



Town of Yacolt
202 W. Cushman St. P O Box 160
Yacolt, WA 98675
(360) 686-3922 FAX: (360) 686-3853
www.townofyacolt.com

March 19, 2018
Town Council Agenda
Town Hall 7:00 PM

- 1. Call to Order**
- 2. Flag Salute**
- 3. Roll Call**
- 4. Minutes of Previous Meeting**
 - A. Draft Minutes for 3/5/2018**
- 5. Late Changes to the Agenda**
- 6. Citizen Communication**

***Anyone requesting to speak to the Council regarding items not on the agenda may Come forward at this time. Comments are limited to (3) minutes. Thank you.**
- 7. Old Business:**
 - A. Personal Policy Update**
 - B. Employee Benefits**
 - C. Town Clerk Position**
 - D. Clark County Interlocal Agreement - Building Department Services**
 - E. Community Development Block Grant (CDBG)**
- 8. New Business:**
 - A. KWRL Baseball Inquiry**
- 9. Mayor's Comments**
- 10. Attorney's Comments**
- 11. Council's Comments**
- 12. Public Works Dept. Report**
- 13. Town Clerks Report**
- 14. Pay Bills on behalf of the Town**
- 15. Adjourn**

The Town of Yacolt is celebrating 109 Year.... '1908 - 2017'!!!

Town of Yacolt
202 W. Cushman St
Yacolt, WA 98675
DRAFT

March 5, 2018

Town Council Meeting Minutes (Regular Meeting)

1. Call to Order:

Mayor Myers called the meeting to order at 7 p.m.

2. Flag Salute.

3. Roll Call:

PRESENT: Mayor Myers and Council members Boget, Bryant, Noble, Moseley, Rowe-Tice, Town Attorney Ridenour, Public Works Director Ross, Assistant Clerk Younce

4. Draft Minutes from the previous meeting:

Draft Minutes were presented for the 3/5/2018 regular meeting.

MOTION: Council member Bryant moved to approve the minutes from the 3/5/2018 regular meeting with noted changes.

SECOND: Council member Boget

AYES: Council members Boget, Bryant, Noble, Moseley

ABSTAIN: Council member Rowe-Tice

VOTE: Motion Carried

5. Late Changes to the Agenda:

None

6. Citizen Communication:

A citizen had a complaint and questions about Centurylink. She would like to know what other options the town has and what can be done. The entire Yacolt Crossings subdivision hasn't been hooked up to Centurylink and they don't know when they will get it.

7. Old Business:

- A. Verification of Ordinance Publication – Update: Council members Boget, Noble and Rowe-Tice gave the Council updates on the progress of the Ordinance and Resolution publications. Council member Boget was able to complete the publications for 2017. She is having trouble finding publications for years 2011 and 2012. Council member Boget also offered to help the other Council members with their searches. Council member Rowe-Tice did not find anything at the Battle Ground Library but did find some at the Vancouver Library. She will do some research online and try using different computers. Council member Noble said the search for the 2014 publications is going good. He is having a hard time finding publications for 2013. Council member Boget put a request to the reflector to get the information on CD and was told that she would have to use the micro-film. Attorney Ridenour gave Council member Boget the name for our contact with the reflector. Attorney Ridenour also gave the Council the quoted cost from Karen at the Reflector of \$25.00 per Ordinance or per hour.
- B. Personnel Policy Update: Council member Rowe-Tice asked that the part of Section 3.2, pertaining to drug testing, be more specific. Attorney Ridenour explained that the personnel policy says “may” to avoid a rule from accidentally getting broken upon hiring. Council member Bryant had spoken with her company’s HR department. They told Council member Bryant that they put in their job posting that certain tests may be required.
- C. Employee Health Insurance Benefits: Council member Bryant asked Attorney Ridenour if he had received the underwriting contract. Attorney Ridenour stated that the contract may have additional terms that affect your decision and what conditions exist that may limit your decisions. He is continuing to work with the individuals at AWC. Attorney Ridenour stated that his contact at AWC provided links to the portal where the detail he is looking for exists. The council is trying to get information on the budget impact of wages and benefits. Attorney Ridenour is trying to get all of the information needed to make clear decisions so the Council knows the budget impact, not only for now, but in the future. Council member Noble asked if that means that AWC dictates what we can and can’t do. Attorney Ridenour told him that is correct. Council member Noble asked where is the Council at regarding making a decision about part time employees. Is there still no decisions? Attorney Ridenour let him know that there are questions about that. Attorney Ridenour stated that the Council could make a decision on part-time employees, but there are still details he does not have so he can’t offer an opinion. He also told the council that they could make a decision but it may violate their contract with AWC. Attorney

Ridenour told the Council that we may be able to get a representative from AWC to come to a meeting and answer questions. The council decided that may not be a good use of time if the representative can't answer all of the legal questions. There was discussion of how many hours a week Assistant Clerk Younce would like to work and what percentage of the coverage she would like the Town to pay.

- D. Town Clerk Position – Update: Council member Rowe-Tice has asked Battle Ground's HR manager what they cover at their fee of \$50.29 an hour. The Town would be responsible for back ground and other checks. Council member Rowe-Tice is currently working on a job description to get to Battle Ground. Then the Town can get that posted. Battle Ground's HR manager would like to meet with Council members Boget and Rowe-Tice. Council member Rowe-Tice suggested that we pursue Battle Ground HR to help with screening/listing and walking them through the process. Council member Rowe-Tice suggested open posting until position filled. The Council members working on the project would like to list the pay at \$21.00 to \$25.00 an hour, depending on experience. The Council agreed that was a fair wage. Mayor Myers asked the council if they would like to start this process immediately at the wage range suggested. The Council agreed.
- E. Clark County Interlocal Agreement for Building Department Services: Attorney Ridenour has a phone call into Susan Ellinger with Clark County. He is waiting to hear back from her.

8. New Business: None

- 9. Mayor's Comments:** Mayor Myers suggested to the Council that Assistant Clerk Younce receive a temporary raise to \$18.00 an hour until a new clerk is hired. The Council discussed options. The Council came to a decision that the Assistant Clerk position be moved to \$15.00 an hour retroactively to February 1, 2018, and carry that wage from then forward.

MOTION: Council member Noble moved to accept the changes to the Assistant Clerk position of \$15.00 an hour from \$13.00 an hour and that the position be 32 hours a week.

SECOND: Council member Rowe-Tice

AYES: Council members Boget, Bryant, Noble, Moseley and Rowe-Tice

VOTE: Motion Carried

- 10. Attorney's Comments:** Attorney Ridenour updated the council that the refund check from Highlands Product Group came in. and he delivered it to Assistant Clerk Younce.
- 11. Council Comments:** Working on Personnel Policy for the future not just the employees the Town has right now.
- 12. Public Works Comments:** Public Works Director Ross let the Council know that the Public Works Department is working on getting the poles needed to get the street signs up. Council member Noble asked how the locks in the bathroom were working. Public Works Maintenance let the council know that they had the locks working, but with the water leak, they've had to close everything down. The locks for the restrooms cost \$900.00 per lock. Also, they are working on finding the water leak at the park.
- 13. Assistant Clerk Comments:** Assistant Clerk Younce let the Council know that she contacted Katie Listek to ask if she would like to run the Sidewalk Chalk Contest. Ms. Listek said she will know within the next couple of weeks. Council member Boget volunteered to run the event if no one else was able to.
- 14. Pay Bills on behalf of the Town:**
MOTION: Council member Bryant moved to approve payment of the bills as presented. Before there was a second, Council member Rowe-Tice ask questions of Attorney Ridenour regarding his bill. She would like to see the bills a little more itemized. Attorney Ridenour let Council member Rowe-Tice that he would work on giving the council a more detailed bill showing the breakdown of time per item. Council member Rowe-Tice asked Attorney Ridenour to clarify the topic of the call from the FBI because he had stated two different answers. Attorney Ridenour cleared things up and the phone call referenced incarceration records.
SECOND: Council member Boget.
AYES: Council members Boget, Bryant, Noble, Moseley and Rowe-Tice
VOTE: Motion Carried.
- 15. Adjourn Meeting:** Mayor Myers adjourned the meeting at 8:36 p.m.

DRAFT

DRAFT

Vince Myers, Mayor

Katie Younce, Assistant Clerk

001 Current Expense	8,462.55
101 Streets	3,517.11
103 Cemetery	98.98
403 Storm Water	<u>3,293.65</u>
	15,372.29

Claims	8,218.46
Payroll	7,153.83



Town of Yacolt

Request for Council Action

Proposed Meeting Date: Monday, March 19, 2018 Agenda Item:

Contact Information for Person/Group/Department Requesting Council Action:

Requester's Name Attorney and Staff

Group Name (if applicable)

Address

Daytime Phone

Alternate Phone

E-Mail Address

Item Title:

Personal Policy Update

Action Requested of Council:

Proposed Motion:

Summary / Background:

Governing Legislation:

Budget/Finance Impacts:

Attachments, (previous ordinance, resolution, proposed ordinance, etc.):

Letter to Council Regarding the Personnel Policy
Health Insurance Graphic

Staff Contact(s):

Attorney and Staff

DAVID W. RIDENOUR

Attorney at Law

4001 Main Street, Suite 306
Vancouver, WA 98663

360.906.1556
Fax: 360.906.1558
Davidwr@copper.net

Via e-mail only to Acting Town Clerk Katie Younce at katie.younce@townofyacolt.com

March 14, 2018

The Honorable Vince Myers
Mayor
Town of Yacolt
P.O. Box 160
Yacolt, WA 98675

Re: Personnel Policy Update
My file number: **252-01**

Dear Mayor Myers and Members of the Town Council:

By your next public meeting, I expect to have made significant progress with the Council's planned revisions to the Town's Personnel Policy. Over the last week, I decided to add two things to my list of things to do for this project before committing to proposed new language for the policy.

First, I am planning to take a class on Washington's new sick leave and minimum wage laws, (on my own time). I want to make sure that I understand the Town's obligations under those new statutes, and it makes sense to attend the class *before* revisions to the Personnel Policy are complete, rather than after.

Second, over the last few months, the Council and staff have been talking (and learning) about a number of different concepts that all relate in some way to the issues of employee health insurance benefits and the Personnel Policy. The different subjects tend to bleed into one another in ways that can be confusing and counter-productive. At least I found them so.

I finally broke the different subjects apart graphically to separate and distinguish their purposes. I have tried to make a similar graphic for you. (See enclosed.) I include this in the hope that it might benefit our discussions at your meeting on Monday.

