational uses.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.145), 2007).

**16C.02.150 Dredging.**

“Dredging” means removal of earth from the bed of a stream, lake, or pond for the purpose of increasing the depth of surface water or obtaining minerals, construction aggregate, or landfill materials. This definition does not include excavation for mining within a pond created by a mining operation approved under this title or under a local zoning ordinance, or a mining operation in existence before Zoning, Shorelines, or Critical Areas permits were required for such operations.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.150), 2007).

**16C.02.160 Earth Material.**

“Earth material” means any rock, natural soil, or combination thereof.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.160), 2007).

**Elevation Certificate.**

“Elevation Certificate” is an administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, to determine the proper insurance premium rate, and to support a request for a Letter of Map Amendment (LOMA) or Letter of Map Revision based on fill (LOMR-F).

**16C.02.170 Enhance.**

“Enhance” means to strengthen any of the basic functional properties listed in Section 16C.06.05 that exist but do not perform at optimum efficiency. “Optimum” refers to the most favorable or best performance of each function achievable for a specific segment of stream corridor.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.170), 2007).

**16C.02.175 Ephemeral Stream.**

“Ephemeral stream” means a stream that flows only in response to precipitation with no groundwater association, usually less than thirty days per year. The lack of any groundwater association results in a lack of a distinctive riparian vegetation compared to the surrounding landscape.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.175), 2007).

**16C.02.180 Erosion.**

“Erosion” means the wearing away of the earth’s surface as a result of the movement of wind, water, or ice.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.180), 2007).

**16C.02.190 Excavation.**

“Excavation” means the mechanical removal of earth material. (Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.190), 2007).

**16C.02.200 Fill.**

“Fill” means the addition of any material, such as (by way of illustration) earth, clay, sand, rock, gravel, concrete rubble, wood chips, bark, or waste of any kind, which is placed, stored or dumped upon the surface of the ground resulting in an increase in the natural surface elevation. The physical structure of a shore stabilization structure shall not be considered fill. However, fill placed behind the structure is considered fill. Stream bed manipulation for irrigation diversions shall not be considered fill.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.200), 2007).

**16C.02.203 Fish and Wildlife Habitat Conservation Areas.**

“Fish and wildlife habitat conservation areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. These areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company. Natural watercourses such as streams and rivers that carry irrigation water are not considered part of these artificial features.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017).

**16C.02.205 Flood or Flooding.**

“Flood” means 1) a general and temporary condition of partial or complete inundation of normally dry land areas from: a) The overflow of inland or tidal waters. b)-the unusual and rapid accumulation of or runoff of surface waters from any source. c) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current. 2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)(a) of this definition.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.205), 2007).

**Flood Elevation Study.**

“Flood Elevation Study” means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also known as a Flood Insurance Study (FIS).

**16C.02.206 Flood Hazard Permit.**

“Flood hazard permit” means written approval applied for and obtained in accordance with such rules and regulations as are established under this title.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.206), 2007).

**16C.02.207 Flood Insurance Rate Maps.**

“Flood insurance rate map (FIRM)” means the official map on which the Federal ~~Emergency Management Agency-Insurance Administrator~~ has delineated both the areas of special flood hazards and the risk premium zones applicable to the community. Preliminary updated Flood Insurance Rate Maps are maps that have been accepted by FEMA, but are not yet effective. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.207), 2007).

**16C.02.208 Flood Insurance Study.**

“Flood insurance study” ~~means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary floodway map, and the water surface elevation of the base flood.~~ see “Flood Elevation Study.”

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.208), 2007).

**16C.02.209 Floods of Record.**

“Floods of Record” are areas identified as inundated during the flood of record, identification of areas subject to flooding, or stream systems where the path of floodwaters can be unpredictable.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017).

**16C.02.210 Floodplain or flood-prone area.**

“Floodplain or flood-prone area” means ~~a land area adjoining a river, stream, watercourse or lake which has been determined likely to flood. The extent of the floodplain may vary with the frequency of flooding being considered. “Floodplain” is synonymous with the one hundred year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year.~~ any land area susceptible to being inundated by water from any source. See “Flood or flooding.”

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.210), 2007).

**16C.02.215 Flood-prone.**

~~“Flood prone” means a land area for which a floodway and floodplain has not been determined with respect to any specific flood frequency, but for which the potential for flooding can be identified by information observable in the field such as soils or geological evidence, or by materials such as flood studies, topographic surveys, photographic evidence or other data.~~

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.215), 2007).

**Floodplain administrator.**

“Floodplain administrator” means the community official designated by title to administer and enforce the floodplain management regulations.

**Floodplain management regulations.**

~~“Floodplain management regulations” means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance and erosion control ordinance) and other application of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.~~

#### **16C.02.216 Flood-proofing.**

“Flood-proofing” for purposes of administering Chapters 16C.05.20 through 16C.05.72 means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damages to ~~lands~~ real estate or improved real property, water and sanitary facilities, structures, and ~~their~~ contents. ~~of buildings. Flood proofed structures are those that have the structural integrity and design to be impervious to floodwater below the Base Flood Elevation.~~

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.216), 2007).

#### **16C.02.220 Floodway.**

“Floodway” means the regular channel of a river, stream, or other watercourse, plus the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than ~~one foot~~ a designated height. Also referred to as “Regulatory Floodway.”

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.220), 2007).

#### **16C.02.225 Floodway Fringe.**

“Floodway fringe” for purposes of administering Chapters 16C.05.20 through 16C.05.72 means that portion of a floodplain which is inundated by floodwaters but is not within a defined floodway. Floodway fringes serve as temporary storage for floodwaters.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.225), 2007).

#### **Functionally dependent use.**

“Functionally dependent use” is a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

#### **16C.02.230 Forest Land.**

“Forest land” means land primarily devoted to forest practices activities.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.230), 2007).

#### **16C.02.240 Forest Practices.**

“Forest practices” means any activity conducted on or directly pertaining to forestland and relating to growing, harvesting, or processing timber, including but not limited to:

- (a) Road and trail construction, including forest practices hydraulic projects that include water crossing structures, and associated activities and maintenance;
- (b) Harvesting, final and intermediate;
- (c) Pre-commercial thinning;
- (d) Reforestation;
- (e) Fertilization;
- (f) Prevention and suppression of diseases and insects;



- (g) Salvage of trees; and
- (h) Brush control.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.02.240), 2007).

**16C.02.245 Frequently Flooded Areas.**

“Frequently Flooded Areas” are defined by:

- (a) Flood Insurance Rate Maps (FIRM) from FEMA;
- (b) Preliminary updated FIRM maps from FEMA;
- (c) Floods of record;
- (d) Mapped channel migration zones; and
- (e) Flood-prone.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017).

**16C.02.250 Grade.**

“Grade” means the vertical location of the ground surface. “Natural grade” is the grade as it exists or may have existed in its original undisturbed condition. “Existing grade” is the current grade in either its undisturbed, natural condition or as disturbed by some previous modification. “Rough grade” is a stage where grade conforms approximately to an approved plan. “Finish grade” is the final grade of the site which conforms to an approved plan.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.02.250), 2007).

**16C.02.255 Grading.**

“Grading” means any excavation, filling, or combination thereof.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.02.255), 2007).

**16C.02.260 Groundwater.**

“Groundwater” means water that occurs beneath the land surface, also called subsurface water or subterranean water. Groundwater includes water in the zone of saturation of a water-bearing formation.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.02.260), 2007).

**16C.02.261 Hazardous Materials.\***

“Hazardous materials” means any material, either singularly or in combination, that is a physical or health hazard as defined and classified in the International Fire Code, whether the materials are in usable or waste condition; any material that may degrade groundwater quality when improperly stored, handled, treated, used, produced, recycled, disposed of, or otherwise mismanaged; any hazardous waste, hazardous substance, dangerous waste, or extremely hazardous waste that is a physical or health hazard as defined or classified in Chapter 70.105 RCW and Chapter 173-303 WAC, whether the materials are in usable or waste condition; and petroleum or petroleum products that are in a liquid phase at ambient temperatures, including any waste oils or sludge.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 1-2011 § 2 (Exh. A (5)), 2011).

\* Code reviser’s note: Ord. 1-2011 added this section as 16C.02.061; it has been editorially renumbered to preserve alphabetization.

**Highest adjacent grade.**

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Historic structure.**



“Historic structure” is any structure that is:

- 1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- 3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- 4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a) By an approved state program as determined by the Secretary of the Interior, or
  - b) Directly by the Secretary of the Interior in states without approved programs.

**16C.02.263 Hydrologically Related Critical Areas (HRCA).**

“Hydrologically related critical areas (HRCA)” include all those areas identified in Section 16C.06.03, within Yakima County which are important and deserving of protection by nature of their value for the functional properties found in Section 16C.06.05.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.263), 2007).

**16C.02.266 Hyporheic.**

“Hyporheic” means a groundwater area adjacent to and below channels where water is exchanged with channel water and water movement is mainly in the downstream direction.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.266), 2007).

**16C.02.270 Intermittent Streams.**

“Intermittent stream” means a stream which flows only during certain times of the year, with inputs from precipitation and groundwater, but usually more than 30 days per year. The groundwater association generally produces an identifiable riparian area. This definition does not include streams that are intermittent because of irrigation diversion or other manmade diversions of the water.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.270), 2007).

**16C.02.275 Lake or Pond.**

“Lake” or “pond” means any inland body of standing water. The term includes the reservoir or expanded part of a river behind a dam, but excludes a man-made body of water created for surface mining purposes.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.275), 2007).

**16C.02.281 Lowest Floor.**

“Lowest floor” for purposes of administering Chapters 16C.05.20 through 16C.05.72 means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this title (i.e. provided there are adequate flood ventilation openings).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.281), 2007).

**16C.02.282 Manufactured Home.**

“Manufactured home” means a structure fabricated on a permanent chassis that is transportable in one or more sections; is designed to be used with or without a permanent foundation when connected to the required facilities; has sleeping, cooking, and plumbing facilities or any combination thereof; and is intended for human occupancy or is being used for residential purposes. Although Washington Administrative Code (WAC) and Yakima County Code Titles 13 and 19 separately define and distinguish between “manufactured home” and “mobile home” according to federal or state construction codes for such dwellings, the term “manufactured home” shall include “mobile home” for regulatory purposes under this title. The term shall not include “recreation vehicle,” “commercial coach,” “camping vehicle,” “travel trailer,” “park trailer,” “tip-out,” and any other similar vehicle which is not intended, designed, constructed or used for residential purposes for use as a single-family dwelling and is not otherwise labeled as a manufactured or mobile home under any federal or state law. For floodplain management purposes only under this title, park trailers, camping vehicles, travel trailers, tip-outs, and other similar vehicles shall be considered manufactured homes when placed on a site for greater than one hundred eighty days.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Res. 80-2016 (Exh. A) (part), 2016; Ord. 13-2007 §1 (Exh. A)(16C.02.282), 2007).

**16C.02.283 Manufactured Home Park or Subdivision.**

“Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale in accordance with YCC Title 19.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Res. 80-2016 (Exh. A) (part), 2016; Ord. 13-2007 §1 (Exh. A)(16C.02.283), 2007).

**16C.02.284 Manufactured Home Park or Subdivision, Existing.**

“Existing manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before October 1, 1995, the effective date of these floodplain management regulations.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.284), 2007).

**Mean Sea Level.**

“Mean Sea Level” means, for purposes of the National Flood Insurance Program, the vertical datum to which Base Flood Elevations shown on a community’s Flood Insurance Rate Map are referenced.

**16C.02.285 Minerals.**

“Minerals” means gravel, sand and metallic and nonmetallic substances of commercial value.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.285), 2007).

**16C.02.290 Mining.**

“Mining” means the removal of naturally occurring minerals and materials from the earth for commercial value. Mining includes processing and batching. Mining does not include large excavations for structures, foundations, parking areas, etc. Also see Dredging and Excavation (Section 16C.06.20).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.290), 2007).

**16C.02.295 Native.**

“Native” means indigenous to or originating naturally within Yakima County.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.295), 2007).

**16C.02.300 Natural Conditions.**

“Natural conditions” means those conditions which arise from or are found in nature and not modified by human intervention; not to include artificial or manufactured conditions.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.300), 2007).

**16C.02.302 New Construction.**

“New construction” for purposes of administering Chapters 16C.05.20 through 16C.05.72 [for the purposes of determining insurance rates](#), means structures for which the “start of construction” commenced on or after June 5, 1985, the date Yakima County enacted Ordinance 3-1985 in order to meet the requirements of the National Flood Insurance Program. October 1, 1995, the effective date of the amended ordinance codified in Title 16A shall be used for defining the term “new construction” as it applies to all other critical areas requirements established under Title 16A by Ordinance 8-1995.

(Ord. 10-2019 (Exh. 1) (part), 2019: Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.302), 2007).

**16C.02.303 Nonconforming Structure.**

“Nonconforming structure” for purposes of administering Chapters 16C.05.20 through 16C.05.72 means a structure which was legally constructed prior to October 1, 1995, the effective date of the amended Title 16A, but which would not be permitted as a new structure under the terms of this title because the structure is not in conformance with the applicable elevation and/or flood-proofing requirements.

(Ord. 10-2019 (Exh. 1) (part), 2019: Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.303), 2007).

**16C.02.304 Nonconforming Use.**

“Nonconforming use” for purposes of administering Chapters 16C.05.20 through 16C.05.72 means the use of a building, structure or land which was lawfully established, existing and maintained at the effective date of provisions of this title but which, because of the application of this title to it, no longer conforms to the use or applicable elevation and/or flood-proofing requirements of this title and which would not be permitted as a new use under the terms of this title.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.304), 2007).

**16C.02.305 Ordinary High Water Mark (OHWM).**

“Ordinary high water mark (OHWM)” means that mark on lakes and streams which will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.305), 2007).

**16C.02.310 Perennial Stream.**

“Perennial stream” means a stream that flows year-round in normal water years. Groundwater is a source of much of the water in the channel.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.310), 2007).

**16C.02.320 Project Site.**

“Project site” means that portion of any lot, parcel, tract, or combination thereof which encompasses all phases of the total project proposal.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.320), 2007).

**16C.02.321 Qualified Professional.**

A “qualified professional” shall meet the following criteria:

- (1) A qualified professional for wetlands must have a bachelor’s degree or higher in biology, ecology, soil science, botany, or a closely related field, and a minimum of five years of professional experience in wetland identification and assessment in the Pacific Northwest.