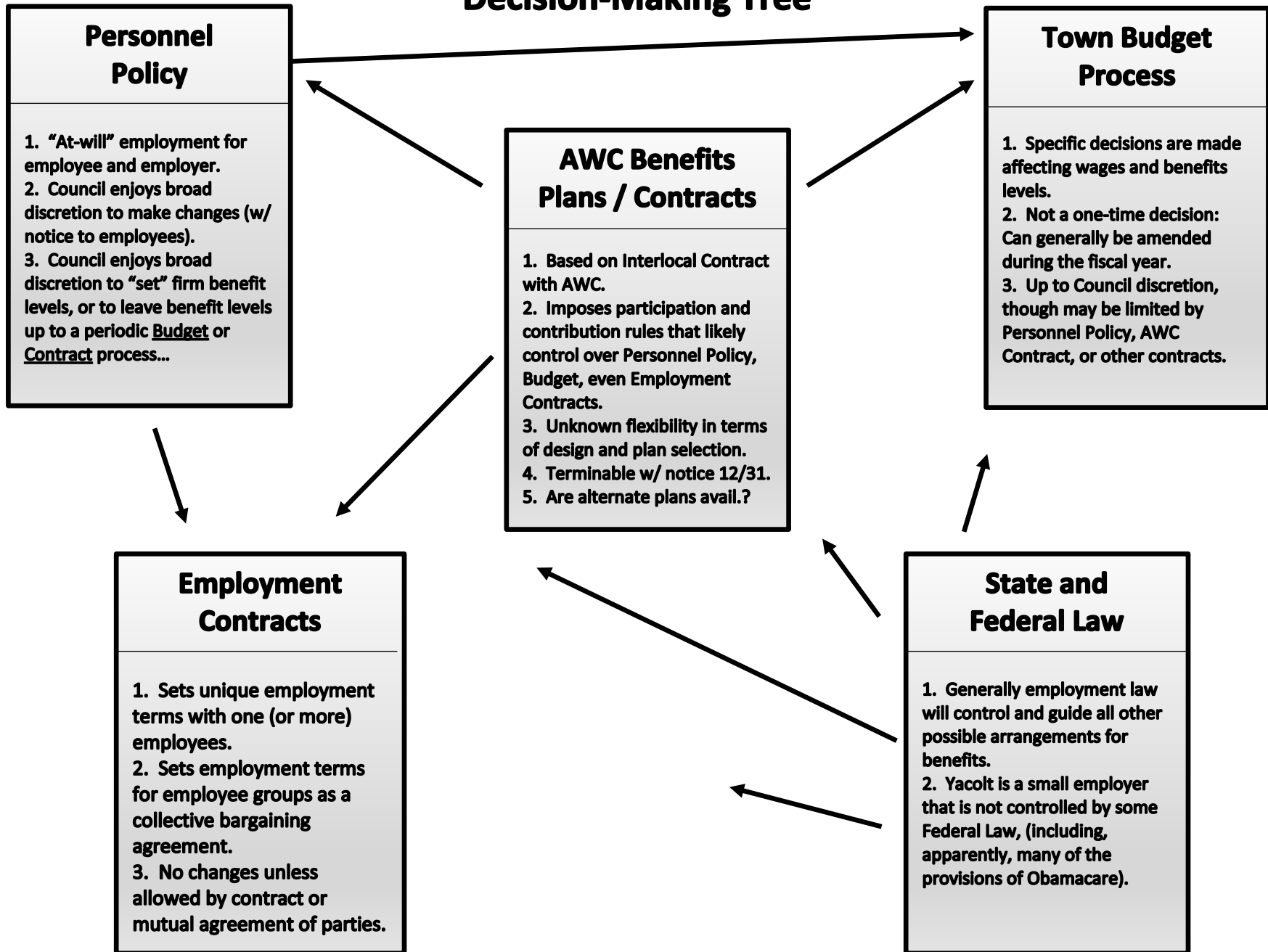
Very truly yours,

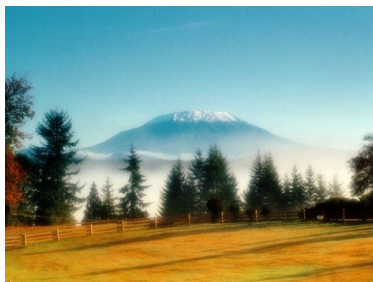


David W. Ridenour
/dwr

enclosure

Yacolt Health Insurance Policies Decision-Making Tree





Town of Yacolt

Request for Council Action

Proposed Meeting Date: Monday, March 19, 2018 Agenda Item:

Contact Information for Person/Group/Department Requesting Council Action:

Requester's Name Attorney and Staff

Group Name (if applicable)

Address

Daytime Phone

Alternate Phone

E-Mail Address

Item Title:

Employee Benefits

Action Requested of Council:

Proposed Motion:

Summary / Background:

The trust agreement was given to the Council in their packets on March 5, 2018

Governing Legislation:

Budget/Finance Impacts:

Attachments, (previous ordinance, resolution, proposed ordinance, etc.):

Letter to Council Regarding Health Benefits
Email to Heidi Buswell with AWC
Email from Heidi Buswell replying to Attorney Ridenour

Staff Contact(s):

Attorney and Staff

DAVID W. RIDENOUR

Attorney at Law

4001 Main Street, Suite 306
Vancouver, WA 98663

360.906.1556
Fax: 360.906.1558
Davidwr@copper.net

Via e-mail only to Acting Town Clerk Katie Younce at katie.younce@townofyacolt.com

March 14, 2018

The Honorable Vince Myers
Mayor
Town of Yacolt
P.O. Box 160
Yacolt, WA 98675

Re: AWC Health Benefits Plans
My file number: **252-01**

Dear Mayor Myers and Members of the Town Council:

At the Council's last public meeting, we continued to address questions about the Town's options when it comes to insurance benefits decisions. We continue to lack clear answers to many questions because the documentation provided by AWC provides only general guidelines that appear to conflict in practice. Since your last meeting, I have tried to organize questions about the program rules. If nothing else, the questions highlight the need for additional detailed rules that we have not yet seen.

Katie Younce was able to locate the Governing Trust Agreement, which we were told is the main contract controlling a city's participation in the plans. In what has become a recurring theme, the Governing Trust Agreement provides few new details. Instead, it explains at page 25 that the detailed participation rules may be found in the "underwriting rules, which are incorporated herein by reference", along with something called the "master group contract". I will be trying to provide those documents to you this week.

I finally organized most of my questions in an e-mail that I sent to Heidi Buswell at AWC early this morning. A copy is enclosed for your review. I put a call in to Ms. Buswell this afternoon, but so far have been unable to learn whether AWC has any helpful response to the questions. I hope that I will have additional information for you at Monday's meeting.

Very truly yours,



David W. Ridenour
/dwr

enclosure

From: David Ridenour
To: ["Heidi Buswell"](#)
Subject: Town of Yacolt - AWC Health Benefit Plans
Date: Wednesday, March 14, 2018 4:29:00 AM

Hello, Heidi;

Thanks to your help (and AWC's web-site tech support people), we've been able to assemble many of the plan documents for AWC's benefits plans. The Council and I have reviewed the enrollment forms, the Interlocal Agreement, the Master Participation Agreement, the Administrative Guide, and the Governing Trust Agreement. It has been an interesting process: Each time we find a new document to review, we discover a new reference to yet another document that may offer more important information.

Most recently this happened with the Governing Trust Agreement, which suggests at page 25 that the detailed participation rules may be found in the "underwriting rules, which are incorporated herein by reference", along with something called the "master group contract". We haven't seen anything that looks like underwriting rules yet, and we still have questions about how the benefit plans apply to Yacolt. Some of the information in the documents seems to be contradictory. I thought I'd offer a few of the questions we have to see what help you can give.

To set the stage, the Town of Yacolt is very small. Historically the Town has had three full-time employees and one part-time employee. There are times when services are provided by seasonal or temporary employees. The Town has seen significant changes with its staff over the last few months, with employees occupying different positions, and changing their status as full or part-time employees, or changing the number of hours worked per week.

Before all of these changes, the Town's general plan for 2018 was to provide 90% reimbursement for medical, vision and dental coverages to three full-time employees and their spouses. No reimbursement benefit was planned for additional dependents or part-time/seasonal employees. The Town's personnel policy provided that all employees, including part-time employees, are eligible for the insurance at their own expense, by payroll deduction.

The AWC Plan Administrative Guide offers a few rules that we are trying to apply to the Town's situation:

1. 75% of employees must participate in an employer-sponsored health plan. (Admin. pg. 15)
2. "All regular employees working a minimum of 20 hours per week are eligible to participate." (Admin. pg. 15)
3. Seasonal employees working a minimum of 20 hours per week are eligible to participate." (Admin. pg. 15)
4. "If offering Trust medical, 75% of eligible employees must be insured on a Trust-sponsored medical plan..." (Admin. pg. 16)
5. "Employers with less than 5 employees total must have 100% of eligible employees enrolled." (Admin. pg. 16)
6. "If dependent coverage is offered, 75% of dependents without other medical insurance must be

enrolled.” (Admin. pg. 16)

7. “75% of all eligible employees must be enrolled on the dental and/or vision plan.” (Admin. pg. 16)

8. “If dependent coverage is offered, 75% of dependents without other dental and/or vision insurance must be enrolled.” (Admin. pg. 16)

9. Medical premiums. Employers must pay a minimum of 50% of the employee’s medical premium.” (Admin. pg. 21)

10. Dental and vision premiums. Employers must pay 75% of dental and vision premiums for employees and all covered family members.” (Admin. pg. 21)

11. Rates: Health insurance premiums are paid for an employee, a spouse/partner, a 1st dependent, and a 2nd dependent. 3 or more dependents are covered at no additional charge. (Admin. pg. 22-)

Questions:

1. Since the Town has fewer than 5 employees, all full-time employees must participate in the plan? What if one of them does not want to? What if one of them does not need to? No distinction seems to be made for eligible employees who may have coverage through another plan.

2. Since AWC treats part-time and seasonal employees as “eligible” employees, all such employees must participate in the programs? Again, what happens if one or more does not need or want to?

3. Is it true that if the Town must offer reimbursement of premiums to all full-time employees? All part-time employees? Seasonal employees? The question comes up in your Master Participation Plan, which asks whether the Town provides benefits to part-time employees or not. Does the Town really have this option? Or is that question on the form not applicable to the Town because of the small number of employees? The Master Participation Plan asks the Town for its policy for the minimum number of hours worked per week before a part-time employee is eligible for the benefits. Again, is this question applicable to Yacolt or not? Does the Town have any discretion here? If part-time employees are not reimbursed for their medical premiums, do they have to be reimbursed for vision and dental regardless because of the unique rules for contributions for dental and vision?

Again, your Master Participation Agreement asks if part-time employees are covered at all... if the answer is yes, the form says they can’t be working less than 20 hours per week. If the answer is no, then the Town is not required to provide payments for part-time employee premiums, right?

Alternately, is the Town allowed to answer “yes”, (it does provide coverage for part-time employees), and then define part-time workers as those working 20, 30, 36, or any other number of hours per week for purpose of this benefit, as the form asks?

4. May the Town pro-rate the reimbursement benefits for part-time employees? AWC staff has repeatedly told us so, but nowhere is that stated or implied in the Plan documents that we’ve seen to date. Requiring a city to pay full premium costs for an employee that works only half-time essentially forces a city to pay double the benefit cost per hour for a part-time employee that it does for its highest level full-time employees... On the other hand, allowing a pro-rata payment to a half-

time employee would appear to violate the rules for minimum levels of employer contributions. (If a city set a 50% contribution for medical, the contribution for a half-time employee would be 25% of the full medical premium cost. That violates the simple minimum contribution rule stated in the Administrative Guide. The situation gets even worse with vision and dental plans, where the employer minimum contribution is raised to 75%.) How does the Town reconcile these conflicting ideas when trying to design a plan for its employees?

5. We've been told that seasonal employees must be eligible, but that temporary employees are not. Aren't seasonal employees the same thing as temporary employees? What's the difference?

6. Does the Town have the option to provide a health insurance benefit only? Without vision and dental? Can the Town choose to provide any of the available coverages? Are any of the coverage plans essential to participation in the group?

7. Can the Town provide benefits to employees, but not their spouses and dependents?

8. Can the Town provide benefits to employees and spouses, but not to other dependents? [I noticed that your Master Participation Plan does not ask whether dependents are covered. It only asks about spouses and domestic partners... Is asking about dependents an inappropriate question? I understand asking employees or job applicants about their family members or family size is not allowed. If that's true, then when a participating city decides to cover "dependents", does that automatically mean that the city is covering any spouse or domestic partner, along with all dependents in the family? Does the Town have any option in deciding whether to cover spouses and dependents, or what number of dependents to cover? Or if a city provides the benefit for one dependent, is it providing the benefit for all dependents? If a city is providing the benefit to employee spouses, are all dependents automatically included in the coverage and the employer contribution commitment? Specifically, the Town of Yacolt said on its Master Participation Form that spouses are covered. Does AWC assume that the Town is providing a 90% contribution benefit for all employees, spouses, and all dependents in their families?