- (2) A qualified professional for stream corridors must have a bachelor's degree or higher in wildlife biology, ecology, fisheries, or closely related field, and a minimum of five years' professional experience related to the subject species/habitat type.
- (3) A qualified professional for geologically hazardous areas and preparation of geo-technical reports must be a professional engineering geologist or civil engineer, licensed in the state of Washington.
- (4) A qualified professional for critical aquifer recharge areas must be a professional hydrogeologist, or environmental engineer licensed in the state of Washington.
- (5) A qualified professional for channel migration zone reports must be a professional engineering geologist, civil engineer or geologist licensed in the state of Washington, with a minimum of five years of professional experience in geomorphology.
- (6) A qualified professional for flood studies must be a professional engineering geologist or civil engineer licensed in the state of Washington.
- (7) A qualified professional for economic studies must have a bachelor's degree or higher in economics or business administration with five years of professional experience. The five-year standard shall be waived for professionals with a Ph.D degree.
- (8) A qualified professional for habitat assessments and habitat management plans must have a bachelor's degree or higher in biology and professional experience related to the subject species or habitat.
- (9) Or other person/persons with experience, training, expertise and related work experience appropriate for the relevant critical area subjects determined to be acceptable to the Administrative Official.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 2-2009 § 2 (Exh. A (2)), 2009; Ord. 13-2007 §1 (Exh. A)(16C.02.321), 2007).

#### **16C.02.322 Recreation Vehicle.**

"Recreation vehicle" means a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.322), 2007).

#### **16C.02.325 Restore.**

"Restore" means to re-establish the basic functional properties listed in Section 16C.06.05 that have been lost or destroyed through natural events or human activity. This may be accomplished through measures including but not limited to re-vegetation, removal of intrusive structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the site to aboriginal or pre-European settlement conditions nor to limit flood authorities' ability to make improvements necessary to alleviate flood risk, which may not allow for certain restoration activities or methods.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.325), 2007).

#### **16C.02.330 Revetment.**

"Revetment" means a facing placed on a bank or bluff to protect a slope, embankment, or shore structure against erosion by wave action or currents.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.330), 2007).

**16C.02.335 Riparian Areas.**

“Riparian areas” are transitional between terrestrial and aquatic ecosystems and are distinguished by gradients in biophysical conditions, ecological processes, and biota. They are areas through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. They include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., a zone of influence).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.335), 2007).

**16C.02.340 Riprap.**

“Riprap” means a layer, facing, or protective mound of stones randomly placed to prevent erosion, scour, or sloughing of a structure or embankment; also the stone used for this purpose.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.340), 2007).

**16C.02.345 Scour.**

“Scour” means the removal of underwater material by waves and currents, especially at the base or toe of a shore stabilization structure.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.345), 2007).

**16C.02.355 Shoreline.**

“Shoreline,” as used in this title, means those water areas, the associated features, and the land areas within Yakima County that are subject to the State Shoreline Management Act, especially as defined in RCW 90.58.030 (definitions), and as further identified in Section 16D.10.03 (Shoreline Jurisdiction) of the Shoreline Master Program (YCC Title 16D).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.355), 2007).

**16C.02.360 Shore Stabilization.**

“Shore stabilization” means the construction or modification of bulkheads, retaining walls, dikes, levies, riprap, breakwaters, jetties, groins, weirs, and other structures along the shore, for the purpose of controlling stream undercutting, stream erosion or lake shore erosion.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.360), 2007).

**16C.02.362 Shrub-steppe.**

“Shrub-steppe” means a non-forested vegetation type consisting of one or more layers of perennial bunchgrasses and a conspicuous but discontinuous layer of shrubs (see Eastside Steppe for sites with little or no shrub cover). In areas with greater precipitation or on soils with higher moisture-holding capacity, shrub-steppe can also support a dense layer of forbs (i.e., broadleaf herbaceous flora). Shrub-steppe contains various habitat features, including diverse topography, riparian areas, and canyons. Another important component is habitat quality (i.e., degree to which a tract resembles a site potential natural community), which may be influenced by soil condition and erosion; and the distribution, coverage, and vigor of native shrubs, forbs, and grasses. Sites with less disturbed soils often have a layer of algae, mosses, or lichens.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017).

**16C.02.365 Slope.**

“Slope” means an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.365), 2007).

#### **16C.02.366 Solid Waste.**

“Solid waste” means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, wood waste, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. Solid waste shall not include earth, clay, sand or gravel.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.366), 2007).

#### **16C.02.367 Special Flood Hazard Areas.**

“Special flood hazard area” means the land in the floodplain identified by the Federal Emergency Management Agency that is subject to a one percent or greater chance of flooding in any given year; commonly known as the 100-year floodplain.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.367), 2007).

#### **16C.02.368 Start of Construction.**

“Start of construction” for purposes of administering Chapters 16C.05.20 through 16C.05.72 includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure ~~(other than a manufactured home)~~ on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. “Permanent construction” does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garage, or sheds not occupied as dwelling units or not as part of the main structure. ~~For a structure (other than a manufactured home) without a basement or poured footings, the “start of construction” includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For manufactured homes not within a manufactured home park, “start of construction” means the affixing of the manufactured home to its permanent site. For manufactured homes within manufactured home parks, “start of construction” is the date on which the construction of facilities for servicing the site on which the manufactured home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.~~

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.368), 2007).

#### **16C.02.370 Stream.**

“Stream” means water contained within a channel, either perennial, intermittent or ephemeral. Streams include natural watercourses modified by man, for example, by stream flow manipulation, channelization, and relocation of the channel. They do not include irrigation ditches, wasteways, drains, outfalls, operational spillways, canals, stormwater runoff facilities, or other artificial watercourses.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.370), 2007).

#### **16C.02.380 Stream Corridor.**

“Stream corridor,” as used in this title, means those features listed and described in Section 16C.06.03 and related appendices to this title.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.380), 2007).

#### **16C.02.390 Structure.**

“Structure” means anything constructed or erected which requires location on the ground, or attached to something having a location on the ground, but not including fences or walls used as fences less than six feet in height. The term also includes gas or liquid storage tanks when located principally above ground. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.390), 2007).

**Substantial Damage.**

“Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**16C.02.395 Substantial Improvement.**

“Substantial improvement” for purposes of administering Chapters 16C.05.20 through 16C.05.72 means any repair, reconstruction, addition, or improvement of a structure, the cost of which equals or exceeds fifty percent of the assessed value of the structure either:

~~(1) — Before the improvement or repair is started; or~~ “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

~~(2) — Before the damage occurred to a structure that has been damaged and is being restored.~~

~~For the purposes of this definition “substantial improvement” occurs when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The total value of all improvements to an individual structure undertaken subsequent to October 1, 1995, the effective date of the amended Title 16A, shall be used to define “substantial improvement” for said structure. The term does not, however, include either:~~

(1) Any project for improvement to a structure to ~~comply with~~ correct previously identified existing violations of state or local health, sanitary or safety code specifications that have been identified by the local code enforcement official and that are the minimum ~~which are solely~~ necessary to assure safe living conditions; or

(2) Any alteration of a “historic structure,” listed on the National Register of Historic Places or a state inventory of historic places, provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

(Ord. 10-2019 (Exh. 1) (part), 2019: Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.395), 2007).

**16C.02.400 Use.**

“Use” means the activity to which land or a building is devoted and for which either land or a building is or may be occupied or maintained.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.400), 2007).

**Variance.**

“Variance” means a grant of relief by a community from the terms of a floodplain management regulation.

**16C.02.415 Vegetative Buffer or Buffer.**

“Vegetative buffer” or “buffer” means an area extending landward from the ordinary high water mark of a lake or stream and/or from the edge of a wetland which is maintained or otherwise allowed to provide, under optimal conditions, adequate soil conditions and native vegetation for the performance of the basic functional properties of a stream corridor, wetland and other hydrologically related critical areas as set forth in Section 16C.06.05 (Functional Properties) and Section 16C.07.04 (Wetland Functions and Rating). It is understood that optimal conditions do not always exist due to degradation of the vegetative buffer before establishment of this title, or due to colonization by non-native species. Such conditions still provide functional properties, though at a lower level, depending on the difference from natural conditions.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.415), 2007).



**16C.02.425 Wetland.**

“Wetland” or “wetlands” means areas that are naturally inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.425), 2007).

**16C.02.430 Wildlife.**

“Wildlife” means all species of the animal kingdom whose members exist in Washington in a wild state. The term “wildlife” includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term “wildlife” does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.430), 2007).

**16C.02.435 Wildlife Habitat.**

“Wildlife habitat” means areas which, because of climate, soils, vegetation, relationship to water, location and other physical properties, have been identified as of critical importance to maintenance of wildlife species.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.435), 2007).

**16C.02.440 Works.**

“Works” means any dam, wall, wharf, embankment, levee, dike, berm, pile, bridge, improved road, abutments, projection, excavation, channel rectification, or improvement attached to, or affixed upon, the realty.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.02.440), 2007).



## **Chapter 16C.03**

### **APPLICATION AND REVIEW PROCEDURES**

Sections:

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#### **ARTICLE I – GENERAL PROVISIONS**

##### **16C.03.01 Critical Area Development Authorization Required.**

(1) No new development, construction or use shall occur within a designated critical area without obtaining a development authorization in accordance with the provisions of this title, except for those provided for in Section 16C.03.05 (Minor Activities Allowed Without a Permit).

(2) With respect to application and review procedures, it is the intent of this title to streamline and coordinate the authorization of critical area projects which require other local, state and/or federal permits or authorizations. Any nonexempt development, construction or use occurring within a designated critical area shall be processed according to the provisions of this chapter and the Project Permit Administration Ordinance (YCC Title 16B).

(3) Approval of a development authorization under this title shall be in addition to, and not a substitute for, any other development permit or authorization required by Yakima County. Approval of a development authorization

under this title shall not be interpreted as an approval of any other permit or authorization required of a development, construction or use.

(4) Permits issued in accordance with this title shall run with the land and conveyed to the applicant, their grantees, and assignees.

(5) Coordination with Other Jurisdictions.

(a) Where all or a portion of a standard development project site is within a designated critical area and the project is subject to another local, state or federal development permit or authorization, then the Administrative Official shall determine whether the provisions of this title can be processed in conjunction with, and as part of, that local, state or federal development permit or authorization, or whether a separate critical area development authorization application and review process is necessary. The decision of the Administrative Official shall be based upon the following criteria:

- (i) The nature and scope of the project and the critical area features involved or potentially impacted;
- (ii) The purpose or objective of the permit or authorization and its relationship to protection of the critical area;
- (iii) The feasibility of coordinating the critical area development authorization with the permitting agency;
- (iv) The timing of the permit or authorization.

(b) When a determination has been made that provisions of this title can be handled through another applicable development permit or authorization process, project proponents will be required to provide any additional site plans, data and other information necessary as part of that process to fully evaluate the critical area project and ensure its compliance with this title. The Administrative Official's decision on the critical area development authorization shall be coordinated to coincide with other permits and authorizations.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 6-2011 § 2 (Exh. A) (part), 2011; Ord. 13-2007 §1 (Exh. A)(16C.03.01), 2007).

## ARTICLE II – INQUIRY AND EARLY ASSISTANCE

### 16C.03.02 Critical Area Identification Form and Critical Area Report Requirements.

(1) Prior to the review or consideration of any proposed development, construction or use, except those provided under Applicability (Section 16C.01.05), and Minor Activities Allowed Without a Permit (Section 16C.03.05), the County shall consider available information to determine if a critical area is likely to be present. The presence of a critical area found on the paper and electronic maps within or adjacent to the property proposed for development is sufficient foundation for the Administrative Official to require preparation of a critical area identification form, provided by the department, and a preliminary site plan. This critical area identification form and preliminary site plan may be one piece of information used to analyze how a critical area could be affected by a development proposal. To the extent possible, all critical area features must be identified on the critical area identification form and shown on the preliminary site plan prior to the Administrative Official determining whether the development is subject to this title.

(2) Upon receipt of a critical area identification form and site plan, the Administrative Official will typically conduct a site examination to review critical area conditions on site. The Administrative Official shall notify the property owner of the site examination prior to the site visit. Reasonable access to the site shall be provided by the property owner for the site examination during any proposal review, restoration, emergency action, or monitoring period.

(3) The Administrative Official shall review available information pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal. If so, a more detailed critical areas report shall be submitted in conformance with Section 16C.03.17 (Critical Areas Report Requirements) and Section 16C.03.18 (Supplemental Report Requirements for Specific Critical Areas), except as provided below:

- (a) No critical areas present. If the Administrative Official is able to sufficiently determine that a critical area does not exist within or adjacent to the project area, then a critical areas report is not required;
- (b) Critical areas present, but no impact. If the Administrative Official is able to determine the existence, location and type of critical area sufficiently to indicate that the project area is not within or adjacent to the critical area and that the proposed activity is unlikely to degrade the functions or values of the critical area, then the Administrative Official may waive the requirement for a critical areas report. A summary of the determination shall be included in any staff report or decision on the permit or review;
- (c) Critical areas may be affected by proposal. If the project area is within or adjacent to a critical area or buffer the Administrative Official may waive the requirement for a critical areas report if:
  - (i) The Administrative Official is sufficiently able to determine the existence, location and type of the critical area;
  - (ii) The project is of a small scale or is uncomplicated in nature, such that a specialist is not needed to identify impacts and mitigation. Work within a wetland, stream channel, or a vegetative buffer would generally not meet this provision;
  - (iii) The applicant agrees to provide mitigation that the Administrative Official deems adequate, with consultation from resource agencies, to mitigate for anticipated impacts. Restoration of degraded areas may serve as mitigation; and
  - (iv) A summary of the determination shall be included in any staff report or decision on the permit or review;
- (d) If the applicant wants greater assurance of the accuracy of the critical area review determination, the applicant may choose to hire a qualified professional to provide such assurances;
- (e) As guidance on the practical application of the requirement for critical areas reports, reports will generally fall into the following groups based on increasing complexity and cost of the report:
  - (i) Determining the absence of a critical area (sometimes resulting when initial indicators show the likely presence of a critical area);
  - (ii) Determining the existence, location and type of a critical area;
  - (iii) Determining impacts of an encroachment on a critical area and general mitigation measures;
  - (iv) Developing a compensatory mitigation plan for replacement or mitigation of lost wetland or stream channel area.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 6-2011 § 2 (Exh. A) (part), 2011; Ord. 13-2007 §1 (Exh. A)(16C.03.02), 2007).

#### **16C.03.03 Pre-application Conference.**

Any new development, construction or use falling under the provisions of this title shall be subject to a pre-application conference, except that project review for flood hazards shall follow the pre-application requirements established to administer Chapters 16C.05.20 through 16C.05.72 (Flood Hazard Areas). The department shall schedule a pre-application conference for as soon as is reasonably possible to allow attendance by the project proponent and necessary staff. To assist in project review and discussion, prior to the pre-application conference, the project proponent must submit a preliminary site plan showing the nature and scope of the proposed project along with any existing features of the property having a relationship to the project. The pre-application conference is intended to allow the Administrative Official to:

- (1) Establish the scope of the project and the critical area features involved or potentially impacted;

- (2) Consider the degree to which the project may affect or impair a designated critical area and identify potential concerns that may arise;
  - (3) Identify other permits and authorizations which the project proponent may need to obtain;
  - (4) Determine whether the project will be processed through the development authorization procedures of this title or coordinated through the review and approval procedures of another development permit or authorization required of the project from Yakima County;
  - (5) Provide the proponent with resources and technical assistance (such as maps, scientific information, other source materials, etc.) to assist the proponent in meeting the provisions of this title and any applicable rules and regulations of other agencies and jurisdictions;
  - (6) Determine whether there is a need for a preliminary site assessment or a technical assistance conference to better define the critical area issues and alternatives;
  - (7) Determine whether the project requires a permit, and what type of permits or reviews may be needed. Final determination of necessary permits will be made based on the project design and submittal materials;
  - (8) Consider whether a preliminary site assessment should be scheduled in the field to determine the applicability of the development standards of this title to the project, based on information contained in the preliminary site plan.
- (Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 6-2011 § 2 (Exh. A) (part), 2011; Ord. 13-2007 §1 (Exh. A)(16C.03.03), 2007).

#### **16C.03.04 Technical Assistance Conference.**

If requested by the project proponent or otherwise determined necessary, the department will arrange a meeting of representatives of those agencies and organizations with expertise, interest, or jurisdiction in the project. In conjunction with the invitation to attend the technical assistance conference, the department will provide the potential participants with a project summary compiled from the pre-application conference. The technical assistance conference may also involve a preliminary site assessment, if it is determined that resolution of issues related to the project can be achieved through an on-site review. The purpose of the technical assistance conference will be to:

- (1) Confirm and define the requirements of any other applicable local, state or federal regulations;
- (2) Clarify any identified procedural or regulatory conflicts and define the alternative courses of action available to the applicant in addressing project requirements;
- (3) Determine whether compliance with other existing statutes and regulations will adequately address the provisions of this title;
- (4) Provide the proponent with guidance, available data and information that will assist in complying with the provisions of this title and other ordinances and regulations;
- (5) Provide the proponent with guidance concerning project modifications or site enhancements that would eliminate or minimize impacts to the critical area;
- (6) Provide the proponent with alternatives for securing data, information, or assistance necessary to the project but not available through the pre-application conference;
- (7) Determine whether a critical area report is necessary, and if so, the qualifications, skills and expertise required of a consultant to perform the special study.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.03.04), 2007).

### ARTICLE III – ABBREVIATED REVIEW ALTERNATIVES

#### **16C.03.05 Minor Activities Allowed Without a Permit.**

(1) The following activities are included under Section 16C.01.05(1) (Applicability) and are allowed without a permit:

- (a) Maintenance of existing, lawfully established areas of crop vegetation, landscaping (including paths and trails) or gardens within a regulated critical area or its buffer. Examples include harvesting or changing crops, mowing lawns, weeding, harvesting and replanting of garden crops, pruning, and planting of non-invasive ornamental vegetation or indigenous native species to maintain the general condition and extent of such areas. Excavation, filling, and construction of new landscaping features, such as concrete work, berms and walls, are not covered in this provision and are subject to review;
- (b) Minor maintenance and/or repair of lawfully established structures that do not involve additional construction, earthwork or clearing. Examples include painting, trim or facing replacement, re-roofing, etc. Maintaining canals, ditches, drains, wasteways, etc. without expanding their original configuration is not considered additional earthwork. Repair of levees operated by the Yakima County Flood Control Zone District, as long as the original dimensions and location are maintained, is not considered additional earthwork. All cleared materials shall be placed outside the stream corridor, wetlands, and buffers;
- (c) Low impact activities such as hiking, canoeing, viewing, nature study, photography, hunting, fishing, education or scientific research;
- (d) Creation of unimproved private trails that do not cross streams or wetlands that are less than two (2) feet wide and do not involve placement of fill or grubbing of vegetation;
- (e) Planting of native vegetation;
- (f) Noxious weed control outside vegetative buffers identified in Chapter 16C.06.16, except for area wide vegetation removal/grubbing;
- (g) Noxious weed control within vegetative buffers, if the criteria listed below are met. Control methods not meeting these criteria may still apply for a development authorization as applicable:
  - (i) Hand removal/spraying of individual plants only;
  - (ii) No area wide vegetation removal/grubbing;
- (h) Agricultural and other accessory uses or structures that maintain the existing natural vegetation (rangeland, grazing, stock fences, outdoor recreation, etc.).
- (i) The restoration of critical areas for habitat restoration projects that do not include excavation or fill.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 6-2011 § 2 (Exh. A) (part), 2011; Ord. 1-2011 § 2 (Exh. A (2A)), 2011; Ord. 2-2009 § 2 (Exh. A (3)), 2009; Ord. 13-2007 § 1 (Exh. A)(16C.03.05), 2007).

#### **16C.03.10 Mitigation Requirements.**

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

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
  - (e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
  - (f) Monitoring the impact and taking appropriate corrective measures.
- (2) Mitigation for individual actions may include a combination of the above measures.
- (3) Unless otherwise provided in this title, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated in accordance with an approved Mitigation Plan. Mitigation shall not be implemented until after approval of the Mitigation Plan.
- (4) Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area. When necessary, mitigation may be provided that is out-of-kind and/or off-site.
- (Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.03.10), 2007).

#### ARTICLE IV – REVIEW PROCESS

##### **16C.03.11 Application Submittal.**

- (1) Application for a development authorization under this title shall be made on forms provided by the department. The application submittal shall include a site plan drawn to scale showing:
- (a) The actual shape and dimensions of the property site to be used;
  - (b) Existing and proposed structures;
  - (c) Excavation, fill, drainage facilities, topography, slope; and
  - (d) Such other information as is needed to determine the nature and scope of the proposed development, including the maximum extent of the project site with respect to construction, excavation, equipment and material storage, and other project related work.
- (2) The site plan should also show the location of all critical areas, such as those identified in Sections 16C.03.02 (Critical Area Identification Form and Critical Area Report Requirements) and 16C.03.17 (Critical Areas Report Requirements), include all required critical areas reports prepared in conformance with Section 16C.03.17, and include the permit information required either in YCC Title 16B (Project Permit Administration) or in Chapter 16C.05.44 (Flood Hazard Protection Administration), as appropriate.
- (3) To be accepted as complete, a critical area development authorization application must include all maps, drawings and other information or data specified by this title or requested on the basis of the pre-application conference (Section 16C.03.03), or technical assistance conference (Section 16C.03.04).
- (Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.03.11), 2007).

##### **16C.03.12 Determination of Review Process.**

- (1) The Administrative Official shall determine from the application submittal, and other available information what type of permit or review is required under this title. The Administrative Official shall make such determination as early in the application process as is possible and shall inform the project applicant in writing of any application needs. Available information used in this determination may include:
- (a) Critical areas identification form;
  - (b) Pre-application conference information;

(c) Technical assistance conference information.

(2) Specific information on when a permit or review is required, its review process type and review criteria are found in the section for each permit or review. However, a brief description of each type of permit or review is provided in Table 3-1 below. Some permits or reviews are general and all projects will have a general review. Some permits are more specialized and apply only in specific cases or situations. More than one permit or review may be needed for a project.

Table 3-1

General Permits or Reviews
<b>Standard Development.</b> Standard development projects include any development not subject to RCW Chapter 90.58, the Shoreline Management Act.
Specific Permits
<b>Adjustment.</b> Administrative Adjustments are used outside Shoreline jurisdiction when a project needs to reduce or adjust a development standard.
<b>Non-conforming Use or Facility Alteration.</b> Non-conforming Use or Facility Alterations are necessary when an existing legal use that currently does not conform to this title is to be altered.
<b>Minor revisions to an Existing Permit.</b> Minor Revisions to an Existing Permit allow simplified review of certain changes to a project that has previously received a permit.
<b>Reasonable Use Exceptions.</b> Reasonable Use Exceptions provide an alternative to landowners when all reasonable use of a property has been prohibited.
<b>Flood Hazard Permit.</b> A Flood Hazard Permit is required for activities within floodplains. It is different in that it has special administrative provisions, and may include many of the specific permit types noted above within it, which are described in chapters 16C.05.20 through 16C.05.72. It is focused mainly on construction methods, but may include site design to minimize impacts to adjacent properties or resources, or to locate the proposed development in areas where depth and velocity of floodwaters during the base flood do not exceed the current standards for construction of human occupied structures or safe access.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 6-2011 § 2 (Exh. A) (part), 2011; Ord. 13-2007 §1 (Exh. A)(16C.03.12), 2007).

### 16C.03.13 Development Authorization – Review Procedure.

Upon submittal and acceptance of a completed development authorization application, the Administrative Official shall process and review the application as follows, except that permits or reviews required for critical areas under Chapters 16C.05.20 through 16C.05.72 (Flood Hazard Areas) shall be processed using the permit development standards, approval criteria and other provisions established in Chapters 16C.05.20 through 16C.05.72.

(1) Development authorizations shall be processed consistent with review procedures provided in YCC Title 16B (Project Permit Administration), and with any specific processes requirements provided in Sections 16C.03.20 through 16C.03.26 (specific permit descriptions), including but not limited to:

- (a) Submittals;
- (b) Completeness review;
- (c) Notices;
- (d) Hearings;
- (e) Decisions; and
- (f) Appeals.

(2) Development authorizations shall be reviewed for conformance with the applicable development standards provided in Section 16C.03.27 (General Critical Areas Protection Measures), and in Chapters 16C.06 through 16C.09, except that:

(a) For rangeland livestock grazing operations, the Administrative Official may waive compliance with development standards in Chapters 16C.06 (Fish and Wildlife Habitat and the Stream Corridor System), 16C.07 (Wetlands), 16C.08 (Geologically Hazardous Areas), and 16C.09 (CARA), except for those uses and activities listed in Section 16C.06.10 (Prohibited Uses). To qualify for this provision, a Resource Management Plan must be provided that has been prepared using all applicable U.S. Department of Agriculture – National Resource Conservation Service best management practices designed to protect streams, wetlands, vegetative buffers, erosion hazards, and floodplains from grazing operations. An acceptable Resource Management Plan is deemed to consist of acceptable critical areas protection measures capable of dealing with impacts of grazing activities dispersed across large areas. This provision is not intended to apply to pasture grazing, hobby farms, or confinement feeding operations.

(3) Decisions on a development authorization shall be consistent with Sections 16C.03.14 (Authorization Decisions – Basis for Action), 16C.03.15 (Conditional Approval of Development Authorization) and with any specific decision criteria provided under the sections for each relevant permit type, as provided in Sections 16C.03.20 through 16C.03.26 (specific permit descriptions).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.03.13), 2007).

**16C.03.14 Authorization Decisions – Basis for Action.**

The action on any development authorization under this title shall be based upon the following criteria:

- (1) Impact of the project to critical area features on the property or on abutting or adjacent properties;
- (2) Danger to life and property that would likely occur as a result of the project;
- (3) Compatibility of the project with the critical area features on, adjacent to, or near the property;
- (4) Conformance with the applicable development standards in this title;
- (5) Requirements of other applicable local, state or federal permits or authorizations, including compliance with flood hazard mitigation requirements of Chapters 16C.05.20 through 16C.05.72;
- (6) Adequacy of the information provided by the applicant or available to the department;
- (7) Ability of the project to satisfy the purpose and intent of this title;
- (8) Based upon the project evaluation, the decision maker shall take one of the following actions:
  - (a) Grant the development authorization;
  - (b) Grant the development authorization with conditions, as provided in Section 16C.03.15 (Conditional Approval of Development Authorization), to mitigate impacts to the critical area feature(s) present on or adjacent to the project site;
  - (c) Deny the development authorization;
- (9) The decision by the Administrative Official on the development authorization shall include written findings and conclusions stating the reasons upon which the decision is based.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.03.14), 2007).

**16C.03.15 Conditional Approval of Development Authorization.**

In granting any development authorization, the decision maker may impose conditions to:

- (1) Accomplish the purpose and intent of this title;
- (2) Eliminate or mitigate any identified specific or general negative impacts of the project on the critical area;



- (3) Restore important resource features that have been degraded or lost because of past or present activities on the project site;
- (4) Protect designated critical areas from damaging and incompatible development;
- (5) Ensure compliance with specific development standards in this title.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.03.15), 2007).

#### **16C.03.16 Fees and Charges.**

The board of county commissioners establishes the schedule of fees and charges listed in Yakima County Code, Title 20 (Yakima County Fee Schedule), for development authorizations, adjustments, appeals and other matters pertaining to this title.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.03.16), 2007).

### **ARTICLE V – CRITICAL AREAS REPORTS**

#### **16C.03.17 Critical Areas Report Requirements.**

- (1) The Administrative Official may require a critical areas report, paid for by the applicant in accordance with YCC Chapter 16B.04, where determined necessary through the critical area identification form, technical assistance conference, site investigation, or other portion of the project review.
- (2) A qualified professional, as defined by this title, shall prepare the report utilizing best available science. The intent of these provisions is to require a reasonable level of technical study and analysis sufficient to protect critical areas. The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity.
- (3) The critical area report shall:
  - (a) Demonstrate that the submitted proposal is consistent with the purposes and specific standards of this title;
  - (b) Describe all relevant aspects of the development proposal; all critical areas adversely affected by the proposal including any geologic or flood hazards; all risks to critical areas, the site, and other public and private properties and facilities resulting from the proposal; and assess impacts on the critical area from activities and uses proposed; and
  - (c) Identify proposed mitigation and protective measures as required by this title.
- (4) The critical areas report shall include information to address the supplemental report requirements for specific critical areas (16C.03.18).
- (5) The Administrative Official shall review the critical areas report for completeness and accuracy, and shall consider the recommendations and conclusions of the critical areas report to assist in making decisions on development authorizations and to resolve issues concerning critical areas jurisdiction, appropriate mitigation, and protective measures.
- (6) Critical areas reports shall generally be valid for a period of five (5) years, unless it can be demonstrated to the satisfaction of the Administrative Official that the previously prepared report is adequate for current analysis. Future land use applications may require preparation of new, amended, or supplemental critical area assessment reports. Reports prepared for nearby lands may be deemed acceptable by the Administrative Official, in whole or in part, if relevant to the current analysis and meeting the above standards. The Administrative Official may also require the preparation of a new critical area assessment report or a supplemental report when new information is found demonstrating that the initial assessment is in error. If the Administrative Official requires more information in the report, he/she shall make the request in writing to the applicant stating what additional information is needed and why.