9. May the Town decide to reimburse more of the full-time employee's costs, and less of the employee's dependent's costs? For medical? For vision and dental?

10. Does the Town have to provide benefits and premium reimbursement during training/probation periods? Your forms suggest that a probation period of up to 90 days is allowed...

11. When it comes to the medical plan, the employer is only required to pay a minimum of 50% of the employee's premiums. Dependents' premiums can be the responsibility of the employees 100%. Is that correct?

12. What about vision and dental? I understand employers are required to pay 75% minimum of the entire plan costs for vision and dental for all employees and covered dependents, (assuming the plan is extended to dependents). Is that true? We've been told repeatedly that employers must pay a minimum of 75% of all premium costs for vision and dental for all employees AND their dependents. I take it this only applies if dependents are covered by the plan. So can an employer

provide coverage for dependents in the health plan, but exclude employer contributions entirely for dependents when it comes to vision and dental? Vice versa?

13. Can benefits be given to part-time employees excluding their spouses and dependents, where a benefit is given to spouses and/or dependents of full time employees? Or vice-versa, can the Town extend greater benefits by proportion of premium payment to part-time employees? Can they provide coverage for spouses of part-time employees but not spouses of full time employees?

14. Has AWC addressed temporary or seasonal work provided to cities by Department of Corrections crews?

15. Here is the biggest question of them all: How is a plan participant supposed to figure out the answers to these questions? How does AWC answer questions like these? What is the source of your information? What is the authority? Is this detail provided in the "Underwriting Rules" or the "Master Group Contract"? I have to assume that detail exists somewhere so that the plans may be administered in an even, equitable, and logical manner.

The Town Council wants to provide competitive and useful benefits to its employees, but has to know the potential cost of the plans, and where they may creatively exercise their discretion to create the maximum benefit for the lowest cost. I am still unable to advise the Town regarding these matters based on the information provided about the Plans.

Thank you very much for your help. Feel free to give me a call if you have any questions.
David

David W. Ridenour
Attorney at Law
4001 Main Street, Suite 306
Vancouver, WA 98663

Tel: 360.906.1556
Fax: 360.906.1558

[This e-mail message (including attachments) is for the sole use of the intended recipient(s). It contains confidential, proprietary or legally protected information which is the property of David W. Ridenour, Attorney at Law, or its clients. Any unauthorized disclosure or use of the contents of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately and destroy all copies of the original message.]

From: Heidi Buswell
To: [David Ridenour](#)
Cc: katie.younce@townofyacolt.com
Subject: RE: Town of Yacolt - AWC Health Benefit Plans
Date: Wednesday, March 14, 2018 4:05:29 PM

Hi David –

Please see my responses below.

Heidi

Heidi Buswell

Employee Benefits Specialist
Member Pooling Programs
Association of Washington Cities

From: David Ridenour <davidwr@copper.net>
Sent: Wednesday, March 14, 2018 4:30 AM
To: Heidi Buswell <heidib@awcnet.org>
Subject: Town of Yacolt - AWC Health Benefit Plans

Hello, Heidi;

Thanks to your help (and AWC's web-site tech support people), we've been able to assemble many of the plan documents for AWC's benefits plans. The Council and I have reviewed the enrollment forms, the Interlocal Agreement, the Master Participation Agreement, the Administrative Guide, and the Governing Trust Agreement. It has been an interesting process: Each time we find a new document to review, we discover a new reference to yet another document that may offer more important information.

Most recently this happened with the Governing Trust Agreement, which suggests at page 25 that the detailed participation rules may be found in the "underwriting rules, which are incorporated herein by reference", along with something called the "master group contract". We haven't seen anything that looks like underwriting rules yet, and we still have questions about how the benefit plans apply to Yacolt. Some of the information in the documents seems to be contradictory. I thought I'd offer a few of the questions we have to see what help you can give.

To set the stage, the Town of Yacolt is very small. Historically the Town has had three full-time employees and one part-time employee. There are times when services are provided by seasonal or temporary employees. The Town has seen significant changes with its staff over the last few months, with employees occupying different positions, and changing their status as full or part-time employees, or changing the number of hours worked per week.

Before all of these changes, the Town's general plan for 2018 was to provide 90% reimbursement for medical, vision and dental coverages to three full-time employees and their spouses. No reimbursement benefit was planned for additional dependents or part-time/seasonal employees.

The Town's personnel policy provided that all employees, including part-time employees, are eligible for the insurance at their own expense, by payroll deduction.

The AWC Plan Administrative Guide offers a few rules that we are trying to apply to the Town's situation: **(These are the referenced underwriting rules mentioned above.)**

1. 75% of employees must participate in an employer-sponsored health plan. (Admin. pg. 15)
2. "All regular employees working a minimum of 20 hours per week are eligible to participate." (Admin. pg. 15)
3. Seasonal employees working a minimum of 20 hours per week are eligible to participate." (Admin. pg. 15)
4. "If offering Trust medical, 75% of eligible employees must be insured on a Trust-sponsored medical plan..." (Admin. pg. 16)
5. "Employers with less than 5 employees total must have 100% of eligible employees enrolled." (Admin. pg. 16)
6. "If dependent coverage is offered, 75% of dependents without other medical insurance must be enrolled." (Admin. pg. 16)
7. "75% of all eligible employees must be enrolled on the dental and/or vision plan." (Admin. pg. 16)
8. "If dependent coverage is offered, 75% of dependents without other dental and/or vision insurance must be enrolled." (Admin. pg. 16)
9. Medical premiums. Employers must pay a minimum of 50% of the employee's medical premium." (Admin. pg. 21)
10. Dental and vision premiums. Employers must pay 75% of dental and vision premiums for employees and all covered family members." (Admin. pg. 21)
11. Rates: Health insurance premiums are paid for an employee, a spouse/partner, a 1st dependent, and a 2nd dependent. 3 or more dependents are covered at no additional charge. (Admin. pg. 22-)

Questions:

1. Since the Town has fewer than 5 employees, all full-time employees must participate in the plan? What if one of them does not want to? What if one of them does not need to? No distinction seems to be made for eligible employees who may have coverage through another plan. **The city can apply for a "small city exception" to the underwriting rule requiring 100% enrollment. If you want to pursue this, let us know.**
2. Since AWC treats part-time and seasonal employees as "eligible" employees, all such employees must participate in the programs? Again, what happens if one or more does not need or want to? **This is *discretionary* for the City and is addressed in the MPA. AWC will *allow* these employees coverage if the City wants to cover them. Our *minimum* hours worked for PT employees is an average of 20/hrs a week (or 80/hrs a month).**
3. Is it true that if the Town must offer reimbursement of premiums to all full-time employees? All part-time employees? Seasonal employees? The question comes up in your Master Participation Plan, which asks whether the Town provides benefits to part-time employees or not. Does the Town

really have this option? Or is that question on the form not applicable to the Town because of the small number of employees? The Master Participation Plan asks the Town for its policy for the minimum number of hours worked per week before a part-time employee is eligible for the benefits. Again, is this question applicable to Yacolt or not? Does the Town have any discretion here? If part-time employees are not reimbursed for their medical premiums, do they have to be reimbursed for vision and dental regardless because of the unique rules for contributions for dental and vision? **I'm not sure what you mean by "reimbursed for their premiums." The minimum required contribution made by the city for medical premiums is 50% of the employee only premium. Any remainder can be funded by the employee via payroll deduction. Many cities pro-rate the benefit for PT employees based on hours worked. This is okay. For dental and vision, the employer must pay 75% of the total premium due. Unlike the medical coverage, this is not calculated on an employee by employee basis – but on the total amount due.**

Again, your Master Participation Agreement asks if part-time employees are covered at all... if the answer is yes, the form says they can't be working less than 20 hours per week. If the answer is no, then the Town is not required to provide payments for part-time employee premiums, right? Alternately, is the Town allowed to answer "yes", (it does provide coverage for part-time employees), and then define part-time workers as those working 20, 30, 36, or any other number of hours per week for purpose of this benefit, as the form asks? **Yes – as long as the requirement is at least 20 hours a week. Yacolt currently requires PT employees to work an average of 32 hours per week to be considered benefits eligible.**

4. May the Town pro-rate the reimbursement benefits for part-time employees? AWC staff has repeatedly told us so, but nowhere is that stated or implied in the Plan documents that we've seen to date. Requiring a city to pay full premium costs for an employee that works only half-time essentially forces a city to pay double the benefit cost per hour for a part-time employee that it does for its highest level full-time employees... On the other hand, allowing a pro-rata payment to a half-time employee would appear to violate the rules for minimum levels of employer contributions. (If a city set a 50% contribution for medical, the contribution for a half-time employee would be 25% of the full medical premium cost. That violates the simple minimum contribution rule stated in the Administrative Guide. The situation gets even worse with vision and dental plans, where the employer minimum contribution is raised to 75%.) How does the Town reconcile these conflicting ideas when trying to design a plan for its employees? **Please see my answer to Question #3.**

5. We've been told that seasonal employees must be eligible, but that temporary employees are not. Aren't seasonal employees the same thing as temporary employees? What's the difference? **To clarify, seasonal employees may be covered at the discretion of the city. Seasonal employees are very different from temporary employees. They are hired year after year to cover a season – typically terminating employment every winter and are rehired every spring. Temporary employees are people who are hired through an agency and are not actual employees of the City.**

6. Does the Town have the option to provide a health insurance benefit only? Without vision and dental? Can the Town choose to provide any of the available coverages? Are any of the coverage plans essential to participation in the group? **Each coverage is considered separately, so**

yes – you can choose to offer everything or only one thing.

7. Can the Town provide benefits to employees, but not their spouses and dependents? **Per the law, you can choose not to offer benefits to spouses, but if the coverage is offered, you must make it available to dependent children.**

8. Can the Town provide benefits to employees and spouses, but not to other dependents? [I noticed that your Master Participation Plan does not ask whether dependents are covered. It only asks about spouses and domestic partners... Is asking about dependents an inappropriate question? I understand asking employees or job applicants about their family members or family size is not allowed. If that's true, then when a participating city decides to cover "dependents", does that automatically mean that the city is covering any spouse or domestic partner, along with all dependents in the family? Does the Town have any option in deciding whether to cover spouses and dependents, or what number of dependents to cover? Or if a city provides the benefit for one dependent, is it providing the benefit for all dependents? If a city is providing the benefit to employee spouses, are all dependents automatically included in the coverage and the employer contribution commitment? Specifically, the Town of Yacolt said on its Master Participation Form that spouses are covered. Does AWC assume that the Town is providing a 90% contribution benefit for all employees, spouses, and all dependents in their families? **No. Within the parameters outlined above, the contribution percentage is set by the city. Any coverage offered must be offered to all dependent children. You have discretion about offering coverage to a spouse.**

9. May the Town decide to reimburse more of the full-time employee's costs, and less of the employee's dependent's costs? For medical? For vision and dental? **Yes. See Question 3 for clarification.**

10. Does the Town have to provide benefits and premium reimbursement during training/probation periods? Your forms suggest that a probation period of up to 90 days is allowed... **Actually this would be a 60 day probationary period at the maximum. This is due to the Affordable Care Act language that mandates coverage, if offered, is effective on the 90th day of employment. Because AWC does not pro-rate coverage to start in the middle of the month, you want to keep this to 60 days so that the coverage is in force on day 90.**

11. When it comes to the medical plan, the employer is only required to pay a minimum of 50% of the employee's premiums. Dependents' premiums can be the responsibility of the employees 100%. Is that correct? **Yes.**

12. What about vision and dental? I understand employers are required to pay 75% minimum of the entire plan costs for vision and dental for all employees and covered dependents, (assuming the plan is extended to dependents). Is that true? We've been told repeatedly that employers must pay a minimum of 75% of all premium costs for vision and dental for all employees AND their dependents. I take it this only applies if dependents are covered by the plan. So can an employer provide coverage for dependents in the health plan, but exclude employer contributions entirely for dependents when it comes to vision and dental? Vice versa? **This will really depend on your individual demographic, the amounts you require employees to contribute, and the**

number of dependents the employee *chooses* to enroll. By law, you cannot exclude dependent children from coverage. If the total premium paid via employee payroll contribution is less than 25% of the total bill, you are in compliance.

13. Can benefits be given to part-time employees excluding their spouses and dependents, where a benefit is given to spouses and/or dependents of full time employees? Or vice-versa, can the Town extend greater benefits by proportion of premium payment to part-time employees? Can they provide coverage for spouses of part-time employees but not spouses of full time employees? **Yes as discussed above in terms of premium contributions by the employer. Dependent children are eligible for coverage by law, so you can't change that. For covering a spouse – you would just need to note the difference on the MPA.**

14. Has AWC addressed temporary or seasonal work provided to cities by Department of Corrections crews? **These crews are not employed by the cities so do not have access to our plans. The covered person must be a city employee.**

15. Here is the biggest question of them all: How is a plan participant supposed to figure out the answers to these questions? How does AWC answer questions like these? What is the source of your information? What is the authority? Is this detail provided in the "Underwriting Rules" or the "Master Group Contract"? I have to assume that detail exists somewhere so that the plans may be administered in an even, equitable, and logical manner. **All of this information was provided in the various documents that have been sent over or are posted on our website. The questions that we typically receive are requests for clarification and are answered as they come up.**

The Town Council wants to provide competitive and useful benefits to its employees, but has to know the potential cost of the plans, and where they may creatively exercise their discretion to create the maximum benefit for the lowest cost. I am still unable to advise the Town regarding these matters based on the information provided about the Plans.

Thank you very much for your help. Feel free to give me a call if you have any questions.
David

David W. Ridenour
Attorney at Law
4001 Main Street, Suite 306
Vancouver, WA 98663

Tel: 360.906.1556
Fax: 360.906.1558

[This e-mail message (including attachments) is for the sole use of the intended recipient(s). It contains confidential, proprietary or legally protected information which is the property of David W. Ridenour, Attorney at Law, or its clients. Any unauthorized disclosure or use of the contents of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately and destroy all copies of the original message.]



Town of Yacolt

Request for Council Action

Proposed Meeting Date: Monday, March 19, 2018 Agenda Item:

Contact Information for Person/Group/Department Requesting Council Action:

Requester's Name Mayor and Council

Group Name (if applicable)

Address

Daytime Phone

Alternate Phone

E-Mail Address

Item Title:

Town Clerk Position

Action Requested of Council:

Proposed Motion:

Summary / Background:

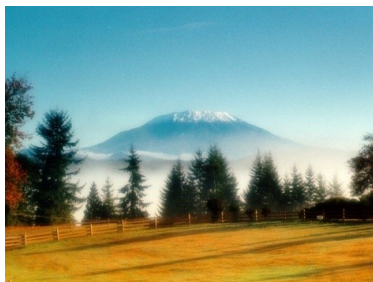
Governing Legislation:

Budget/Finance Impacts:

Attachments, (previous ordinance, resolution, proposed ordinance, etc.):

Staff Contact(s):

Attorney and Staff



Town of Yacolt

Request for Council Action

Proposed Meeting Date: Monday, March 19, 2018 Agenda Item:

Contact Information for Person/Group/Department Requesting Council Action:

Requester's Name Attorney and Staff

Group Name (if applicable)

Address

Daytime Phone

Alternate Phone

E-Mail Address

Item Title:

Clark County Interlocal Agreement - Building Department Services

Action Requested of Council:

Proposed Motion:

Summary / Background:

Governing Legislation:

Budget/Finance Impacts:

Attachments, (previous ordinance, resolution, proposed ordinance, etc.):

Letter to Council Regarding Ordinance 659
Draft Ordinance 569

Staff Contact(s):

Attorney and Staff

DAVID W. RIDENOUR

Attorney at Law

4001 Main Street, Suite 306
Vancouver, WA 98663

360.906.1556
Fax: 360.906.1558
Davidwr@copper.net

Via e-mail only to Acting Town Clerk Katie Younce at katie.younce@townofyacolt.com
March 14, 2018

The Honorable Vince Myers
Mayor
Town of Yacolt
P.O. Box 160
Yacolt, WA 98675

Re: Amendments to Yacolt's Critical Areas Codes
Draft Ordinance #569
My file number: **252-01**

Dear Mayor Myers and Members of the Town Council:

In early 2017, the Town of Yacolt embarked on a process to update its Critical Areas Ordinances. Clark County and the Town's Public Works Director concluded that amendments were required so that Yacolt's regulations would be consistent with those of Clark County, which is required under the State Growth Management Act. In addition, the 'best available science' that supported Yacolt's Critical Areas Ordinances had become outdated.

In April of 2017, the Town entered an Interlocal Agreement with Clark County Community Planning Services to propose new regulations and to assist with procedures for adoption of the new Code language. Other parts of the County's work were completed last year, including revisions to the Town's planning and zoning regulations. The revisions to the Town's Critical Areas Codes represents the last of the work due from Clark County Planning Services under the Interlocal Agreement, which terminated according to its terms late last month.

The result of the County's work is a set of amended Critical Areas Code Chapters that are now ready for the Council's final review and approval. I have attached a proposed Ordinance #569 for this purpose.

I feel compelled to provide a general background for Yacolt's regulatory compliance with the Growth Management Act. As a component 'city' in a 'GMA' County, Yacolt is responsible to fulfill many complex and recurring procedures under the GMA and SEPA statutes and regulations. To my knowledge, the Town has never developed a plan to satisfy these obligations on its own. Instead, Yacolt relies on Clark County to provide notice of the requirements, and to assist with satisfaction of

the requirements. Furthermore, the Town has never asked me to assist with these substantive projects, (or any previous Town Attorney, from what I can tell from historical records).

Clark County took the lead again in early 2017 by alerting the Town to the need for these amendments. The Interlocal Agreement provided that all substantive work would be performed by the County. That work did not involve guiding Yacolt through a review of scientific literature to internally develop new rules for managing its Critical Areas. The work was performed primarily by modifying Clark County's existing Critical Areas Code to fit Yacolt's circumstances.

The theory was that these regulations should be satisfactory for the Town because the same basic regulations passed procedural and substantive scrutiny when they were adopted by Clark County. My concern is that Yacolt has not followed all of the same procedural steps that Clark County followed when it developed these regulations for itself. Yacolt is following a streamlined procedure that it hopes will satisfy the letter and spirit of the State laws on this subject. I mention this because Yacolt is trying to accomplish all of this work by more limited means than what Clark County followed. Arguably this more limited process is appropriate given Yacolt's small population, extremely small staff, extremely limited financial resources, extremely limited land area that is subject to Critical Areas rules, and extremely limited potential for growth and development.

This letter will confirm that I was not asked to advise the Town regarding substantive and procedural requirements relating to the Growth Management Act, Critical Areas regulations, or State Environmental regulations. I have not reviewed or compared the amended Critical Areas Codes to Clark County's Code or any other source for accuracy, completeness, suitability of the source content, or suitability of changes made to the source language. I have not worked with the Town's staff to determine whether the new Code Chapters are workable for the Town's future circumstances. We have made no attempt to anticipate the many kinds of development and building applications to which these Code provisions might apply, or to trace how well the regulations will track from initial interpretation through possible enforcement action. I have limited my review to the form of the proposed Code provisions and to the form of the proposed adopting Ordinance. I did my best to assist with proofreading the proposed Codes, which needed significant work to ensure that the Chapters were readable, internally consistent, and accurate in terms of cross-citations. The Town has relied entirely on Clark County Planning Services for the substantive terms of these revised Code Chapters, as well as the notification process for adoption.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David W. Ridenour', with a long horizontal line extending to the right.

David W. Ridenour
/dwr

enclosure

ORDINANCE #569

AN ORDINANCE AMENDING TITLE 16, DIVISION II, OF THE YACOLT MUNICIPAL CODE TO UPDATE YACOLT'S CRITICAL AREAS REGULATIONS BY AMENDING YMC 16.20 - GENERAL PROVISIONS, YMC 16.25 - CRITICAL AQUIFER RECHARGE AREAS (CARAS), YMC 16.30 – GEOLOGIC HAZARD AREAS, YMC 16.35 - FREQUENTLY FLOODED AREAS, YMC 16.40 - PRIORITY HABITAT AREAS, AND YMC 16.45 – WETLANDS; AND PROVIDING FOR AN EFFECTIVE DATE

RECITALS

Whereas, the Town of Yacolt, (hereafter "*Town*" or "*Yacolt*"), participates in the development and application of Clark County, Washington's Comprehensive Growth Management Plan pursuant to RCW 36.70A, (hereafter, "*Growth Management Plan*");

Whereas, the Town Council of Yacolt recognizes that it must update its Critical Areas regulations to be consistent with the Growth Management Plan and to ensure compliance with the requirements of RCW 36.70A.130 and WAC 365.196 of the Growth Management Act ("*GMA*");

Whereas, the Town Council of Yacolt recognizes its responsibility under WAC 365-196-500 to adopt development regulations that are internally consistent; that are consistent with the Growth Management Plan; and that implement the Growth Management Plan;

Whereas, the Town Council of Yacolt recognizes as planning goals the intention to retain open space; enhance recreation opportunities; conserve fish and wildlife habitat; protect the environment, and enhance the State's high quality of life, including air and water quality, and the availability of water;

Whereas, the Town Council of Yacolt recognizes that local government jurisdictions are required to include the Best Available Science in developing policies and development regulations to protect the functions and values of Critical Areas;

Whereas, the Growth Management Act requires the Town to review and if necessary revise its existing Critical Areas Codes to ensure compliance with Best Available Science;

Whereas, an analysis of the Town's existing Critical Areas Codes by Clark County, (Yacolt's planning partner and leader for the Growth Management Plan), identified gaps and deficiencies in the Town's compliance with Best Available Science;

Whereas, Yacolt entered into an Interlocal Agreement dated April 3, 2017, with Clark County Community Planning Services in which Clark County agreed to provide planning services to update Yacolt's Critical Areas Codes to reflect consistency with the Growth Management Plan and to incorporate Best Available Science, as that term is used in the GMA, with respect to the protection of resource lands and Critical Areas;

Whereas, Clark County has used Best Available Science to recently update its own Critical Areas Codes, including without limitation, Critical Areas Code amendments described in Clark County Ordinance #2018-01-03 and Ordinance #2014-12-05;

Whereas, based on its work to maintain and update its own Critical Areas Codes to incorporate Best Available Science, Clark County was able to modify its Codes to apply to Yacolt's circumstances and unique resource lands and Critical Areas;

Whereas, Best Available Science was therefore used in creating the standards found within the Town's proposed Critical Areas Code amendments described herein;

Whereas, the Critical Areas Code amendments described herein are therefore based in part on the information, analysis, reports, minutes, materials, and proceedings conducted by Clark County during the development of its own recent Critical Areas Code amendments;

Whereas, the Town of Yacolt recognizes its responsibility to adequately and effectively communicate with the public about the process of amending its Critical Areas Codes;

Whereas, the Town provided significant opportunities for public involvement with respect to the proposed Critical Areas Code amendments including via its website and at public meetings, presentations and discussions including, without limitation, the following:

- 1). The Town Council held a public open house regarding the proposed amendments to Yacolt's Critical Areas Codes at a special public meeting on January 29, 2018;
- 2). The Town Council held a public work session regarding the proposed amendments to Yacolt's Critical Areas Codes at its regular public meeting on February 5, 2018;
- 3). The Town Council held a public hearing at a re-scheduled regular meeting of the Council on February 26, 2018, to take public testimony regarding the proposed revisions to its Critical Areas Codes;
- 4). Legal notice of the Town's public hearing was published on January 24, 2018, and on January 31, 2018, in The Reflector, the Town's official newspaper of record, providing a public hearing date of February 20, 2018, which was then re-scheduled to February 26, 2018, due to poor weather conditions, with lawful notice having been given to the Town's Council and the public;
- 5). The Town's public hearing notices described documents that were available to the public and offered for inspection by the public, including a SEPA checklist dated January 19, 2018; a Staff Report dated January 24, 2018; and a Determination of Non-Significance dated January 19, 2018;
- 6). The Town also provided a copy of the proposed amendments to the Critical Areas Codes on its website for public download;
- 7). The Town invited public comment and open discussion at its public meetings, and invited written comments from interested parties in its published notices for the public hearing;
- 8). An Environmental Determination of Non-Significance (DNS) was properly issued for the proposed amendments to Yacolt's Critical Areas Codes on or about January 19, 2018;

- 9). Legal notice of the DNS was published on January 24, 2018, in The Reflector, the Town's official newspaper of record, providing notice of an appropriate appeal period through February 15, 2018;

Whereas, no public comments or concerns were received at the public meetings or the public hearing held on the subject; no written public comments were filed with the Town; and no appeal of the DNS on the subject was received by the Town;

Whereas, a notice of intent to adopt the proposed Critical Areas Code amendments was delivered to the Washington State Department of Commerce on February 2, 2018, for review and comment by State reviewing agencies, together with a request for expedited review;

Whereas, the Washington State Department of Ecology and the Washington State Department of Fish and Wildlife approved the proposed Critical Areas Code amendments on or about February 15, 2018, with certain modifications;

Whereas, a revised notice of intent to adopt the proposed Critical Areas Code amendments was delivered to the Washington State Department of Commerce and the Washington State Department of Ecology on or about February 15, 2018, to provide an opportunity for additional review and comment;

Whereas, the revisions to the Critical Areas Code amendments involved changes to correct typographical errors, correct cross-references, clarify and streamline language in the proposed new Code provisions without changing its effect, and changes fairly within the original substantive scope of the DNS and the original proposed amendments, as described in RCW 36.70A.035(2)(b)(i), (ii), and (iii);

Whereas, on March 12, 2018, the Washington State Department of Commerce, on behalf of all reviewing agencies, confirmed their permission for the adoption of the proposed Critical Areas Code amendments, as revised, by the Yacolt Town Council;

Whereas, the Yacolt Town Council concludes that the proposed amendments to the Town's Critical Areas Codes are consistent with applicable amendment criteria as described herein;

Whereas, the Town has satisfied applicable public hearing and notice requirements prior to adoption of this Ordinance, including the requirement to provide notice of the proposed amendment of development regulations to the Washington State Department of Commerce under RCW 36.70A.106 and WAC 365-196-630;

Whereas, the Town Council makes the following findings with respect to the proposed amendments:

- 1). The Critical Areas Code amendments described in this Ordinance are in the best interest of the residents of the Town and will benefit the Town as a whole by ensuring the environmental critical areas regulations are based on Best Available Science;
- 2). The Critical Areas Code amendments described in this Ordinance comply with Chapter 36.70A RCW, the Growth Management Act;
- 3). The Critical Areas Code amendments described in this Ordinance bear a substantial relationship to, and will protect and not adversely affect, the public health, safety, and welfare;

- 4). The Critical Areas Code amendments described in this Ordinance are in the best interest of the public and the residents of the Town of Yacolt because they protect life, property, habitat, and the environment;

Whereas, the Yacolt Town Council desires to adopt the Critical Areas Code amendments described in this Ordinance;

Whereas, the Town Council of Yacolt, Washington, is in regular session this 19th day of March, 2018; and,

Whereas, each member of the Town Council has had notice of the time, place and purpose of said meeting;

NOW THEREFORE, be it Ordained by the Town Council of the Town of Yacolt, Washington:

Section 1 - Adoption of Recitals: The foregoing Recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance upon adoption hereof.

Section 2 - Amendments to Title 16 of the Yacolt Municipal Code: Division II, (Critical Areas), of Title 16, (Environment), of the Yacolt Municipal Code is hereby amended by replacing said Division II in its entirety with the text, tables and maps attached to this Ordinance as Exhibit A. Specifically, this Ordinance updates, amends and replaces the following Chapters of the Yacolt Municipal Code:

- a). YMC 16.20 – General Provisions;
- b). YMC 16.25 – Critical Aquifer Recharge Areas, (CARAs);
- c). YMC 16.30 – Geologic Hazard Areas;
- d). YMC 16.35 – Frequently Flooded Areas;
- e). YMC 16.40 – Priority Habitat Areas; and,
- f). YMC 16.45 – Wetlands.

Section 3 - Savings Clause: All terms of the YMC Chapters amended by this Ordinance shall remain in full force and effect until the effective date of this Ordinance.

Section 4 - Severability: If any section, subsection, sentence, clause or phrase of this Ordinance or of the Yacolt Municipal Code Chapters amended hereby is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance or the amended Chapters of the Yacolt Municipal Code, which shall remain in full force and effect.

Section 5 - Instructions to the Clerk: The Town Clerk shall:

- a). Transmit a copy of this Ordinance to the Washington State Department of Commerce within ten days of its adoption;
- b). Cause notice of adoption of this Ordinance to be published forthwith pursuant to Section 6 below; and,
- c). Promptly transmit a copy of this Ordinance to Code Publishing, Inc. to update the electronic version of the Yacolt Municipal Code.

Section 6 - Effective Date: This Ordinance shall take effect according to law upon publication by the Town Clerk. The Town Clerk is directed to publish the following summary in the Town's official newspaper:

Town of Yacolt - Summary of Ordinance #569

The Town Council of the Town of Yacolt adopted Ordinance #569 at its regularly scheduled Town Council meeting held on March 19, 2018. The content of the Ordinance is summarized in its title as follows: "AN ORDINANCE AMENDING TITLE 16, DIVISION II, OF THE YACOLT MUNICIPAL CODE TO UPDATE YACOLT'S CRITICAL AREAS REGULATIONS BY AMENDING YMC 16.20 - GENERAL PROVISIONS, YMC 16.25 - CRITICAL AQUIFER RECHARGE AREAS (CARAS), YMC 16.30 - GEOLOGIC HAZARD AREAS, YMC 16.35 - FREQUENTLY FLOODED AREAS, YMC 16.40 - PRIORITY HABITAT AREAS, AND YMC 16.45 - WETLANDS; AND PROVIDING FOR AN EFFECTIVE DATE". The effective date of the Ordinance is _____, 2018.

A copy of the full text of the Ordinance will be mailed upon request to the Town Clerk for the Town of Yacolt at Town Hall, P.O. Box 160, Yacolt, WA 98675: (360) 686-3922.

Published this ____ day of _____, 2018.
Katie Younce, Acting Town Clerk

PASSED by the Town Council of the Town of Yacolt, Washington, at a regular meeting thereof this 19th day of March, 2018.

TOWN OF YACOLT

DRAFT

Vince Myers, Mayor

Attest:

Katie Younce, Acting Town Clerk

Approved as to Form:

David W. Ridenour, Town Attorney

Ayes: _____
Nays: _____
Absent: _____
Abstain: _____

TOWN CLERK’S CERTIFICATION

I hereby certify that the foregoing Ordinance is a true and correct copy of Ordinance #569 of the Town of Yacolt, Washington, entitled “AN ORDINANCE AMENDING TITLE 16, DIVISION II, OF THE YACOLT MUNICIPAL CODE TO UPDATE YACOLT’S CRITICAL AREAS REGULATIONS BY AMENDING YMC 16.20 - GENERAL PROVISIONS, YMC 16.25 - CRITICAL AQUIFER RECHARGE AREAS (CARAS), YMC 16.30 – GEOLOGIC HAZARD AREAS, YMC 16.35 - FREQUENTLY FLOODED AREAS, YMC 16.40 - PRIORITY HABITAT AREAS, AND YMC 16.45 – WETLANDS; AND PROVIDING FOR AN EFFECTIVE DATE” as approved according to law by the Town Council on the date therein mentioned. The Ordinance has been published or posted according to law.

Attest:

Katie Younce, Acting Town Clerk

Published: _____

Effective Date: _____

Ordinance Number: 569

**Chapter 16.20
GENERAL PROVISIONS**

Sections:

16.20.010 - Purpose
16.20.020 - Authority
16.20.030 - Severability
16.20.040 - Administrative rules
16.20.050 - Administrative rules
16.20.060 - Interpretation
16.20.070 - Critical lands
16.20.080 - Best available science
16.20.090 - Applicability
16.20.100 - Exemptions
16.20.110 - Reasonable use exceptions
16.20.120 - Allowed activities
16.20.125 - Hazard vegetation removal permit
16.20.130 - Review required
16.20.140 - Critical area reporting evaluation requirements
16.20.150 - Critical area report – modifications to requirements
16.20.160 - Modification requirements
16.20.170 - Mitigation sequencing
16.20.180 - Mitigation plan requirements
16.20.190 - Innovative mitigation
16.20.200 - Unauthorized critical area alterations and enforcement
16.20.210 - Critical area markers, signs and fencing
16.20.220 - Critical area protective mechanism
16.20.240 - Bonds to ensure mitigation, maintenance, and monitoring
16.20.260 - Definitions

16.20.010 - Purpose.

- A. The purpose of this Title is to designate and classify ecologically sensitive and hazardous areas, and to protect these areas, their functions and values, while allowing for some reasonable use of property.
- B. The Town finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the Town of Yacolt and its residents, and/or may pose a threat to human safety, or to public and private property.
- C. Goals. By managing development and alteration of critical areas, this Chapter seeks to:
 - 1. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, or Flooding;
 - 2. Protect unique, fragile, and valuable elements of the environment, including ground and surface waters;
 - 3. Direct activities not dependent on critical area resources to less ecologically sensitive sites, and mitigate necessary impacts to critical areas by regulating alterations in and adjacent to critical areas; and,
 - 4. Prevent cumulative adverse environmental impacts to critical aquifer recharge and Frequently Flooded Areas.
- D. The regulations of this Chapter are intended to protect critical areas in accordance with the Growth Management Act, RCW 36.70A, and through the application of best available science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals.
- E. This Chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this Chapter to make a parcel of property unusable by denying its owner reasonable economic use of the property.

- F. The Town's enactment or enforcement of this Chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.

16.20.020 - Authority.

As provided herein, the "Director" shall mean the Town's Public Works Director or designee. The Mayor and Director are given the authority to interpret and apply, and the responsibility to enforce this Title to accomplish the stated purpose.

16.20.030 - Relationship to other regulations.

- A. These critical area regulations shall apply as an overlay and in addition to zoning and other regulations, including the Town of Yacolt Engineering Standards for Public Works Construction, adopted by the Town.
- B. These critical area regulations may be applied concurrently with review conducted under the State Environmental Policy Act (SEPA), or other development review as adopted.
- C. In the event of a conflict with any other provisions of this Title, that which provides more protection to the critical areas shall apply.
- D. Compliance with the provisions of this Title does not constitute compliance with other federal, state and local regulations and permit requirements that may be required (for example, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits). The applicant is responsible for complying with all requirements, apart from the process established in this Title.

16.20.040 – Severability.

If any clause, sentence, paragraph, section, or part of this Title or the application thereof to any person or circumstances shall be judged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered. The decision shall not affect or invalidate the remainder of any part thereof, and to this end the provisions of each clause, sentence, paragraph, section, or part of this law are declared to be severable.