- (7) The Administrative Official may reject or request revision of the critical areas report when the Administrative Official can demonstrate that the assessment is incomplete, or does not fully address the critical areas impacts involved.
- (8) To avoid duplication, the reporting requirements of this chapter shall be coordinated if more than one critical area report is required for a site or development proposal.
- (9) Applicants should provide reports and maps to the County in an electronic format that allows site data to be incorporated into the County critical areas database, provided that the County may waive this requirement for single-family developments. Applicants are encouraged to coordinate with the Administrative Official regarding electronic submittal guidelines. This requirement shall not be construed as a requirement to use specific computer software.
- (10) At a minimum, a critical areas report shall include the following information:
- (a) A site plan showing the proposed development footprint and clearing limits, and all relevant critical areas and buffers within and abutting the site, including but not limited to effects related to clearing, grading, noise, light/glare, modification of surface or subsurface flow, drilling, damming, draining, creating impervious surface, managing stormwater, releasing hazardous materials, and other alterations. Projects in frequently flooded areas must comply with the requirements of Sections 16C.05.20 through 16C.05.72. For projects on or adjacent to geologically hazardous areas or areas subject to high floodwater depth or velocity, the report shall identify the type of hazard and assess the associated risks posed by the development to critical areas, the site, and other public and private properties and facilities that are the result from the proposal, and assess impacts on the critical area from activities and uses proposed;
  - (b) A written description of the critical areas and buffers on or abutting the site, including their size, type, classification or rating, condition, disturbance history, and functions and values. For projects on or adjacent to geologically hazardous areas or areas subject to high floodwater depth or velocity the description shall identify the type and characteristics of the hazard;
  - (c) An analysis of potential adverse critical area impacts associated with the proposed activity. For geologically hazardous areas, also assess the risks posed by the development to critical areas, the site, and other public and private properties and facilities that are the result from the proposal, and assess impacts on the critical area from activities and uses proposed;
  - (d) An explanation of how critical area impacts or risks will be avoided and/or minimized, how proposed mitigation measures will prevent or minimize hazards, why the proposed activity requires a location on or access across a critical area, the on-site design alternatives, and why alternatives are not feasible;
  - (e) When impacts cannot be avoided, the report shall include a plan describing mitigation to replace critical area functions and values altered as a result of the proposal, or to reduce flood or geologic hazards to critical areas, the site, and other public and private properties. For projects on or adjacent to geologically hazardous areas or areas subject to high floodwater depth or velocity the plan shall address mitigation for impacts to critical areas, the site, and other public and private properties and facilities that are the result from the proposal, and assess impacts on the critical area from activities and uses proposed;
  - (f) The dates, names, and qualifications of the persons preparing the report and documentation of analysis methods including any fieldwork performed on the site; and
  - (g) Additional reasonable information requested by the Administrative Official for the assessment of critical areas impacts or otherwise required by the subsequent chapters of this title.
- (11) A critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the Administrative Official.
- (12) The Administrative Official may limit the required geographic area of the critical area report as appropriate.

(13) Compensatory Mitigation Plans. When compensatory mitigation, as described in Section 16C.03.10 (Mitigation Requirements), is required or proposed for wetland areas, stream channels, or upland habitat areas, the applicant shall submit for approval by Yakima County a mitigation plan as part of the critical area report, which includes:

- (a) Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the proposed compensation including:
  - (i) A description of the anticipated impacts to the critical areas, mitigating actions proposed, and the purposes of the compensation measures, including the site selection criteria, identification of compensation goals and objectives, identification of desired resource functions, dates for beginning and completion of site compensation construction activities, and an analysis of the likelihood of success of the compensation project. The goals and objectives shall be related to the functions and values of the impacted critical area;
- (b) A review of the best available science supporting the proposed mitigation;
- (c) A description of the report author's experience to date in restoring or creating the type of critical area proposed;
- (d) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained;
- (e) Detailed Construction Documents. The mitigation documents shall include written specifications and plans describing the mitigation proposed, such as:
  - (i) The proposed construction sequence, timing, and duration;
  - (ii) Grading and excavation details;
  - (iii) Erosion and sediment control features;
  - (iv) A planting plan specifying plant species, quantities, locations, size, spacing, and density;
  - (v) Measures to protect and maintain plants until established; and
  - (vi) Documents should include scale drawings showing necessary information to convey both existing and proposed topographic data, slope, elevations, plants and project limits;
- (f) Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years 1, 3, 5, and 7 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.
- (g) Contingency Plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.
- (h) Financial Guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with Section 16C.03.27(1) (Financial Guarantees).

(14) Innovative Mitigation.

(a) Yakima County encourages innovative mitigation projects that are based on the best available science. The mitigation plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:

- (i) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
- (ii) The group demonstrates the organizational and fiscal capability to act cooperatively;
- (iii) The group demonstrates that long-term management of the habitat area will be provided;
- (iv) There is a clear potential for success of the proposed mitigation at the identified mitigation site;
- (v) There is a clear likelihood for success of the proposed plan based on supporting scientific information and demonstrated experience in implementing similar plans;
- (vi) The proposed project results in equal or greater protection and conservation of critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;
- (vii) The plan is consistent with the general purpose and intent of this chapter;
- (viii) The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and
- (ix) The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.

(b) Conducting mitigation as part of a cooperative process does not reduce or eliminate the required wetland replacement ratios.

(c) Projects that propose compensatory wetland mitigation shall also use the standards in Section 16C.07.05 (Compensatory Mitigation Requirements). For those situations where a mitigation bank may provide an opportunity for mitigation, then the requirements in Section 16C.07.06 (Wetland Mitigation Banks) shall apply.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.03.17), 2007).

#### **16C.03.18 Supplemental Report Requirements for Specific Critical Areas.**

(1) Stream Corridors. When a critical areas report is required for a stream corridor or hydrologically related critical area, it shall include the following:

- (a) A habitat and native vegetation conservation strategy that addresses methods to protect and enhance the functional properties listed in Section 16C.06.05 (Functional Properties);
- (b) Where there is evidence that proposed construction lies within an immediate zone of potential channel migration, representing a future hazard to the construction, a hydrologic analysis report may be required. The report shall assume the conditions of the one-hundred-year flood, include on-site investigative findings, and consider historical meander characteristics in addition to other pertinent facts and data.

(2) Upland Wildlife. When a critical areas report is required for Upland Wildlife Habitat Conservation Areas, it shall include the following:

- (a) **Habitat Assessment.** A habitat assessment is an investigation of the project area to evaluate the presence or absence of such species, and habitat types with which such species have a primary association. The presence or absence assessment shall incorporate the time sensitive nature of species use. The landowner may submit an assessment prepared by the state or federal agency with jurisdiction over the species. This assessment is time sensitive and the assessment must be completed no more than 36 months prior to the date the critical areas application is deemed complete.
- (b) If the habitat assessment determines that such habitat area is present on site, a management plan is required that follows published federal, or state, management recommendations. The Administrative Official shall confer with the appropriate agency and consider their comments through the review process.
- (3) **Wetlands.** When a critical areas report is required for Wetlands, it shall include the following:
- (a) The exact location of a wetland's boundary and wetland rating shall be determined through the performance of a field investigation by a qualified wetland professional applying the 1987 Corps of Engineers Wetlands Delineation Manual – (<http://www.ecy.wa.gov/programs/sea/wetlands/pdf/corps87manual.pdf>) as required by RCW 36.70A.175 (Wetlands to be delineated in accordance with manual), Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0) ([http://www.ecy.wa.gov/programs/sea/wetlands/pdf/AridWest\\_Sept2008.pdf](http://www.ecy.wa.gov/programs/sea/wetlands/pdf/AridWest_Sept2008.pdf)), and Western Mountains, Valleys, and Coast Region (Version 2.0) ([http://www.ecy.wa.gov/programs/sea/wetlands/pdf/WestMt\\_May2010.pdf](http://www.ecy.wa.gov/programs/sea/wetlands/pdf/WestMt_May2010.pdf)), and the Washington State Wetland Rating System for Eastern Washington (Ecology Publication # 14-06-030 - <http://fortress.wa.gov/ecy/publications/SummaryPages/1406030.html>), as amended;
- (b) All delineated wetlands and required buffers within two hundred (200) feet of the project area shall be depicted on the site plan. For areas off-site of the project site, wetland conditions within 200 feet of the project boundaries may be estimated using the best available information. Best available information should include, but not be limited to, aerial photos, land based photos, soils maps, or topographic maps;
- (c) A critical area report for wetlands shall contain an analysis of the wetlands including the following site- and proposal-related information:
- (i) A statement specifying all assumptions made and relied upon;
  - (ii) Documentation of any fieldwork performed on the site, including field data sheets for delineations, the wetland rating form, baseline hydrologic data, etc.;
  - (iii) A description of the methodologies used to conduct the wetland delineations, or impact analyses including references;
  - (iv) Wetland category, including vegetative, faunal, and hydrologic characteristics;
- (d) For projects that will affect the wetland or its buffer, provide the following:
- (i) A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and wetland functions and values listed in Section 16C.07.04(1) (Wetland Functions and Rating) and Section 16C.06.05 (Functional Properties);
  - (ii) Mitigation sequencing pursuant to Section 16C.03.10 (Mitigation Requirements) to avoid, minimize, and mitigate impacts. Mitigation shall result in no net loss of wetland functions and values. Mitigation ratios may be necessary and should follow the guidance provided in Section 16C.07.05 (Compensatory Mitigation) of the wetland chapter.
- (4) **Geologically Hazardous Areas.** When a critical areas report is required for a Geologically Hazardous Area, it shall include the following, provided that the Administrative Official may determine that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:

- (a) A description of the site features, including surface and subsurface geology. This may include surface exploration data such as borings, drill holes, test pits, wells, geologic reports, and other relevant reports or site investigations that may be useful in making conclusions or recommendations about the site under investigation;
  - (b) A description of the geologic processes and hazards affecting the property, including a determination of the actual hazard types for any Suspected and Risk Unknown hazards identified in the affirmative determination of hazard (Section 16C.08.04);
  - (c) A description of the vulnerability of the site to seismic and other geologic processes and hazards;
  - (d) A description of any potential hazards that could be created or exacerbated as a result of site development;
  - (e) For developments in or affecting landslide hazard areas the report shall also include:
    - (i) Assessments and conclusions regarding slope stability including the potential types of landslide failure mechanisms (e.g., debris flow, rotational slump, translational slip, etc.) that may affect the site. The stability evaluation shall also consider dynamic earthquake loading, and shall use a minimum horizontal acceleration as established by the current version of YCC Title 13 (Building Code);
    - (ii) An analysis of slope recession rate shall be presented in those cases where stability is impacted or influenced by stream meandering, or other forces acting on the toe of the slope;
    - (iii) Description of the run-out hazard of landslide debris to the proposed development that starts up-slope (whether part of the subject property or on a neighboring property) and/or the impacts of landslide run-out on down-slope properties and critical areas.
- (5) Flood Hazards.
- (a) Prior to authorization of any major construction project within a floodplain which can be anticipated to displace floodwaters or alter the depth or velocity of floodwaters during the base flood, an engineering report shall be prepared that establishes any new flood elevations that would result for the one-hundred-year flood frequency if the project were implemented.
- (6) Critical Aquifer Recharge Areas. When a hydrogeological report is required for CARAs, it shall include the following:
- (a) The report shall address the impact the proposed land use will have on both the quality and quantity of the water transmitted to the aquifer.
  - (b) The hydrogeologic report shall be prepared by a hydrogeologist licensed in the state of Washington.
  - (c) The report shall contain recommendations on appropriate BMPs (Best Management Practices) or mitigation to assure no significant degradation of groundwater quality.
- (Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 1-2011 § 2 (Exh. A (6)), 2011; Ord. 2-2009 § 2 (Exh. A (7)), 2009; Ord. 13-2007 §1 (Exh. A)(16C.03.18), 2007).

## ARTICLE VI – PERMIT REVIEW CRITERIA

### 16C.03.20 Standard Development Permit.

- (1) Classification Criteria. Standard Development permits include any development not subject to RCW Chapter 90.58 (Shoreline Management Act).
- (2) Process. Standard Development permits shall be processed as either a Type I or II permit at the judgment of the Administrative Official, in accordance with YCC Title 16B (Project Permit Administration). Applications that are of a significant size or scope shall be processed as a Type II review with public notice. Examples of such

projects include those that typically require environmental review (SEPA), filling or excavating a stream channel or wetlands, involve large amounts of fill, require large amounts of parking, etc.

(3) Decision Criteria. Decisions on Standard Development permits shall be based on the general decision criteria found in Section 16C.03.14 (Authorization Decisions – Basis for Action).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.03.20), 2007).

**16C.03.23 Adjustment.**

(1) Classification Criteria - For projects not required to be processed under RCW Chapter 90.58 (Shoreline Management Act), the Administrative Official is authorized to administratively adjust the development standards specified herein. Existing structures, parcel size, property boundaries, and other constraints may preclude conformance with building setbacks, vegetative buffers, and other provisions of this chapter. Given such constraints, administrative adjustments may be authorized where the site plan and project design include measures which ensure the protection and performance of the functional properties identified in Section 16C.06.05 (Functional Properties). Adjustments from prohibited use limits are not allowed.

(2) Process - Requests for an Adjustment permit shall be processed as a Type II permit, in accordance with YCC Title 16B (Project Permit Administration). Requests for adjustments of development standards shall be made in writing and shall specify the standard(s) for which an adjustment is sought and the reasons why the adjustment is sought.

(3) Decision Criteria - Decisions on Adjustment permits shall be based on the general decision criteria found in section 16C.03.14 (Authorization Decisions - Basis for Action) together with the criteria below.

(a) A particular standard may be reduced or modified as long as the Administrative Official determines that the adjustment and/or reduction:

- (i) is consistent with the purpose of this title;
- (ii) is consistent with the intent of the standard; and,
- (iii) will not result in degradation of the critical area.

(b) The Administrative Official shall consider the following:

- (i) The proximity and relationship of the project to any critical area and its impact on the critical area;
- (ii) The functions and values that the critical area performs;
- (iii) The overall intensity of the proposed use;
- (iv) The presence of threatened, endangered, or sensitive species;
- (v) The site's susceptibility to severe erosion;
- (vi) The use of a buffer averaging or buffer enhancement plan by the applicant which uses native vegetation or other measures which will enhance the functions and values of the Hydrologically Related Critical Area (HRCA).

(c) When granting an adjustment to the provisions of this chapter, the Administrative Official may require alternative measures to be taken to protect the function and value of the HRCA. These alternative measures may include, but are not limited to, the following:

- (i) Restoration of impaired channels and banks to conditions which support natural stream flows, fish habitat, and other values;

- (ii) Restoration, enhancement, and preservation of soil characteristics and the quantity and variety of native vegetation;
  - (iii) Provisions for erosion control and for the reduction and filtration of stormwater runoff to moderate the effects of the project on the stream channel and the available area of vegetation separating the project from the stream channel;
  - (iv) Removal or alteration of existing manmade facilities associated with stream channels, or drainage ways which improve stream-flow characteristics or improve the movement or exchange of surface waters or floodwaters;
  - (v) Replacement of lost wetlands or other stream corridor features on an acre-for-acre and equivalent value or at a higher acre and/or value basis;
  - (vi) Conservation easements for key portions of stream corridor property and/or their inclusion within public or private conservation programs which provide for their long-term preservation and maintenance.
  - (vii) Vegetative Buffer Averaging. Vegetative buffers may be modified by averaging buffer widths. Buffer averaging is preferred in the use of mitigation sequencing (16C.03.10 Mitigation Requirements), over a reduction in the buffer standards.
- (d) The following criteria must be met to reduce the vegetative buffers found in tables 6-1 and 6-2.
- (i) There is a hardship related to maintenance of the buffer width that results from parcel boundaries or existing on-site development.
  - (ii) The buffer width shall be the maximum possible while meeting the minimum needs of the proposal.
  - (iii) The development will not result in a reduction of habitat functions and values.
  - (iv) The buffer reduction will not adversely affect salmonid habitat.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 4-2013 §2 (Exh. 2) (part), 2013: Ord. 13-2007 §1 (Exh. A)(16C.03.23), 2007).