16.20.050 – Administrative rules.

The Town of Yacolt may adopt such administrative rules and regulations as necessary and appropriate to implement this Title, and to prepare and require the use of such forms as necessary for its administration. The applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

16.20.060 - Interpretation.

In the interpretation and application of this Title, the provisions of this Title shall be considered to be the minimum requirements necessary, shall be liberally construed to serve its purpose, and shall be deemed to neither limit nor repeal any other provisions required by or under state statute.

16.20.070 - Critical lands.

The following critical lands are covered under this Title:

- A. Critical aquifer recharge areas (CARAs);
- B. Geologic hazard areas;
- C. Frequently Flooded Areas.

- D. Priority habitat areas; and,
- E. Wetlands;

16.20.080 – Best available science.

- A. Best Available Science to be Used Must be Consistent with Criteria. The best available science is that scientific information applicable to the critical area prepared by local, state, or federal natural resource agencies, a qualified scientific professional, or team of qualified scientific professionals, that is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925.
- B. Absence of Valid Scientific Information. Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area, leading to uncertainty about the risk to critical area function of permitting an alteration of or impact to the critical area, the Director shall:
 - 1. Limit development and land use activities until the uncertainty is sufficiently resolved; and,
 - 2. Require an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. An adaptive management program shall:
 - a. Address funding for the research component of the adaptive management program;
 - b. Change course based on the results and interpretation of new information that resolves uncertainties; and,
 - c. Commit to the appropriate timeframe and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting protection of critical areas and anadromous fisheries.

16.20.090 - Applicability.

The Town will not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any Structure or improvement in, over, or on critical areas, without first ensuring compliance with the requirements of this Title, including but not limited to, the following development permits:

- A. Building permit;
- B. Grading permit;
- C. Forest practices conversion permit regulated by WAC 222;
- D. Conditional use permit;
- E. Short subdivision;
- F. Subdivision;
- G. Planned unit development;
- H. Any commercial or industrial development;
- I. Site plan;
- J. Zoning variance;
- K. Any grading, filling, or clearing of land, or logging or removal of timber; or,
- L. Other activities as specified within this Title.

16.20.100 - Exemptions.

- A. Exempt Activities. The following developments, activities, and associated uses shall be exempt from the provisions of this Title; provided that they are otherwise consistent with the provisions of other local, state and

federal laws and requirements:

1. **Emergencies.** Emergency activities are those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property, and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of these provisions;

An emergency response shall utilize reasonable methods to address the emergency considering the applicable critical area(s); in addition, an emergency response must have the least possible impact to the critical area. The person or agency undertaking such action shall notify the Town within four days following commencement of the emergency activity. If the Director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement will commence;

After the emergency, the person or agency undertaking the action shall fully restore and/or mitigate any impacts to the critical area resulting from the emergency action in accordance with an approved critical area report and mitigation plan. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner;

2. **Operation, Maintenance or Repair.** Operation, maintenance or repair of existing Structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems that do not further alter or increase the impact to, or encroach further within, the critical area;
 3. **Passive Outdoor Activities.** Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching; and,
 4. **Forest Practices.** Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, Title 222 WAC, and those that are exempt from the Town of Yacolt's jurisdiction, provided that forest practice conversions are not exempt.
- B. **Exempt Activities Shall Avoid Impacts to Critical Areas.** All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from these provisions does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.

16.20.110 - Reasonable use exception.

- A. If the application of this Title would deny all reasonable use of the subject property, the property owner may apply for an exception pursuant to this Section.
- B. **Exception Request and Review Process.** An application for a reasonable use exception shall be made to the Town and shall include a critical area application and fee; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents). A staff report shall be prepared to include a recommendation to the approval authority based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in Subsection D of this Section.
- C. **Public Hearing Required.** A request for an exception under this section shall be considered through a hearing process in accordance with YMC Chapter 18.95.
- D. **Reasonable Use Review Criteria.** The criteria for review and approval of reasonable use exceptions include the following:
 1. The application of these provisions would deny all reasonable use of the property;
 2. No other reasonable use of the property has less impact on the critical area;
 3. Any alteration is the minimum necessary to allow for reasonable use of the property; and,
 4. The inability of the applicant to derive reasonable use of the property is not the result of actions taken by

the applicant or its predecessor after the effective date of these provisions;

5. Any alteration of a critical area approved under this Section shall be subject to appropriate conditions and will require mitigation under an approved mitigation plan.
- E. Burden of Proof. 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.

16.20.120 - Allowed activities.

- A. Critical Area Report Not Required. Activities which have been reviewed and permitted or approved by the Town, or other agency with jurisdiction, for impacts to critical or sensitive areas, do not require submittal of a new critical area report or application under this Title, unless such submittal was required previously for the underlying permit.
- B. Required Use of Best Management Practices. All allowed activities shall be conducted using the best management practices, adopted pursuant to other provisions contained in this Code, that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The Town shall monitor the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.
- C. Allowed Activities. The following activities are allowed:
 1. Permit Requests Subsequent to Previous Critical Area Review. Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits) and construction approvals (such as building permits) if all of the following conditions have been met:
 - a. There have been no material changes in the potential impact to the critical area since the prior review;
 - b. There is no new information available that is applicable to any critical area review of the site or particular critical area;
 - c. No more than five years has elapsed since the issuance of the permit or approval; and,
 - d. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.
 2. Modification to Existing Structures. Structural modifications, additions to, or replacement of an existing legally constructed Structure that does not further alter or increase the impact to the critical area, and where there is no increased risk to life or property as a result of the proposed modification or replacement, provided that restoration of Structures substantially damaged by fire, Flood, or act of nature must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion.
 3. Activities within the Improved Right-of-Way. Replacement, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a Town-authorized private roadway, except those activities that alter a wetland or watercourse, such as culverts or bridges, or that result in the transport of sediment or increased stormwater.
 4. Public and Private Pedestrian Trails.
 - a. Existing public and private trails may be maintained, replaced, or extended, provided there is no increase in the impact to the critical area.
 - b. Other public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, subject to the following:
 - (1). The trail surface shall meet all other requirements including water quality standards set forth in the Town of Yacolt Engineering Standards for Public Works Construction;

- (2). Critical area widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and,
 - (3). Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion, and in accordance with an approved geotechnical report.
5. Selective Vegetation Removal Activities. The following vegetation removal activities are allowed without a permit:
 - a. The removal of invasive plant species including Himalayan blackberry (*Rubus armeniacus*), Evergreen blackberry (*Rubus laciniatus*), and English Ivy, as well as any other noxious weed or invasive plant species acknowledged by the Town;
 - b. Invasive plant removal must be performed with hand labor and light equipment (e.g., push mowers, powered trimmers, etc.);
 - c. Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act; Chapter 76.09 RCW, and Clark County Fire District 13 fire department requirements; provided, that the removed vegetation shall be replaced in-kind by the property owner or with similar native species within one year in accordance with an approved restoration plan;
 - d. Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, provided that their use shall be restricted in accordance with Department of Fish and Wildlife Management Recommendations, and the regulations of the Department of Agriculture and the U.S. Environmental Protection Agency. More information on commercial and residential use of chemicals can be found in Department of Ecology "Critical Aquifer Recharge Areas: Guidance Document," Publication #05-10-028;
 - e. Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; and,
 - f. Navigational Aids and Boundary Markers. Construction or modification of navigational aids and boundary markers.

16.20.125 - Hazard vegetation removal permit.

- A. Vegetation and tree removal from a critical area must be approved by the Director. An application must include the following information:
 1. The applicant must submit a report from a certified arborist or professional forester that documents the hazard and provides a pruning plan or replanting plan for the replacement trees and vegetation. The report must be prepared by a professional unaffiliated with the company proposing to remove the tree(s).
 2. Tree pruning is preferred over felling. Pruning includes the removal of a hazardous branch, crown thinning or crown reduction. When pruning is insufficient to address the hazard, then trees should be removed as justified by a qualified professional.
 - a. Tree topping is prohibited. Topping is the cutting of tree branches to stubs or to lateral branches that are not large enough to assume the terminal role.
 - b. Reduction. Reduction reduces the size of a tree, often for utility line clearance. Reducing a tree's spread is best accomplished by pruning back the leaders and branch terminals to secondary branches that are large enough to assume the terminal roles. Compared to topping, reduction helps maintain the form and structural integrity of the tree.
 - c. Crown cleaning and thinning. Proper pruning opens the foliage of a tree, reduces weight on heavy limbs, removes dead branches, and helps retain the tree's natural shape and height.
- B. Mitigation Required. The landowner shall replace trees that are felled with new trees at a ratio of two

replacement trees for each tree felled within one year in accordance with an approved restoration plan.

1. Tree species that are native and indigenous to the site and a minimum caliper of two inches shall be used.
 2. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts.
- C. Hazard trees determined to pose an imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation, may be removed by the landowner prior to receiving written approval from the Town; provided, that within fourteen days following such action, the landowner shall submit a proof of hazard (e.g. photos) together with a restoration plan that demonstrates compliance with these provisions.

16.20.130 - Review required.

Mapping. The approximate location and extent of critical areas are shown on critical area maps that are provided Clark County Geographic Information Systems (a.k.a. "Maps Online"). These maps are to be used as a guide for the Town, project applicants, and/or property owners, and may be continually updated as new critical areas are identified. They are a reference and do not provide a final critical area designation or delineation. If the proposed activity is within, adjacent to (within two hundred feet), or is likely to impact a critical area, the Town shall require a critical area report from the applicant that has been prepared by a qualified professional. If the report concludes that there is a critical area present then the Town of Yacolt shall:

- A. Review and evaluate the critical area report;
- B. Determine whether the development proposal conforms to the purposes and performance standards of these provisions;
- C. Assess potential impacts to the critical area and determine if they are necessary and unavoidable; and,
- D. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of these provisions.

16.20.140 - Critical area reporting evaluation - Requirements.

- A. Incorporating Best Available Science. The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance, and reference the source of science used. The critical area report shall evaluate the proposal and the likelihood of all probable adverse impacts to critical areas in accordance with these provisions.
- B. Minimum Report Contents. At a minimum, the report shall contain the following:
 1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
 2. A copy of the site plan for the development proposal showing identified critical areas, property lines, limits of any areas to be cleared, and a description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;
 3. The dates, names, and qualifications of the persons preparing the report, and documentation of any fieldwork performed on the site;
 4. Identification and characterization of critical areas, wetlands, and water bodies within the proposed project area;
 5. A description of reasonable efforts made to avoid, minimize, and mitigate impacts to critical areas;
 6. A proposal for financial guarantees to ensure compliance; and,
 7. Any additional information required for the critical area, as specified in the corresponding Chapter.
- C. Unless otherwise provided, 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 Director.

16.20.150 - Critical area report - Modifications to requirements.

- A. Limitations to Study Area. The Director may limit or extend the required geographic area of the critical area report as deemed appropriate, so long as it is within the proposed site. If a wetland is located off-site and is inaccessible, the best available information shall be used to determine the wetland boundary and category.
- B. Modifications to Required Contents. The applicant may consult with the Director prior to or during preparation of the critical area report to obtain Town written approval for modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the probable critical area impacts and required mitigation.
- C. Additional Information May be Required. The Director may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity in accordance with these provisions. Additional information that may be required, includes, but is not limited to:
 - 1. Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
 - 2. Grading and drainage plans; and,
 - 3. Information specific to the type, location, and nature of the critical area.

16.20.160 - Mitigation requirements.