#### **16C.03.24 Reasonable Use Exception.**

- (1) Classification Criteria. If the application of this title would deny all reasonable economic use of the subject property, the property owner may apply for a Reasonable Use Exception pursuant to this section.
- (2) Process. A Reasonable Use Exception shall be processed as a Type III review with a public hearing in accordance with YCC Chapter 16B.03 (Classification by Project Permit Type).
- (3) Decision Criteria. Decisions on the Reasonable Use request shall be based on the general decision criteria found in Section 16C.03.14 (Authorization Decisions – Basis for Action), together with the criteria below. The Reasonable Use request shall be accompanied by the evidence necessary to demonstrate conformance with the criteria below. Failure to satisfy any one of the criteria shall result in denial of the request. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.
- (a) The application of this title would deny all reasonable use of the property; provided that the inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant;
  - (b) No other reasonable use of the property has less impact on the critical area;
  - (c) Any alteration is the minimum necessary to allow for reasonable use of the property.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.03.24), 2007).



**16C.03.25 Minor Revisions to Approved Uses or Developments.**

(1) Classification Criteria. Minor revisions to a project that has been approved under a permit are allowed in certain circumstances.

(a) Changes that are not substantive are not required to obtain a revision and may be allowed as activities to implement the original permit. Examples of such include minor changes in facility orientation or location, minor changes in structural design that do not change the height or increase ground floor area, and minor accessory structures (such as equipment covers or small sheds near the main structure, etc.).

(b) Substantive changes are those that materially alter the project in a manner that relates to its conformance with the permit requirements. Such changes may be approved as a minor revision, if the Administrative Official determines that the proposed revision and all previous revisions are within the scope and intent of the original permit, and meet the criteria listed below. Changes not able to meet the criteria must obtain a new permit.

(i) No additional over water construction will be involved, except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;

(ii) Lot coverage and height may be increased a maximum of ten percent from the provisions of the original permit; provided, that revisions involving new structures not shown on the original site plan shall require a new permit; and provided further, that any revisions authorized under this subsection shall not exceed height, lot coverage, setback or any other requirements of these regulations;

(iii) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with this title for the area in which the project is located;

(iv) The use authorized pursuant to the original permit is not changed;

(v) No additional significant adverse environmental impact will be caused by the project revision.

(2) Process. Minor revisions to existing permits shall be processed as a Type I review, as provided under YCC Title 16B (Project Permit Administration). Parties of record to the original permit shall be notified of the revision, though a comment period is not required.

(3) Decision Criteria. Decisions on permit revisions shall be based on the general decision criteria found in Section 16C.03.14 (Authorization Decisions – Basis for Action).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.03.25), 2007).

**16C.03.26 Non-Conforming Uses and Facilities.**

Non-Conforming Uses and Facilities are classified as either conforming uses with non-conforming structures or areas, or as non-conforming uses, as described in subsection 1 below. Both types have different review processes and decision criteria, as provided below in subsections 2 and 3.

(1) Classification Criteria – There may be situations that do not conform to the standards or regulations of this title. These situations are characterized as:

(a) Non-conforming Uses. Uses of a structure or land that were lawfully established at the time of their initiation but are currently prohibited by this title are non-conforming uses, and may utilize structures or land areas that are also non-conforming. A non-conforming use that is discontinued for any reason for more than one year shall have a presumption of intent to abandon, shall not be re-established, and shall lose its non-conforming status, unless an Adjustment (Section 16C.03.23) is obtained to extend the length of time, based on documentation showing that an intent to abandon did not exist during the period of discontinuance. An Adjustment request may be submitted after the deadline has passed. In the case of destruction or damage where reconstruction costs exceed 50% of the assessed value, the structure shall not be rebuilt;

(b) Conforming Uses with Non-conforming Structures or Areas are structures or areas for conforming uses that were lawfully established at the time of their initiation, but currently do not conform to the bulk, dimensional or other development standards of this title. Structures or areas in locations approved under a permit shall not be considered non-conforming. Non-conforming outdoor areas that have not been used or maintained for 5 consecutive years shall lose their non-conforming status and may not be reestablished;

(c) Any non-conforming structure, area, or use may be maintained with ordinary care according to the provisions in Section 16C.01.05 (Applicability) and Section 16C.03.05 (Minor Activities Allowed without a Permit) and do not require additional review under these non-conforming provisions.

(2) Process.

(a) Alterations to conforming uses with nonconforming structures or areas shall be allowed under the following process requirements with the understanding that other permits or reviews may also be required under this title:

(i) Those that do not increase the existing nonconformity and otherwise conform to all other provisions of this title are allowed without additional review under these nonconforming provisions;

(ii) Those that increase the nonconformity, including establishing additional square footage within a buffer, are allowed without additional review under these nonconforming provisions; however, a Critical Areas Adjustment Permit must be obtained for the increased nonconformity;

(iii) Reconstruction or repair of a structure damaged less than 75% of the assessed value shall be processed as provided in subsections (2)(a)(i) and (ii) above;

(iv) A nonconforming structure which is moved any distance shall be processed as provided in subsections (2)(a)(i) and (ii) above;

(v) Reconstruction or repair of structures destroyed or damaged 75% or more of the assessed value of the structure (not the whole property), including that resulting from neglect of maintenance or repair, shall be processed under these nonconforming provisions as a Type II review under YCC Title 16B (Project Permit Administration).

(b) Alterations to Nonconforming Uses.

(i) Those involving expansion or alteration within an existing structure, but do not include alterations to outdoor areas, or expansions of the building's height or square footage are allowed without additional review under these nonconforming provisions.

(ii) Alterations to nonconforming uses, including their nonconforming structures or areas that do not qualify under subsection (2)(b)(i) above, shall be processed under these nonconforming provisions as a Type II review, as provided under YCC Title 16B (Project Permit Administration).

(3) Decision Criteria.

(a) Decisions on projects that require review under the nonconforming provisions, as identified under subsection (1) above, shall be based on the general decision criteria found in Section 16C.03.14 (Authorization Decisions – Basis for Action) together with the criteria below.

(b) Applications for conforming uses with nonconforming structures or areas that are subject to subsection (2)(a)(v) above shall not be approved unless a finding is made that the project meets all of the following criteria:

(i) Using the original location will not place the structure or people in danger of a hazard;

(ii) The previous structure and any structural shore modification used to protect the structure did not increase hazards or damage to other properties;

(iii) The previous structure and any shore modification used to protect the structure did not cause significant impacts to the functions and values of the critical area.

(c) Decisions on Nonconforming Uses.

(i) A nonconforming use may not be altered or expanded in any manner that would bring that use into greater nonconformity.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 6-2011 § 2 (Exh. A) (part), 2011; Ord. 13-2007 §1 (Exh. A)(16C.03.26), 2007).

**16C.03.27 General Critical Areas Protective Measures.**

The standards below apply to all permits and reviews performed under this title.

(1) Financial Guarantees to Ensure Mitigation, Maintenance, and Monitoring.

(a) When mitigation required pursuant to a development proposal is not completed prior to Yakima County's final permit approval, such as final plat approval or final building inspection, the Administrative Official may require the applicant to post a financial guarantee to ensure that the work will be completed. If the development proposal is subject to compensatory mitigation for wetlands and streams, the applicant must post a financial guarantee to ensure mitigation is fully functional. Where financial guarantees are required by other state or federal agencies for specific mitigation features, additional financial guarantees for those features are not required under this provision.

(b) The financial guarantee shall be in the amount of one hundred twenty-five percent (125%) of the estimated cost of the uncompleted actions and/or the estimated cost of restoring the functions and values of the critical area that are at risk.

(c) The financial guarantee may be in the form of a surety bond, performance bond, assignment of savings account, an irrevocable letter of credit guaranteed by an acceptable financial institution, or other form acceptable to the Administrative Official, with terms and conditions acceptable to the Yakima County attorney.

(d) The financial guarantee shall remain in effect until the Administrative Official determines, in writing, that the standards bonded for have been met. Financial guarantees for wetland or stream compensatory mitigation shall be held for a minimum of five years after completion of the work to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

(e) Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

(f) Any failure to satisfy critical area requirements established by law or condition, including but not limited to the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of an approved mitigation plan, shall constitute a default, and the Administrative Official may demand payment of any financial guarantees or require other action authorized by the Yakima County Code or any other law.

(g) Any funds recovered pursuant to this section shall be used to complete the required mitigation. Such funds shall not be deposited in the County General Fund, but rather provided with a separate account. The County will use such funds to arrange for completion of the project or mitigation, and follow-up corrective actions.

(h) Depletion, failure, or collection of financial guarantees shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

(2) Declarative Covenants.

(a) When a development is authorized by a critical areas permit or review, a declarative covenant shall, unless determined not to be necessary by the Administrative Official, be filed with the Yakima County Auditor to inform future owners of the existence of a critical areas decision that runs with the land and contains limits relating to critical areas on the property. The declarative covenant shall read substantially as follows:

This declarative covenant is intended to reduce the incidence of unintentional violation of the Critical Areas Ordinance. Please be informed about your property and the laws that apply to it.

This declarative covenant is provided by Yakima County to the current and future owners of the property described as [enter property description] to inform them that, at the time of this notice, [enter Critical Areas present] existed within or adjacent to the property which are protected and regulated by the Yakima County Critical Areas Ordinance (YCC Title 16C). Development has taken place on the property under permit or review number [enter permit file number], which includes requirements that run with the land. Current and future owners should obtain copies of the permit and also inform themselves about the critical areas that exist on the property.

This declarative covenant may be removed or modified if critical areas conditions change, or if the permit is no longer applicable. Contact the Yakima County Public Services for assistance in doing so.

(b) The declarative covenant shall not be required for a development proposal by a public agency or public or private utility:

- (i) Within a recorded easement or right-of-way;
- (ii) Where the agency or utility has been adjudicated the right to an easement or right-of-way; or
- (iii) On the site of a permanent public facility.

(c) The applicant shall submit proof that the declarative covenant has been filed for public record before the Administrative Official approves any development proposal for the property or, in the case of subdivisions, short subdivisions, planned unit developments, and binding site plans, at or before recording.

(3) Subdivision Standards. The following standards apply to all permits or reviews under the Unified Land Development Code (YCC Title 19) that contain critical areas:

(a) All subdivisions that contain critical areas shall be eligible for density bonuses or other development incentives, as provided in the Unified Land Development Code (YCC Title 19);

(b) Critical areas shall be actively protected through the following:

- (i) Roads and utilities for the subdivision shall avoid critical areas and their buffers, as much as possible;
- (ii) When Geologically Hazardous Areas (excluding Erosion, Over Steepened Slopes of Intermediate Risk, Stream Undercutting, and Earthquake hazards), FEMA Floodway, Channel Migration Zone (CMZ), Streams, Wetlands and/or Vegetative Buffers fall within the boundary of a subdivision:

(A) Said critical areas shall be protected by placing them entirely within a separate critical area tract, or by including them entirely within one of the developable parcels. Other options such as conservation easements and building envelopes may be deemed by the Administrative Official as meeting this provision when special circumstances obstruct the viability of this provision;

(B) For those new lots that do contain said critical areas, useable building envelopes (5,000 square feet or more for residential uses) shall be provided on the plat that lie outside said critical areas;

- (iii) New lots partially within the floodplain shall provide a usable building envelope (5,000 square feet or more for residential uses) outside the floodplain;
- (iv) New lots entirely within the floodplain shall be at least one acre in area;
- (v) For new lots containing streams, wetlands, and/or vegetative buffers, outdoor use envelopes (such as lawns, gardens, play areas, gazebos, etc.) shall be provided on the plat that lie outside said critical areas;
- (vi) Degraded vegetative buffers shall be restored, or provided with protection measures that will allow them to recover;
- (vii) Floodplains and critical areas shall be depicted on preliminary subdivision plats and relevant information about them disclosed on the final plat.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Res. 80-2016 (Exh. A) (part), 2016; Ord. 13-2007 §1 (Exh. A)(16C.03.27), 2007).

## **Chapter 16C.04**

### **ENFORCEMENT AND PENALTIES**

Sections:

- 16C.04.01 Enforcement Responsibilities Generally.
- 16C.04.02 Enforcement Responsibilities – Chapters 16C.05.20 through 16C.05.72, Flood Hazard Permits.
- 16C.04.03 Penalties.

#### **16C.04.01 Enforcement Responsibilities Generally.**

It shall be the duty of the Administrative Official or his designee to enforce the provisions of the Critical Areas Ordinance pertaining to all development within the jurisdiction of this title, except as expressly noted in Section 16C.04.02 below pertaining to flood hazard permits. Whenever any development is found to be in violation of this title or a development authorization issued pursuant to this title, the Administrative Official or his designee may order any work on such development stopped by serving written notice on any person engaged in the wrongdoing or causing such development to be done. The notice shall be in the form of a “Notice of Violation and/or Stop Work Order” and shall indicate corrective actions necessary to fulfill authorization conditions and/or terms of this title and the time within which such corrections shall occur, including reclamation requirements outlined in Chapter 16C.06.23. No further development shall be authorized unless and until compliance with the development authorization conditions and/or terms of this title has been achieved to the satisfaction of the Administrative Official.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 13-2007 §1 (Exh. A)(16C.04.01), 2007).

#### **16C.04.02 Enforcement Responsibilities – Chapters 16C.05.20 through 16C.05.72, Flood Hazard Permits.**

It shall be the duty of the chief building official or his designee to enforce the provisions of Chapters 16C.05.20 through 16C.05.72. Whenever any development is found to be in violation of said chapters or a permit issued pursuant to said chapters, the Chief Building Official may order any work on such development stopped by serving written notice on any persons engaged in the doing or causing such development or substantial development to be done. Any such persons shall forthwith stop such work until authorized by the chief building official to proceed with the work.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 13-2007 §1 (Exh. A)(16C.04.02), 2007).

#### **16C.04.03 Penalties.**

(1) Violation of the provisions of this title or failure to comply with any of its requirements constitutes a misdemeanor and a public nuisance. Any person who violates or fails to comply with any of its requirements shall, upon conviction in a court of competent jurisdiction, be fined not more than one thousand dollars or be imprisoned for not more than ninety days, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense; however, no additional action will be initiated pending the disposition of any previous suit or complaint.

(2) It shall be the affirmative duty of the county prosecutor’s office to seek relief under this section for violations of this title.

(3) Nothing herein shall prevent the county prosecutor’s office from taking such other lawful action, legal and/or equitable, as is necessary to prevent or remedy any violation.

(4) In addition to any criminal proceedings brought to enforce this title and in addition to any fine or imprisonment provided for therein, continuing violations of this title may be enjoined or ordered abated in a civil proceeding for injunction or for abatement. For purposes of abatement actions, such violations are declared to be public nuisances. Any person, firm, or corporation violating the provisions of this title shall be liable for all costs of such proceedings, including reasonable attorney’s fees and expenses of abatement. The provisions of this subsection are in addition to any other remedies available at law or equity.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 13-2007 §1 (Exh. A)(16C.04.03), 2007).

## Chapter 16C.05.20

### FLOOD HAZARD AREAS – GENERAL PROVISIONS

#### Sections:

- 16C.05.20.010 Flood Hazard Areas Established.
- 16C.05.20.030 Principles.
- 16C.05.20.050 Applicability.
- 16C.05.20.060 Exemptions.
- 16C.05.20.070 Interpretations.
- 16C.05.20.080 Compliance.
- 16C.05.20.090 Warning and Disclaimer of Liability.

#### **16C.05.20.010 Flood Hazard Areas Established.**

The special flood hazard areas identified by the Federal Emergency Management Agency (FEMA), in a scientific and engineering report entitled “The Flood Insurance Study for Yakima County, Washington and Incorporated Areas” dated ~~October 21~~ November 18, 2009, and any revisions thereto, with an accompanying Flood Insurance Rate Map (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be part of Chapters 16C.05.20 through 16C.05.72 and are established as flood hazard areas. The Flood Insurance Study and ~~maps-~~ FIRMs are on file at the Yakima County Courthouse Building, 128 N. 2<sup>nd</sup> St., Yakima, Washington, 98901. State defined frequently flooded areas are included within the flood hazard areas. The best available information for flood hazard area identification as outlined in 16C.05.44.060 shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under 16C.05.44.060.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Res. 127-2012 § 1(2), 2012: Ord. 13-2007 §1 (Exh. A)(16C.05.20.010), 2007).

#### **16C.05.20.030 Principles.**

(1) Recognizing the right and need of the river channel to periodically carry more than the normal flow of water and desiring to minimize loss of life and property, Chapters 16C.05.20 through 16C.05.72 restrict uses and regulate structures to those that are consistent with the degree of flood hazard.

(2) In advancing the above principles, the intent of Chapters 16C.05.20 through 16C.05.72 and their application is:

- (a) To alert the county assessor, appraisers, owners, potential buyers and lessees to the natural limitations of flood-prone land;
- (b) To meet the minimum requirement of the National Flood Insurance Program;
- (c) To implement state and federal flood protection programs.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.20.030), 2007).

#### **16C.05.20.050 Applicability.**

The guidelines and regulations set forth in YCC Title 13 and related International Codes shall apply to all special flood hazard areas within the jurisdiction of Yakima County and shall be utilized when considering the issuance of permits through the administrative or quasi-judicial processes within Yakima County.

(1) The provisions of Chapters 16C.05.20 through 16C.05.72 shall apply to any development proposed in a special flood hazard area.

(2) Flood hazard permits shall be approved by Yakima County. County approvals shall only be granted when in accordance with Chapters 16C.05.20 through 16C.05.72 and other applicable local, state and federal regulations.

(3) Topographic, engineering and construction information necessary to evaluate the proposed project shall be submitted to the department for approval.

(4) The granting of a permit for any development or use shall not constitute a representation, guarantee or warranty of any kind or nature by Yakima County, or any official or employee thereof, of the practicality or safety of any structure or use proposed and shall create no liability upon or cause of action against such public body, official or employee for any damage that may result thereto.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.20.050), 2007).

#### **16C.05.20.060 Exemptions.**

The following uses and activities are exempt from the provisions of Chapters 16C.05.20 through 16C.05.72:

(1) The alteration or substantial improvement of any structure listed on the National Register of Historic Places or a state inventory of historic places;

(2) The installation and maintenance of aboveground utility transmission lines and poles;

(3) Private driveways, fences and other accessory activities and/or uses necessary for agricultural uses which the building official determines will not unduly decrease flood storage or capacity, significantly restrict floodwaters, create a substantial impoundment of debris carried by floodwaters, and will resist flotation and collapse;

(4) ~~Construction and practices normal or necessary for agricultural uses. The construction of an accessory barn or similar agricultural structure, designed to have a low flood damage potential, not involving substantial cutting, filling, or watercourse modification, is subject to Section 16C.05.28.020(3)(a) through (e). (Ref. IRC 323)~~

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.20.060), 2007).

#### **16C.05.20.070 Interpretations.**

(1) In the interpretation and application of Chapters 16C.05.20 through 16C.05.72, the provisions shall be considered as minimum requirements, shall be liberally construed in favor of Yakima County, and deemed neither to limit or repeal any other powers granted under state statute. Its provisions shall be applied in addition to and as a supplement to provisions of the Yakima County Codes (YCC), Title 13, Building and Construction, YCC Title 19 – Unified Land Development Code and the Shoreline Master Program (YCC Title 16D). Chapters 16C.05.20 through 16C.05.72 are not intended to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where these chapters and other ordinances, easements, covenants or deed restrictions conflict or overlap, whichever imposes the more stringent requirement shall prevail.

(2) In an interpretation as to an exact location of the boundaries of the special flood hazard areas (i.e., conflict between a mapped boundary and actual field conditions), the person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of Section 60.6 of the rules and regulations of the National Flood Insurance Program (44 CFR 59, etc.). (Ref. IBC 104.1.)

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Res. 80-2016 (Exh. A) (part), 2016; Ord. 13-2007 §1 (Exh. A)(16C.05.20.070), 2007).

#### **16C.05.20.080 Penalties for ~~Compliance~~Noncompliance.**

No structure or land shall hereafter be used, constructed, located, extended, converted or altered without full compliance with the terms of Chapters 16C.05.20 through 16C.05.72 and other applicable regulations. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \_\_\_\_\_ or imprisoned for not more than \_\_\_\_\_ days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the \_\_\_\_\_ from taking such other lawful action as is necessary to prevent or remedy any violation.



(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.20.080), 2007).

**16C.05.20.090 Warning and Disclaimer of Liability.**

The degree of flood protection required by Chapters 16C.05.20 through 16C.05.72 is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. Chapters 16C.05.20 through 16C.05.72 do not imply that land outside the area of special flood hazards or uses permitted within such area will not be subject to flooding or flood damage.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.20.090), 2007).

**16C.05.20.095 Severability**

This ordinance and the various parts thereof are hereby declared to be severable. Should any Section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the Section so declared to be unconstitutional or invalid.

## Chapter 16C.05.28

### FLOOD HAZARD PROTECTION STANDARDS

#### Sections:

- 16C.05.28.010 General Standards.  
16C.05.28.020 Specific Standards.

#### **16C.05.28.010 General Standards.**

The following regulations shall apply in all special flood hazard areas:

##### (1) Anchoring and Construction Techniques.

(a) All new construction and substantial improvements, including those related to manufactured homes, shall be:

- (i) Anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy; and
- (ii) Constructed using materials and utility equipment resistant to flood damage; and
- (iii) Constructed using methods and practices that minimize flood damage; and
- (iv) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(b) All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's Manufactured Home Installation in Flood Hazard Areas guidebook for additional techniques). Anchoring shall meet the specifications set forth below for structures located within one hundred feet of a floodway or the ordinary high water mark if no floodway has been established.

(c) All new construction and any improvements or additions to existing floodproofed structures that would extend beyond the existing floodproofing located within one hundred feet of the floodway or one hundred feet of the ordinary high water mark if no floodway has been established shall be elevated to a height equal to one foot or greater than the base flood, using zero-rise methods such as piers, posts, columns, or other methodology, unless it can be demonstrated that non-zero-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 be designed to penetrate bearing soil, and be sufficiently anchored, as specified above in subsection (1)(a) of this section, provided therefrom, if the original building required a floodproofing certificate, then the floodproofing certificate must be updated. Also provided therefrom, if any part of the project is in a floodway, the floodway standards in this code still apply.

(d) 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 standards are in accordance with adopted floodproofing techniques.

##### (2) Utilities.

(a) All new and replacement water supply systems and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. Water wells shall be located on high ground that is not in the floodway.

(3) Subdivision Proposals and Development. Subdivision proposals, as well as new development shall:

- (a) Be consistent with the need to minimize flood damage;
- (b) Have roadways, public utilities and other facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- (c) Have adequate drainage provided to reduce exposure to flood damage; and

(d) Where subdivision proposals and other proposed developments contain greater than 50 lots or 5 acres (whichever is lesser) ~~include~~ base flood elevation data shall be included as part of the application.

(4) Watercourse Alterations. Whenever a watercourse is to be altered or relocated: 1) Assure that the flood-carrying capacity within altered or relocated portions of any watercourse shall be maintained. 2) Prior to the approval of any alteration or relocation of a watercourse in riverine situations, the department shall notify adjacent communities; the Department of Ecology and FEMA of the proposed development and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.28.010), 2007).

#### **16C.05.28.020 Specific Standards.**

In all special flood hazard areas where base elevation data has been provided as set forth in Section 16C.05.20.010 or Section 16C.05.44.060, the following regulations shall apply, in addition to the general regulations of Section 16C.05.28.010:

(1) Residential Construction. (Ref. IRC 323.2.)

(a) In AE and A1-30 zones or other A zoned areas where the BFE has been determined or can be reasonably obtained, ~~New~~ construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at a minimum to one foot or more above the base flood elevation. Mechanical equipment and utilities shall be waterproofed or elevated at least one foot above the BFE.

(b) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or if used solely for parking, access or storage shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(ii) The bottom of all openings shall be no higher than one foot above grade.

(iii) Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(iv) A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters.

Alternatively, a registered engineer or architect may design and certify engineered openings.

(c) Residential construction within one hundred feet of a floodway or the ordinary high water mark, if no floodway has been established, shall also meet the requirements of Section 16C.05.28.010(1)(c).

(d) New construction and substantial improvement of any residential structure in an AO zone shall meet the requirements in Appendix A.

(e) New construction and substantial improvement of any residential structure in an Unnumbered A zone for which a BFE is not available and cannot be reasonably obtained shall be reasonably safe from flooding, but in all cases the lowest floor shall be at least two feet above the Highest Adjacent Grade.

(2) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure, and any addition to an existing floodproofed structure that would extend beyond the existing floodproofing, shall meet the requirements of subsection A or B below.

(A) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet all of the following requirements:

(i) In AE and A1-30 zones or other A zoned areas where the BFE has been determined or can be reasonably obtained: New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall ~~either~~ have the lowest floor, including basement, elevated a minimum of one foot above the base flood elevation, or elevated as required by ASCE 24, whichever is greater. ~~Mechanical equipment; or, together with attendant and utility-utilities and sanitary-facilities,~~ shall be waterproofed or elevated at least one foot above the BFE, or as required by ASCE 24, whichever is greater.

(ii) If located in an AO zone, the structure shall meet requirements in Appendix A.

(iii) If located in an Unnumbered A zone for which a BFE is not available and cannot be reasonably obtained, the structure shall be reasonably safe from flooding, but in all cases the lowest floor shall be at least two feet above the Highest Adjacent Grade.

(iv) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or if used solely for parking, access or storage shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

a) Have a minimum of two openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.

b) The bottom of all openings shall be no higher than one foot above grade.

c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

d) A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters.

Alternatively, a registered engineer or architect may design and certify engineered openings.

(B) If the requirements of subsection A are not met, then new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet all of the following requirements:

(a.i) —Be floodproofed so that below an elevation one foot above base flood level the structure is watertight, with walls substantially impermeable to the passage of water or dry floodproofed to the elevation required by ASCE 24, whichever is greater; ~~and~~

(b.ii) —Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(eiii) —Be certified by a registered professional engineer or architect that the design and method of construction are in accordance with accepted standards of practice for meeting provisions of this subsection, based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the building official;

(div) —Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in Section 16C.05.28.020~~(1)(b)~~(2)(A)(iv) above;

(ey) —Meet the special standards for structures set forth in Section 16C.05.28.010(1)(c) above if within one hundred feet of a floodway or within one hundred feet of the ordinary high water mark and no floodway has been established;

~~(f) —Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below the level). Floodproofing the building an additional foot will reduce insurance premiums significantly. (Ref. IBC 1612.5.)~~

(3) Agricultural Construction. New construction and substantial improvement of any agricultural structure shall either have the lowest floor, including basement, elevated at a minimum to or above the base flood elevation; or meet the floodproofing requirements of subsection (2) of this section. ~~Agricultural construction or other accessory structures that constitute a minimal investment and comply with the floodway encroachment standards may be exempt from the floodproofing and elevation requirements of subsection (2) above when such structures, together with attendant utility sanitary facilities:~~

~~(a) — Have a low potential for structural flood damage;~~

~~(b) — Are designed and oriented to allow the free passage of floodwaters through the structure in a manner affording minimum flood damage; and~~

~~(c) — Ensure that all electrical and mechanical equipment subject to floodwater damage and permanently affixed to the structure be elevated a minimum of one foot above the base flood elevation or higher, or floodproofed;~~

~~(d) — Are constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters; and~~

~~(e) — Will not be used for human habitation.~~

All such structures shall be anchored to resist flotation, collapse, and lateral movement, and that only flood resistant materials be used for elements of these buildings below the base flood elevation.

(4) Manufactured Homes.

(a) ~~All Manufactured~~ manufactured homes to be placed or substantially improved on sites ~~shall be anchored in accordance with Section 16C.05.28.010(1)(b),~~ shall have the lowest floor elevated ~~to or~~ one foot or more above the base flood elevation, and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement in accordance with Section 16C.05.28.010(1)(b).

(5) Recreational Vehicles.

Recreational vehicles placed on sites are required to either:

a) Be on the site for fewer than 180 days, or

b) Be fully licensed and ready for highway use, on wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

c) Meet the requirements of section 16C.05.28.020(4), above.

(6) Enclosed Area Below the Lowest Floor

If buildings or manufactured homes are constructed or substantially improved with fully enclosed areas below the lowest floor, the areas shall be used solely for parking of vehicles, building access, or storage.

8) AE and A1-30 Zones with Base Flood Elevations but No Floodways

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

10) Livestock Sanctuary Areas.

Elevated areas for the for the purpose of creating a flood sanctuary for livestock are allowed on farm units where livestock is allowed. Livestock flood sanctuaries shall be sized appropriately for the expected number of livestock and be elevated sufficiently to protect livestock. Proposals for livestock flood sanctuaries shall meet all procedural and substantive requirements of this chapter. To be "elevated sufficiently to protect livestock" typically means to be elevated at least one foot above the BFE.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.28.020), 2007).