- A. The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in these provisions, if alteration to the critical area is necessary, all adverse impacts to or from critical areas resulting from a development proposal or alteration shall be mitigated in accordance with an approved critical area report and SEPA documents.
- B. Mitigation should 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. Mitigation shall generally be conducted within the same sub-drainage basin and on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable.
- C. Mitigation shall only be implemented after Town approval of a critical area report that includes a mitigation plan. Mitigation shall be in accordance with the provisions of the approved critical area report.

16.20.170 - Mitigation sequencing.

Applicants shall demonstrate that reasonable efforts have been examined with the intent to mitigate impacts to critical areas. When an alteration to a critical area is proposed, mitigation can be accomplished through a variety of methods. Generally, avoiding the impact altogether is the preferred option. Following this process is referred to as mitigation sequencing, and mitigation for individual actions may include a combination of the measures provided in this Section. Methods to reduce impacts and mitigate for them should follow a series of steps taken in sequential order:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action (usually by either finding another site or changing the location on the site);
- 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 design, developable area configuration, 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 or hazard 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; and/or;
- F. Monitoring the impact and taking appropriate corrective measures.,

16.20.180 - Mitigation plan requirements.

When mitigation is required, the applicant shall submit to the Town a mitigation plan as part of the critical area report. The mitigation plan shall include:

- A. Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:
 - 1. A description of the anticipated impacts to the critical areas, the mitigating actions proposed, and the purposes of the compensation measures, including the site selection criteria, identification of compensation goals, identification of resource functions, and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area; and,
 - 2. An analysis of the likelihood of success of the mitigation project.
- B. 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, and whether or not the requirements of these provisions have been met.
- C. Detailed Construction Plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, including but not limited to, the proposed construction sequence, timing and duration; grading and excavation details; erosion and sediment control features; a planting plan specifying plant species, quantities, locations, size, spacing and density; and, measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, and topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.
- D. 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 one, three, and five 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 years.
- E. 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.
- F. Financial Guarantees. The mitigation plan shall include financial guarantees, as determined by the approval authority, 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 consistent with these provisions.

16.20.190 - Innovative mitigation.

The Town may encourage, facilitate, and approve innovative mitigation projects. 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:

- A. Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
- B. The group demonstrates the organizational and fiscal capability to act cooperatively;

- C. The group demonstrates that long-term management of the habitat area will be provided;
- D. There is a clear potential for success of the proposed mitigation at the identified mitigation site; and,
- E. Conducting mitigation as part of a cooperative process may not reduce or eliminate the required replacement ratios.

16.20.200 - Unauthorized critical area alterations and enforcement.

- A. When a critical area has been altered in violation of these provisions, all ongoing development work shall stop and the critical area shall be restored. The Town shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of these provisions.
- B. Restoration Plan Required. Where a violation has occurred, all development work shall remain stopped until a restoration plan is submitted by the property owner and/or violator (applicant) and approved by the Town. Such a plan shall be prepared by a qualified professional and shall describe how the actions proposed meet the intent of requirements described in subsection C of this Section. The Director may, at the applicant's expense, seek expert advice in determining the adequacy of the plan and may impose additional requirements to mitigate critical areas issues.
- C. Minimum Performance Standards for Restoration.
 - 1. For alterations to critical aquifer recharge areas and Frequently Flooded Areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:
 - a. The historic structural and functional values shall be restored, including water quality and habitat functions;
 - b. The historic soil types and configuration shall be replicated;
 - c. The critical area shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities; and,
 - d. The historic functions and values should be replicated at the location of the alteration.
 - 2. For alterations to frequently Flooded and geological hazardous areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:
 - a. The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard;
 - b. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and,
 - c. The hazard area shall be replanted with native vegetation sufficient to minimize the hazard.
- D. Enforcement. Violations and compliance issues under these provisions are subject to enforcement under YMC Chapter 8.05, YMC Title 18, and the Town's general authority to enforce laws and regulations.

16.20.210 - Critical area markers, signs and fencing.

- A. Temporary Markers. The outer perimeter of the critical areas must be marked in the field in such a way as to ensure that no unauthorized intrusion will occur, and verified by the Director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction, and shall not be removed until installation of permanent signs, if required, or final Town approval is granted.
- B. Permanent Signs. The Town may require, as a condition of any permit or authorization issued pursuant to this Title, that the applicant install permanent signs along the boundary of a critical area to Town standards.
- C. Fencing. Installation of a permanent fence at the edge of the habitat conservation area or wetland buffers is required.

1. Fencing may be waived in the following circumstances:
 - a. The applicant demonstrates to the Director's satisfaction that fencing will not prevent future impacts to the habitat conservation area; or,
 - b. The Director determines that a proposed use adjoining the buffer does not pose a threat to the critical area and buffer functions, or there is a public safety issue.
2. Fencing installed as part of a proposed activity shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed forty-two inches high and in a manner that minimizes habitat impacts. Approved fencing styles include: vinyl-coated chain link, wooden split rail, or similar, as approved by the Town.

16.20.220 - Critical area protective mechanism.

- A. Identified critical areas and their associated buffers shall be protected and preserved through a permanent protective mechanism acceptable to the Town. This may include placing the critical area in a separate tract; executing a protective easement; or dedicating the critical area and its associated buffers to a public agency, or public or private land trust. The mechanism shall provide for maintenance of the critical area and its associated buffers.
- B. If the protective mechanism includes placing the critical area and its associated buffers in a separate tract, then the critical area tract(s) shall:
 1. Be recorded on all documents of Title of record for all affected lots;
 2. Be designated on the face of the plat or recorded drawing in a format approved by the Town. The designation shall include the following restriction:
 - a. An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, and protecting plants and animal habitat; and,
 - b. The right of the Town to enforce the terms of the restriction.
- C. The Town may require that any required critical area tract be dedicated to the Town, or held by an incorporated homeowner's association or other legal entity.

16.20.240 - Bonds to ensure mitigation, maintenance, and monitoring.

- A. When mitigation required pursuant to a development proposal is not completed prior to the Town final permit approval, such as final plat approval, the Town shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the Town. If the development proposal is subject to mitigation, the applicant shall post a mitigation bond or other security in a form and amount deemed acceptable by the Town to ensure mitigation is fully functional.
- B. The bond shall be in the amount of one hundred twenty-five percent of the estimated cost of the uncompleted actions, or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.
- C. The bond may be in the form of a surety bond, performance bond, case security agreement, assignment of savings account, irrevocable letter of credit guaranteed by an acceptable financial institution, or other security in a form and amount, and including such terms and conditions, as are acceptable to the Town.
- D. Bonds or other security authorized by this Section shall remain in effect until the Town determines, in writing, that the standards bonded for have been met.
- E. Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.
- F. Public development proposals may 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.

- G. 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 days after it is due, or comply with other provisions of an approved mitigation plan, shall constitute a default, and the Town may demand payment of any financial guarantees and/or require other action authorized by the Town Code or any other law, including the recovery of costs and attorney's fees incurred during the enforcement measures taken by the Town.
- H. Any funds recovered pursuant to this Section shall be used to complete the required mitigation and to reimbursement to Town for its costs, fees, (including attorney's fees), and expenses of enforcement.

16.20.260 - Definitions.

"Anadromous" means species, such as salmon, which are hatched in fresh water, spend a large part of their lives in the sea, and return to fresh water rivers and streams to reproduce.

"Best management practices (BMPs)" means conservation practices, or system of practices and management measures that avoid or minimize adverse impacts to critical areas.

"Buffer zone" means an area that is contiguous to and protects a critical area, which is required for the continued maintenance, functioning, and/or structural stability of a critical area.

"Conservation covenant" means an instrument recorded with the Town that places certain restrictions or limitations on the affected parcel.

"Critical areas" means the following areas and ecosystems as defined in RCW 36.70A.030 and described in WAC 365-190:

1. Critical aquifer recharge areas;
2. Geologic hazard areas;
3. Frequently Flooded Areas;
4. Habitat conservation areas; and,
5. Wetlands.

"Engineer" means an appropriate professional who is licensed in the State of Washington as an engineer.

"Erosion hazard areas" means those areas containing soils which, according to the United States Department of Agriculture Natural Resources Conservation Soil Survey Program, may experience significant erosion. Erosion hazard areas also include channel migration zones.

"Existing and ongoing agricultural activities" means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including but not limited to operation, maintenance and conservation measures of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and normal operation, maintenance or repair of existing serviceable structures, facilities or improved areas. Activities which bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area in which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer than five years, unless the idle land is registered in a federal or state soils conversation program. Forest practices are not included in this definition.

"Exotic" means any species of plants or animals that are not native to the watershed.

"Fish and wildlife habitat conservation areas" means those 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. Counties and cities may also designate locally important habitats and species.

"Fish and wildlife habitat conservation areas" does 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.

“Frequently Flooded Areas” means those lands in the Floodplain subject to one (1) percent or greater chance of Flooding in any given year and those lands that provide important Flood storage, conveyance, and attenuation functions, as determined in accordance with WAC 365-190-030. The most recent FEMA DFIRM is used in setting a baseline for Special Flood Hazard Area.

“Geologically hazardous areas” means lands or areas characterized by geologic, hydrologic, and topographic conditions that render them susceptible to potentially significant or severe risk of landslides, erosion, or seismic activity.

“Hazard tree” means any tree which, in the opinion of the responsible official, an expert approved by Yacolt (such as, but not limited to, a professional forester or landscape architect), or a similar expert employed by another public agency or utility, has a strong likelihood of causing a hazard to life or property.

“Mitigation” means avoiding, minimizing, or compensating for adverse impacts to critical areas.

“Nuisance vegetation” means noxious weeds or any plant that is highly destructive, competitive, or difficult to control by cultural or chemical practices pursuant to RCW 17.10.090 and based on the list of noxious weeds provided in WAC 16-750-005, 16-750-011 and 16-750-015.

“Qualified groundwater professional” means a hydrogeologist, geologist, engineer, or other scientist who meets the following criteria:

1. Has received a baccalaureate or post-graduate degree in the natural sciences or engineering; and,
2. Has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, profession certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater vulnerability.

“Streams” means those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area, which demonstrates clear evidence of the passage of water, and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined swales. The channel or bed need not contain water year-round.

“Watershed” means an area of topographic relief that drains to a single surface water system.

“Wetland” or “wetlands” means those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, retention facilities, wastewater treatment facilities, farm ponds, 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 non-wetland areas created to mitigate conversion of wetlands.

“Wetlands Delineation Manual” means the wetland delineation procedure described in WAC 173-22-035 (as amended).

“Wetland Qualified Professional” means a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using federal manuals, preparing wetland reports, conducting function assessments, and developing and implementing mitigation plans.

Chapter 16.25
CRITICAL AQUIFER RECHARGE AREAS (CARAS)

Sections:

- 16.25.010 - Introduction
- 16.25.020 - Standards
- 16.25.030 - Administration
- 16.25.040 - Enforcement

16.25.010 - Introduction.