## **Chapter 16C.05.32**

### **FLOODWAY FRINGE USES**

Sections:

- 16C.05.32.010 Permitted Uses.  
16C.05.32.020 Prohibited Uses.

#### **16C.05.32.010 Permitted Uses.**

The following uses are permitted in the floodway fringe areas:

- (1) Any use permitted in the zoning district in accordance with YCC Title 19 of the Yakima County Code, unless prohibited by Section 16C.05.32.020.
- (2) Utility Transmission Lines. Utility transmission lines shall be permitted when consistent with YCC Title 19 and where not otherwise inconsistent with Chapters 16C.05.20 through 16C.05.72; except that when the primary purpose of such a transmission line is to transfer bulk products or energy through a floodway fringe or special flood hazard area, such transmission line shall conform to the following:
  - (a) Electric transmission lines shall cross floodway fringe and special flood hazard areas by the most direct route feasible. When support towers must be located within floodway fringe or special flood hazard areas, they shall be placed to avoid high floodwater velocity and/or depth areas, and shall be adequately floodproofed.
  - (b) Buried utility transmission lines transporting hazardous materials, including but not limited to crude and refined petroleum products and natural gas, shall be buried a minimum of four feet. Such burial depth shall be maintained within the floodway fringe or special flood hazard area to the maximum extent of potential channel migration as determined by hydrologic analyses. All such hydrologic analyses shall conform to requirements of Section 16C.05.36.010(2)(c).
  - (c) Beyond the maximum extent of potential channel migration, utility transmission lines transporting hazardous and nonhazardous materials shall be buried below existing natural and artificial drainage features. Burial depth in all other agricultural and nonagricultural floodway fringe or special flood hazard areas shall be determined on the basis of accepted engineering practice and in consideration of soil conditions and the need to avoid conflict with agricultural tillage.
  - (d) Aboveground utility transmission lines, not including electric transmission lines, shall only be allowed for the transportation of nonhazardous materials. In such cases, applicants must demonstrate that line placement will have no appreciable effect upon flood depth, velocity or passage. Such lines shall be adequately protected from flood damage.
  - (e) Aboveground utility transmission line appurtenant structures, including valves, pumping stations or other control facilities, shall not be permitted in floodway fringe or special flood hazard areas except where no other alternative is available, or in the event a floodway fringe or special flood hazard location is environmentally preferable. In such instances, aboveground structures shall be located so that no appreciable effect upon flood depth, velocity or passage is created, and shall be adequately floodproofed.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Res. 80-2016 (Exh. A) (part), 2016; Ord. 13-2007 §1 (Exh. A)(16C.05.32.010), 2007).

#### **16C.05.32.020 Prohibited Uses.**

The following uses shall be prohibited in floodway fringe areas:

- (1) New manufactured home parks and the expansion of manufactured home parks.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.32.020), 2007).

## **Chapter 16C.05.36**

### **FLOODWAY USES**

Sections:

- 16C.05.36.010 Permitted Uses.  
16C.05.36.020 Prohibited Uses.

#### **16C.05.36.010 Permitted Uses.**

Permitted uses include any use permitted in the zoning district in accordance with YCC Title 19 of this code, provided that said use is in compliance with the flood hazard protection standards of Chapter 16C.05.28 and other applicable provisions of this title, and will have a negligible effect upon the floodway in accordance with the floodway encroachment provisions of Section 16C.05.36.020(2):

- (1) Surface mining, provided that the applicant can provide clear evidence that such uses will not divert flood flows causing channel-shift or erosion, accelerate or amplify the flooding of downstream flood hazard areas, increase the flooding threat to upstream flood hazard areas, or in any other way threaten public or private properties. When allowed, such removal shall comply with the provisions of Title 19 and the Yakima County Shoreline Management Master Program Regulations (Shoreline Master Program (Title 16D), where applicable);
- (2) Utility transmission lines, unless otherwise prohibited by this chapter; except that when the primary purpose of such a transmission line is to transfer bulk products or energy through a floodway en route to another destination, as opposed to serving customers within a floodway, such transmission lines shall conform to the following:
  - (a) All utility transmission lines shall cross floodways by the most direct route feasible as opposed to paralleling floodways;
  - (b) Electric transmission lines shall span the floodway with support towers located in flood fringe areas or beyond. Where floodway areas cannot be spanned due to excessive width, support towers shall be located to avoid high floodwater velocity and/or depth areas, and shall be adequately floodproofed;
  - (c) Buried utility transmission lines transporting hazardous and nonhazardous materials, including but not limited to crude and refined petroleum products and natural gas, water and sewage, shall be buried a minimum of four feet below the maximum established scour of the waterway, as calculated on the basis of hydrologic analyses. Such burial depth shall be maintained horizontally within the hydraulic floodway to the maximum extent of potential channel migration as determined by hydrologic analyses. In the event potential channel migration extends beyond the hydraulic floodway, conditions imposed upon floodway fringe and special flood hazard areas shall also govern placement. All hydrologic analyses are subject to acceptance by Yakima County, shall assume the conditions of a one-hundred-year frequency flood as verified by the U.S. Army Corps of Engineers, and shall include on-site investigations and consideration of historical meander characteristics in addition to other pertinent facts and data. The use of riprap as a meander containment mechanism within the hydraulic floodway shall be consistent with the Yakima County Shoreline Management Master Program Regulations;
  - (d) Beyond the maximum extent of potential channel migration, utility transmission lines transporting hazardous and nonhazardous materials shall be buried below existing natural and artificial drainage features. Burial depth in all agricultural areas requiring or potentially requiring subsurface drainage shall be a minimum of six feet as measured from ground surface to the top of the transmission line, or at other such depth as deemed necessary by on-site investigations performed by a qualified soils expert familiar with Yakima County soils. Burial depth in all other agricultural and nonagricultural floodway areas shall be determined on the basis of accepted engineering practice and in consideration of soil conditions and the need to avoid conflict with agricultural tillage;
  - (e) Aboveground utility transmission lines, not including electric transmission lines, shall only be allowed for the transportation of nonhazardous materials where an existing or new bridge or other structure is available and capable of supporting the line. When located on existing or new bridges or other structures with elevations



below the level of the one-hundred-year flood, the transmission line shall be placed on the downstream side and protected from flood debris. In such instances, site-specific conditions and flood damage potential shall dictate placement, design and protection throughout the floodway. Applicants must demonstrate that such aboveground lines will have no appreciable effect upon flood depth, velocity or passage, and shall be adequately protected from flood damage. If the transmission line is to be buried except at the waterway crossing, burial specifications shall be determined as in subsection (2)(c) of this section;

(f) Aboveground utility transmission line appurtenant structures, including valves, pumping stations, or other control facilities, shall not be permitted in the floodway;

(g) Where a floodway has not been determined by preliminary Corps of Engineers' investigations or official designation, a floodway shall be defined by qualified engineering work by the applicant on the basis of a verified one-hundred-year flood event;

(3) Construction or reconstruction of residential structures only as authorized in Section 16C.05.36.020(3);

(4) Improvements to existing residential structures that are not substantial improvements per Section 16C.02.395; provided, the improvement complies with the requirement set forth in Section 16C.05.36.020(2);

(5) Water-dependent utilities and other installations which by their very nature must be in the floodway. Examples of such uses are: dams for domestic/industrial water supply, flood control and/or hydroelectric production; water diversion structures and facilities for water supply, irrigation and/or fisheries enhancement; floodwater and drainage pumping plants and facilities; hydroelectric generating facilities and appurtenant structures; structures and nonstructural uses and practices; provided, that the applicant shall provide evidence that a floodway location is necessary in view of the objectives of the proposal, and provided further that the proposal is consistent with other provisions of this title and the Shoreline Management Master Program (YCC Title 16D). In all instances of locating utilities and other installations in floodway locations, project design must incorporate floodproofing and otherwise comply with subsection (2) above;

(6) Dikes, provided that the applicant can provide evidence that:

(a) Adverse effects upon adjacent properties will not result relative to increased floodwater depths and velocities during the base flood or other more frequent flood occurrences,

(b) Natural drainage ways are minimally affected in that their ability to adequately drain floodwaters after a flooding event is not impaired,

(c) The proposal has been coordinated through the appropriate diking district where applicable, and that potential adverse effects upon other affected diking districts have been documented;

(7) Roads and bridges, subject to the regulations of subsection (2) above.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Res. 80-2016 (Exh. A) (part), 2016; Ord. 13-2007 §1 (Exh. A)(16C.05.36.010), 2007).

#### **16C.05.36.020 Prohibited Uses.**

The following uses/developments are prohibited in the floodway:

(1) Any structure, including manufactured homes, designed for, or to be used for human habitation of a permanent nature;

(2) All encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the effect of the subject encroachment together with the cumulative effects of all similar potential encroachments shall not materially cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, reduce the carrying capacity of the floodway, or result in any increase in flood levels during the occurrence of the base flood discharge;

(3) Construction or reconstruction of residential structures within designated floodways, except for (a) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (b) repairs, reconstruction or improvements to a structure, the cost of which does not exceed fifty percent of the assessed value of the structure either (i) before the repair, reconstruction or improvement is started, or (ii) if the structure has been damaged and is being restored, before the damage occurred. Work done on structures to correct existing violations of existing health, sanitary or safety codes, or to structures identified as historic places shall not be included in the fifty percent. If subsection (2) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Chapters 16C.05.20 through 16C.05.72, including those set forth in subsection (5) below;

(4) The construction or storage of any object subject to flotation or movement during flood level periods;

(5) The following uses, due to their high degree of incompatibility with the purpose of establishing and maintaining a functional floodway, are specifically prohibited:

(a) The filling of wetlands, except as authorized under Chapter 16C.06 (Fish and Wildlife Habitat and the Stream Corridor System) and Chapter 16C.07 (Wetlands) of this title;

(b) Solid waste landfills, dumps, junkyards, outdoor storage of vehicles and/or materials;

(c) Damming or relocation of any watercourse that will result in any downstream increase in flood levels during the occurrence of the base flood discharge;

(6) The listing of prohibited uses in this section shall not be construed to alter the general rule of statutory construction that any use not permitted is prohibited.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.36.020), 2007).

## **Chapter 16C.05.40**

### **NONCONFORMING USES AND STRUCTURES**

Sections:

- 16C.05.40.010 Generally.
- 16C.05.40.020 Nonconforming Uses of Land.
- 16C.05.40.030 Nonconforming Structures.
- 16C.05.40.040 Improvements.
- 16C.05.40.050 Restoration.
- 16C.05.40.060 Discontinuance.

#### **16C.05.40.010 Generally.**

(1) Within the special flood hazard areas established by Chapters 16C.05.20 through 16C.05.72 or amendments thereto, there may exist structures and uses of land and structures which were lawful before these chapters were adopted or amended, but which would be prohibited, regulated or restricted under the terms of Chapters 16C.05.20 through 16C.05.72 or future amendment.

(2) It is the intent of Chapters 16C.05.20 through 16C.05.72 to permit these lawful pre-existing nonconformities to continue until they are removed by economic forces or otherwise, but not to encourage their survival except in cases where continuance thereof would not be contrary to the public health, safety or welfare, or the spirit of said chapters.

(3) To avoid undue hardship, nothing in Chapters 16C.05.20 through 16C.05.72 shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to June 5, 1985, the date Yakima County enacted Ordinance 3-1985 in order to meet the requirements of the National Flood Insurance Program, and upon which actual building construction has been diligently carried on; namely, actual construction materials placed in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved. October 1, 1995, the effective date of the amended ordinance codified in Title 16A, shall be used as it applies to all other critical areas requirements established under Title 16A by Ordinance 8-1995.

(Ord. 10-2019 (Exh. 1) (part), 2019: Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.40.010), 2007).

#### **16C.05.40.020 Nonconforming Uses of Land.**

If, on October 1, 1995, the effective date of Chapters 16C.05.20 through 16C.05.72, a lawful use of land not conducted within a building exists that is made no longer permissible under the terms of said chapters as adopted or amended, such use may be continued as long as it remains otherwise lawful, subject to the following provisions:

(1) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of the lot of record than that which it occupied at the effective date of adoption or amendment of Chapters 16C.05.20 through 16C.05.72.

(2) At such time as a structure is erected thereon, the structure and the use of the land shall conform to the regulations specified by Chapters 16C.05.20 through 16C.05.72 and YCC Title 19.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Res. 80-2016 (Exh. A) (part), 2016; Ord. 13-2007 §1 (Exh. A)(16C.05.40.020), 2007).

#### **16C.05.40.030 Nonconforming Structures.**

(1) If, on October 1, 1995, the effective date of Chapters 16C.05.20 through 16C.05.72, a structure is nonconforming only because the structure is not in conformance with the applicable elevation and/or floodproofing requirement of said chapters and Chapter 19.33 of YCC Title 19, provided that the degree of nonconformity shall

not be increased and the applicable elevation and/or floodproofing requirements of this title shall be observed, any structural alterations or enlargements of an existing structure under such conditions shall not increase the degree of nonconformity.

(2) A structure, nonconforming only because the structure is not in conformance with the applicable elevation and/or floodproofing requirements of Chapters 16C.05.20 through 16C.05.72, destroyed to an extent such that restoration costs would exceed fifty percent of the assessed value of the structure immediately prior to such occurrence, shall be considered completely destroyed and shall be required to meet all applicable requirements of this title and YCC Title 19 upon restoration.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Res. 80-2016 (Exh. A) (part), 2016; Ord. 13-2007 §1 (Exh. A)(16C.05.40.030), 2007).

**16C.05.40.040 Improvements.**

Nothing in Chapters 16C.05.20 through 16C.05.72 shall be construed to restrict normal structural repair and maintenance activities, including replacement of walls, fixtures and plumbing, provided that the value of work and materials in any twelve-month period does not exceed twenty-five percent of the assessed value of the structure prior to such work.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 13-2007 §1 (Exh. A)(16C.05.40.040), 2007).

**16C.05.40.050 Restoration.**

Nothing in Chapters 16C.05.20 through 16C.05.72 shall be deemed to prohibit the restoration of the structural portions of a nonconforming use within six months from the date of its accidental damage by fire, explosion, or act of God; provided that the applicable elevation and/or floodproofing requirements of said chapters shall be adhered to if the structure is destroyed. A structure shall be considered to be destroyed if the restoration costs exceed fifty percent of the assessed value.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 13-2007 §1 (Exh. A)(16C.05.40.050), 2007).

**16C.05.40.060 Discontinuance.**

If the nonconforming use is discontinued for a period of twelve consecutive months or more, the nonconforming status of the use is terminated and any future use of the land or structures shall be in conformity with the provisions of this title. The mere presence of a structure, equipment, or material shall not be deemed to constitute the continuance of a nonconforming use unless the structure, equipment or material is actually being occupied or employed in maintaining such use. The ownership of property classed as nonconforming may be transferred without that fact alone affecting the right to continue such nonconforming use.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 13-2007 §1 (Exh. A)(16C.05.40.060), 2007).

## Chapter 16C.05.44

### FLOOD HAZARD PROTECTION ADMINISTRATION

#### Sections:

16C.05.44.010	Administration.
16C.05.44.020	Authority.
16C.05.44.030	Permit – Required.
16C.05.44.040	Permit – Application.
16C.05.44.050	Permit – Review.
16C.05.44.060	Use of Available Data.
16C.05.44.070	Limitations.
16C.05.44.080	Permit – Expiration and Cancellation.
16C.05.44.090	Performance Bonds.
16C.05.44.100	Appeals.
16C.05.44.110	Coordination.

#### **16C.05.44.010** Designation of the Floodplain Administration Administrator.

The Chief Building Official is vested with the duty of administering the rules and regulations relating to flood hazard protection in accordance with the provisions of Chapters 16C.05.20 through 16C.05.72 and may prepare and require the use of such forms as are essential to such administration. The Floodplain Administrator may delegate authority to implement these provisions.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.05.44.010), 2007).

#### **16C.05.44.020** **Authority.**

Upon application, the Chief Building Official shall have the authority to grant a flood hazard permit when compliance with the applicable conditions as set forth in Chapters 16C.05.20 through 16C.05.72 and in other applicable local, state and federal regulations has been demonstrated and the proposal is found to be consistent with the purpose of the policies of the Critical Areas Ordinance.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.05.44.020), 2007).

#### **16C.05.44.030** **Permit – Required.**

Prior to any construction or development within a special flood hazard area a flood hazard permit shall be obtained. The permit shall be for all structures including manufactured homes, as set forth in the “Definitions,” and for all development including fill and other activities, also as set forth in the “Definitions.” This permit may be in addition to the critical area development authorization as set forth in Chapter 16C.03 of this title.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.05.44.030), 2007).

#### **16C.05.44.040** **Permit – Application.**

All persons applying for a flood hazard permit shall submit a written application, accompanied by an application fee as specified in YCC Title 20, using the forms supplied. The application shall not be considered complete until the following minimum information is provided:

- (1) Name, address and telephone number of applicant;
- (2) Name, address and telephone number of property owner;
- (3) Project description and taxation parcel number;
- (4) Name of the stream or body of water associated with the floodplain in which the development is proposed;

(5) Site plan map showing:

- (a) Actual dimensions and shape of the parcel to be built on,
- (b) Sizes and location of existing structures on the parcel to the nearest foot,
- (c) Location and dimensions of the proposed development, structure or alteration,
- (d) Location, volume and type of any proposed fill,
- (e) The application shall include such other information as may be required by the administrative official, to clarify the application, including existing or proposed building or alteration, existing or proposed uses of the building and land, and number of families, housekeeping units or rental units the building is designed to accommodate, conditions existing on the lot, and such other matters as may be necessary to determine conformance with and provide for the enforcement of Chapters 16C.05.20 through 16C.05.72;

(6) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures recorded on a current elevation certificate with Section B completed by the Floodplain Administrator.

(7) Elevation in relation to mean sea level to which any structure has been flood proofed;

(8) Where a structure is to be flood proofed, certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet flood proofing criteria in Section 16C.05.28.020(2);

(9) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development;

(10) Where development is proposed in a floodway, an engineering analysis indicating no rise of the Base Flood Elevation; and

~~(611)~~ Information required by other sections of Chapters 16C.05.20 through 16C.05.72.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 13-2007 § 1 (Exh. A)(16C.05.44.040), 2007).

**16C.05.44.050 Permit – Review.**

Duties of the Floodplain Administrator shall include, but not be limited to review all development permits to determine;

~~Flood hazard permit applications will be reviewed to determine:~~

- (1) That the floodproofing requirements and other provisions of Chapters 16C.05.20 through 16C.05.72 have been satisfied;
- (2) If the proposed development is located in the floodway, the floodway encroachment provisions of Section 16C.05.36.020(2) are met;
- (3) If the proposed development includes the alteration or relocation of a watercourse, the provisions of Section 16C.05.28.010(4) are met;
- (4) That the proposed development is a use permitted under Chapters 16C.05.20 through 16C.05.72 and YCC Title 19;

(5) That all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(6) The site is reasonably safe from flooding;

(7) Notify FEMA when annexations occur in the Special Flood Hazard Area.

(8) Notify FEMA of changes to the base flood elevation within six months of when technical information of such changes becomes available. Such notification shall include technical or scientific information.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Res. 80-2016 (Exh. A) (part), 2016; Ord. 13-2007 §1 (Exh. A)(16C.05.44.050), 2007).

#### **16C.05.44.055 Review of Building Permits.**

Where elevation data is not available, either through the FIS, FIRM, or from another authoritative source (Section 16C.05.44.060), applications for floodplain development shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. (Failure to elevate habitable buildings at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.)

#### **16C.05.44.060 Use of Available Data.**

When base flood elevation data has not been provided in accordance with Section 16C.05.20.010 (Flood Hazard Areas Established), the ~~county~~Floodplain Administrator shall obtain, review, and reasonably utilize any flood area extent from frequently flooded areas, base flood elevation, and floodway data available from a federal, state or other source, in order to administer Section 16C.05.28.020 (Specific Standards) and 16C.05.36.020 (Floodway Prohibited Uses) and Chapter 16C.04 (Enforcement and Penalties). ~~For flood hazard areas without elevations from FIRMs, they shall be determined for proposed structures by the flood official as the greater of the ground elevation at the flood-map extent or the maximum ground elevation plus two feet at the proposed structure footprint.~~

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.44.060), 2007).

#### **16C.05.44.065 Information to be Obtained and Maintained.**

- 1) Certification required by Section 16C.05.36.020(2)(floodway encroachments).
- 2) Records of all variance actions, including justification for their issuance.
- 3) Improvement and damage calculations.
- 4) Maintain for public inspection all records pertaining to the provisions of this ordinance.

#### **16C.05.44.070 Limitations.**

Permits issued on the basis of plans and applications approved by the ~~administrative official~~Floodplain Administrator authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement or construction at variance with that authorized is a violation of Chapters 16C.05.20 through 16C.05.72 and punishable as provided by Chapter 16C.04 (Enforcement and Penalties).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.44.070), 2007).

#### **16C.05.44.080 Permit – Expiration and Cancellation.**

If the work described in any permit has not begun within one hundred eighty days from the date of issuance thereof, the permit shall expire and be canceled by the chief building official.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.44.080), 2007).

**16C.05.44.090 Performance Bonds.**

(1) The county may require bonds in such form and amounts as may be deemed necessary to assure that the work shall be completed in accordance with approvals under Chapters 16C.05.20 through 16C.05.72. Bonds, if required, shall be furnished by the property owner, or other person or agent in control of the property.

(2) In lieu of a surety bond, the applicant may file a cash bond or instrument of credit with the department in an amount equal to that which would be required in the surety bond.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.44.090), 2007).

**16C.05.44.100 Appeals.**

The decision to grant, grant with conditions or deny a flood hazard permit shall be final and conclusive unless the applicant appeals the decision pursuant to the procedure established for appeals in Chapter 16C.03.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.44.100), 2007).

**16C.05.44.110 Coordination.**

Upon application, the Chief Building Official shall have the authority to grant a flood hazard permit when compliance with the applicable conditions as set forth in Chapters 16C.05.20 through 16C.05.72 and in other applicable local, state and federal regulations has been demonstrated and the proposal is found to be consistent with the purpose of this title.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.44.110), 2007).



## Chapter 16C.05.48

### ELEVATION AND FLOODPROOFING CERTIFICATION

#### Sections:

- 16C.05.48.010 Applicability.
- 16C.05.48.020 Certification Form.
- 16C.05.48.030 Information to Be Obtained and Maintained.
- 16C.05.48.040 Certification Responsibility.

#### **16C.05.48.010 Applicability.**

Certification shall be provided to verify that the minimum floodproofing and elevation standards of Chapter 16C.05.28 have been satisfied. Certification shall be required only for the new construction or substantial improvement of any residential, commercial, industrial or nonresidential structure located in a special flood hazard area, except that agricultural and certain accessory structures constructed in accordance with the standards of Section 16C.05.28.020(3) shall not require certification. Such structures are still subject to elevation or floodproofing certification for flood insurance purposes.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.48.010), 2007).

#### **16C.05.48.020 Certification Form.**

The form of the elevation and floodproofing certificate shall be specified by the Chief Building Official and shall be generally consistent with that required by FEMA for the administration of the National Flood Insurance Program.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.48.020), 2007).

#### **16C.05.48.030 Information to Be Obtained and Maintained.**

The elevation and floodproofing certificate shall verify the following flood hazard protection information:

- (1) Where base flood elevation data is provided through the FIS, FIRM, or as required in Section 16C.05.44.060, obtain and maintain a record of the actual elevation (as-built) elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;
- (2) ~~The actual elevation (in relation to mean sea level) of floodproofing of~~ For all new or substantially improved floodproofed non-residential structures where base flood elevation data is provided through the FIS, FIRM, or as required in Section 16C.05.44.060:
  - (a) Obtain and maintain a record of elevation (in relation to mean sea level) to which the structure was flood proofed)., ~~and that the floodproofing measures utilized below the base flood elevation render the structure watertight, with walls substantially impermeable to the passage of water;~~
  - (b) Maintain the flood proofing certifications required in Section 16C.05.44.040(8).
- (3) Where a base flood elevation has not been established according to Section 16C.05.20.010, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) as related to the highest adjacent grade, and whether or not the structure contains a basement.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.48.030), 2007).

#### **16C.05.48.040 Certification Responsibility.**

The project proponent shall be responsible for providing required certification data to the Chief Building Official prior to the applicable construction inspection specified in the certification form. All elevation and floodproofing data specified in Section 16C.05.48.030 must be obtained and certified by a registered professional engineer, architect, or surveyor. The elevation and floodproofing certification shall be permanently maintained by the chief building official.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.48.040), 2007).

PC HEARING DRAFT

## **Chapter 16C.05.52**

### **VARIANCES**

Sections:

- 16C.05.52.010 Procedure.
- 16C.05.52.020 Variance Limitations.
- 16C.05.52.030 Conditions for Authorization.
- 16C.05.52.040 Administrative Official's Decision.
- 16C.05.52.050 Notification and Final Decision.
- 16C.05.52.060 Power to Refer Decisions.
- 16C.05.52.070 Appeals.

#### **16C.05.52.010 Procedure.**

Any person seeking a variance from the requirements of Chapters 16C.05.20 through 16C.05.72 authorized under Section 16C.05.52.020 shall make such request in writing to the department on forms supplied by the department. Upon receipt of a completed application and application fee for the variance, a notice of the variance request shall be forwarded to all landowners of adjacent property within twenty days of the receipt of completed application and fee. The notice shall solicit written comment on the variance request and specify a time period not less than ten days from the date of mailing, during which written comments may be received and considered. The notice shall also state that copies of the administrative official's final decision will be mailed upon request. The administrative official may also solicit comments from any other person or public agency he or she feels may be affected by the proposal.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.05.52.010), 2007).

#### **16C.05.52.020 Variance Limitations.**

(1) Variances shall be limited solely to the consideration of:

- (a) Elevation requirements for lowest floor construction;
- (b) Elevation requirements for floodproofing;
- (c) The type and extent of floodproofing.

(2) Variances shall not be considered for any procedural or informational requirements or use prohibitions of Chapters 16C.05.20 through 16C.05.72.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.05.52.020), 2007).

#### **16C.05.52.030 Conditions for Authorization.**

Before a variance to the provisions of Chapters 16C.05.20 through 16C.05.72 may be authorized, it shall be shown that:

- (1) There are special circumstances applicable to the subject property or to the intended use, such as size, topography, location or surroundings, that do not apply generally to other property in the same vicinity and zone; and
- (2) The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located; and
- (3) Such a variance is the minimum necessary, considering the flood hazard, to afford relief; and
- (4) Failure to grant the variance would result in exceptional hardship to the applicant; and
- (5) The granting of such a variance will not result in:

- (a) Increased flood heights,
- (b) Additional threats to public safety,
- (c) Creation of nuisances,
- (d) Extraordinary public expense,
- (e) Conflicts with other existing local laws or ordinances.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.05.52.030), 2007).

**16C.05.52.040 Administrative Official's Decision.**

After considering any comments received from other agencies, jurisdictions or adjoining property owners, the administrative official shall approve, approve with conditions, or deny the variance request. The administrative official shall prepare written findings and conclusions stating the specific reasons upon which the decision is based.(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.05.52.040), 2007).

**16C.05.52.050 Notification and Final Decision.**

The decision shall be issued within seven days from the end of the comment period. Further, the administrative official shall mail the findings and decision to the applicant and to other parties of record requesting a copy.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.05.52.050), 2007).

**16C.05.52.060 Power to Refer Decisions.**

In exercising the duties and powers of implementing and administering Chapters 16C.05.20 through 16C.05.72, the administrative official may refer any variance application to the hearing examiner for action at a public hearing.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.05.52.060), 2007).

**16C.05.52.070 Appeals.**

Any decision by the administrative official to approve or deny a variance request may be appealed subject to the procedures set forth in Section 16C.03.13 (Development Authorization – Review Procedure).

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 § 1 (Exh. A)(16C.05.52.070), 2007).

## Chapter 16C.05.72

### MAP CORRECTION PROCEDURES

Sections:

16C.05.72.010 Federal Flood Hazard Map Correction Procedures.

#### **16C.05.72.010 Federal Flood Hazard Map Correction Procedures.**

The procedures for federal flood hazard map correction, as provided in federal regulations Section 70 CFR of the National Flood Insurance Program are hereby adopted by reference.

(Ord. 5-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 13-2007 §1 (Exh. A)(16C.05.72.010), 2007).

#### Appendix A – Standards for Shallow Flooding Areas (AO Zones)

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from 1 to 3 feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In addition to other provisions in this code, the following additional provisions also apply in AO zones:

1. New construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement and mechanical equipment) elevated above the highest adjacent grade to the structure, one foot or more above\* the depth number specified in feet on the community's FIRM (at least two feet above the highest adjacent grade to the structure if no depth number is specified).
2. New construction and substantial improvements of nonresidential structures within AO zones shall either:
  - a. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above\* the depth number specified on the FIRM (at least two feet if no depth number is specified); or
  - b. Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer, or architect as in Section 16C.05.28.020(2)(B)(c).
3. Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
4. Recreational vehicles placed on sites within AO zones on the community's FIRM either:
  - a. Be on the site for fewer than 180 consecutive days, or
  - b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
  - c. Meet the requirements of subsections (1) and (3) above and the anchoring requirements for manufactured homes (Section 16C.05.28.010(1)(b)).