- A. Purpose. This Chapter is intended to protect public health, safety, and welfare by preventing degradation, and where possible, enhance the quality of groundwater which will be, or might likely be, used in the future for drinking water or business purposes. This will be accomplished by limiting potential contaminants within designated CARAs. The requirements of this Chapter are intended to fulfill obligations of state law under Chapter 36.70A RCW, Growth Management – Planning by Selected Counties and Cities; Chapter 70.119A RCW, Public Water Systems – Penalties and Compliance; Chapter 246-290 WAC, Public Water Supplies; Chapter 173-303 WAC, Dangerous Waste Regulations; WAC 173-218, Underground Injection Control Program; and Chapter 173-200 WAC, Water Quality Standards for Ground Waters of the State of Washington.
- B. Definitions.
 - 1. CARA. “CARA” means Critical aquifer recharge areas. CARAs are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge as defined in WAC 365-190-030.
 - 2. Category I CARA. “Category I CARA” means the highest priority critical aquifer recharge area. Category I is the one-(1) year time of travel for Group A water wells, shown on the Town of Yacolt Wellhead Protection Areas Map.
 - 3. Category II CARA. “Category II CARA” means the primary critical aquifer recharge area. This area consists of the unconsolidated sedimentary aquifer and the Troutdale gravel aquifer, both shown on Clark County’s critical aquifer recharge areas map.
- C. Map. The Yacolt Wellhead Protection Areas map identifies CARAs within the Town’s municipal boundaries.
- D. Applicability and Exemptions.
 - 1. Applicability. This Chapter applies to all critical aquifer recharge areas as defined in Section 16.25.010B. Parcels that are partly within Category I and Category II shall be subject to the Category I provisions in this Chapter. Parcels that are partly inside Category II, but outside Category I, shall be subject to the Category II provisions in this Chapter.
 - 2. Exempt Activities. The following activities do not require a CARA permit:
 - a. Currently existing activities that legally existed on July 31, 1997;
 - b. All residential uses other than those having activities covered by 16.25.020B;
 - c. Other uses not listed in 16.25.020B or C; and,
 - d. Activities already permitted and regulated by the state and the Clark County Health Department to incorporate best management practices.
 - 3. The following underground storage tank (UST) systems, including any piping connected thereto, are exempt from the requirements of this Chapter:
 - a. Any UST system holding hazardous wastes subject to Subtitle C of the Federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;
 - b. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act;
 - c. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

- d. Any UST system whose capacity is 110 gallons or less;
- e. Any UST system that contains a de minimis concentration of regulated substances;
- f. Any emergency spill or overflow containment UST system that is expeditiously emptied after use;
- g. Farm or residential UST systems of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes (i.e., not for resale);
- h. UST systems used for storing heating oil for consumptive use on the premises where stored; except that such systems which store in excess of 1,100 gallons are subject to the release reporting requirements of WAC 173-360-372;
- i. Septic tanks;
- j. Any pipeline facility (including gathering lines) regulated under:
 - (1). The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.);
 - (2). The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.); or,
 - (3). Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in Subsection D3j(1) or (2) of this Section;
- k. Surface impoundments, pits, ponds, or lagoons;
- l. Stormwater or wastewater collection systems;
- m. Flow-through process tanks;
- n. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or,
- o. Storage tanks situated in an underground area (such as a basement, cellar, vault, mine working drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

16.25.020 - Standards.

- A. Activities or facilities requiring a CARA permit in Categories I and II include the following:
- 1. Above- and below-ground storage tanks (tanks and pipes used to contain an accumulation of regulated substances);
 - 2. Facilities that conduct biological research;
 - 3. Boat repair shops;
 - 4. Chemical research facilities;
 - 5. Dry cleaners;
 - 6. Gasoline service stations;
 - 7. Pipelines;
 - 8. Printing and publishing shops (that use printing liquids);
 - 9. Below-ground transformers and capacitors;
 - 10. Sawmills [producing over 10,000 board feet per day];
 - 11. Solid waste handling and processing;
 - 12. Vehicle repair, automotive recycling and recyclable materials;
 - 13. Funeral services;
 - 14. Furniture stripping;
 - 15. Motor vehicle service garages (both private and government);

16. Photographic processing;
 17. Chemical manufacturing and reprocessing;
 18. Creosote and asphalt manufacturing and treatment;
 19. Electroplating activities;
 20. Petroleum and petroleum products refining, including reprocessing;
 21. Wood products preserving;
 22. Golf courses;
 23. Regulated waste treatment, storage, disposal facilities that handle hazardous material;
 24. Medium quantity generators (dangerous, acutely hazardous, and toxic extremely hazardous waste); and,
 25. Large quantity generators (dangerous, acutely hazardous, and toxic extremely hazardous waste).
- B. Prohibited Activities or facilities in Category I. The following activities are considered high-impact uses due to the probability and/or potential magnitude of their adverse effects on groundwater and shall be prohibited within Category I. These activities are permitted in Category II, but require a CARA permit:
1. Landfills;
 2. Class V injection wells in accordance with WAC 173-218;
 3. Agricultural drainage wells;
 4. Untreated sewage waste disposal wells;
 5. Cesspools;
 6. Industrial process water and disposal wells;
 7. Radioactive waste disposal;
 8. Radioactive disposal sites;
 9. Surface mining operations; and,
 10. Electroplating activities.
- C. Additional Standards. The following additional standards apply in all CARAs:
1. Pesticides, herbicides and fertilizers shall be applied in accordance with the federal law.
 2. Vehicle repair and servicing.
 - a. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment if leaks occur.
 - b. No dry wells shall be allowed in CARAs on sites for vehicle repair or servicing. Dry wells on the site prior to the facility establishment must be abandoned using techniques approved by the Department of Ecology prior to commencement of the proposed facility.

16.25.030 - Administration.

- A. Permit Requirements.
1. To receive a CARA permit required by section 16.25.020, the applicant must demonstrate, through a Level 1 site evaluation report, how they will integrate necessary and appropriate best management practices (BMP) to prevent degradation of groundwater. The applicant must also meet existing local, state, and federal laws and regulations.
 2. If an applicant wants to avoid implementation of BMPs, they must submit a Level 2 site evaluation report and develop and implement a monitoring program that:

- a. Demonstrates how the applicant will prevent degradation to groundwater. The applicant must also meet existing local, state, and federal laws and regulations; and,
 - b. Includes quarterly reporting to the Public Works Department. The Public Works Department will evaluate the monitoring program and may require periodic changes based on the monitoring results, new technology, and/or BMPs.
- B. Level 1 Site Evaluation Report/Approval Criteria.
 1. For all proposed activities to be located in a critical aquifer recharge area, the site evaluation report shall include a Level 1 assessment by an engineer as defined in section 16.20.260.
 2. The report will identify how the applicant will follow the requirements of the Dangerous Waste Regulations, Chapter 173-303 WAC, in the event hazardous material is released onto the ground or into groundwater.
 3. The report will be reviewed by the Public Works Department in the same process as the primary development permit. If approved, the applicant will receive a CARA permit allowing the activity on the subject property.
 4. The Public Works Department may waive the requirement for an engineer. This would be done when the site conditions or project mitigations have been, or can be, adequately addressed in the site evaluation report.
- C. Level 2 Site Evaluation Report/Approval Criteria.
 1. A qualified groundwater professional as defined in section 16.20.260 will determine whether the proposed activity will have any adverse impacts on groundwater in CARAs. This determination must be based upon the requirements of the Safe Drinking Water Act and the Wellhead Protection Area Program, Public Water Supplies, Chapter 246-290 WAC; Water Quality Standards for Ground Waters of the State of Washington, Chapter 173-200 WAC; WAC 173-218, Underground Injection Control Program; and Dangerous Waste Regulations, Chapter 173-303 WAC. By this reference, Chapters 173-200, 173-303, and 246-290 WAC, as written and hereafter updated, will be part of this Chapter.
 2. The Level 2 site evaluation report will include the following:
 - a. Identification of the proposed development plan, along with potential impacts (e.g., on-site septic systems and other on-site activities) that may adversely impact groundwater quality underlying or down gradient of the project or project area;
 - b. Site plans or diagrams at an appropriate scale (one to 2,400 or one inch to 200 feet) showing the location of abandoned and active wells, springs, and surface water bodies within 1,000 feet of the project or project area; and
 - c. A description of the geologic and hydrogeologic characteristics of the subject property including the following:
 - (1). Lithologic characteristics and stratigraphic relationships;
 - (2). Aquifer characteristics including recharge and discharge areas, depth to and static water-flow patterns, and an estimate of groundwater-flow velocity;
 - (3). Contaminant fate and transport including probable migration pathways and travel time of a potential contaminant release from the site through the unsaturated zone to the aquifer(s) and through the aquifer(s), and how the contaminant(s) may be attenuated within the unsaturated zone and the aquifer(s);
 - (4). Appropriate hydrogeologic cross-sections which depict lithology, stratigraphy, aquifer, units, potential or probable contaminant pathways from a chemical release, and rate of groundwater flow;
 - (5). Existing groundwater quality; and,
 - (6). A proposal for quarterly monitoring of groundwater quality to detect changes and a description of corrective actions that will be taken if monitoring results indicate contaminants from the site have entered the underlying aquifer(s).

3. The report will be reviewed by the Public Works Department, in consultation with the Clark County Health Department and/or the local water purveyor, in conjunction with the same process as the primary development permit. If approved, the applicant will receive a CARA permit allowing the activity on the subject property.
4. Penalties. Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of this Chapter shall be subject to penalties as defined in Chapter 70.119A RCW and Chapters 173-200 and 246-290 WAC.

16.25.040 - Enforcement.

- A. Enforcement. It shall be unlawful to violate the provisions of this Chapter. Enforcement of this Chapter shall be governed by YMC Chapter 13, YMC 8.05, and the Town's general authority to enforce laws and regulations.
- B. Supplemental Enforcement Provisions for Water Resources Protection. In addition to civil and criminal enforcement as authorized under YMC 13.10 and YMC 8.05, enforcement of this Chapter may utilize the following authority:
 1. The Town of Yacolt finds that an operation not in compliance with the requirements of this Chapter constitutes a public nuisance under RCW 7.48, Nuisances, and YMC 8.05, Nuisances.
 2. The Town may use field notes, observations, photo documentation, sample logs, analytical results or other information to define risk and to establish that an operation is in violation of this Chapter.
 3. The Town may require the implementation of the operational or structural best management practices, as defined through the provisions of this Chapter. Implementation of remedies to meet compliance standards shall be performed on a timeline approved by the Town.
 4. The Town may also require the operator to sample and analyze any discharge, surface and storm water, ground water and/or sediment, in accordance with sampling and analytical procedures or requirements determined by the Town. If the operator is required to complete this sampling and analysis, a copy of the analysis shall be provided to the Town.
 5. The Town may impose additional requirements whenever documented specific circumstances (applicable to the operation) threaten water resources.
 6. Notwithstanding any other provisions of this Chapter, whenever it appears to the Town that conditions regulated by this Chapter require immediate action to protect the public health and/or safety, the Town is authorized to enter such property for the purpose of inspecting and investigating such emergency conditions.
 7. When necessary corrective actions are not undertaken as directed by the Town, an owner, operator and/or contractor can be held liable for abatement costs to remedy noncompliance together with all costs, fees, penalties, and charges described in YMC 13.10 and YMC 8.05.

Chapter 16.30 GEOLOGIC HAZARD AREAS

Sections:

- 16.30.010 - Introduction
- 16.30.020 - Standards
- 16.30.030 - Administration

16.30.010 - Introduction.

- A. Purpose. The purpose of this Chapter is to safeguard public health, safety, and welfare by placing limitations on development in geologically hazardous areas consistent with the requirements of the Growth Management Act and WAC 365-190.
- B. Applicability and Exemptions.
 - 1. Applicability. This Chapter applies to all construction, development, earth movement, clearing, or other site disturbance which requires a permit, approval or authorization from the Town in or within 100 feet of a geologic hazard area except for exempt activities listed in Subsection B2 of this Section. Regulated geologic hazards include steep slope hazard areas, landslide hazard areas, seismic hazard areas, and volcanic hazard areas.
 - 2. Exempt Activities and Uses. The following activities and uses are exempt from the provisions of this Chapter:
 - a. Emergency activities which require immediate action to prevent an imminent threat to health, safety, or property. As soon as practical, the responsible party shall provide written notification to the responsible official and obtain all applicable permits;
 - b. The expansion, remodel, reconstruction, or replacement of any Structure which will be set back from the geologic hazard area a distance which is greater than or equal to the setback of the original Structure and which will not increase the building footprint by more than 1,000 square feet inside a steep slope hazard area, landslide area, or their buffers;
 - c. Any replacement, operation, repair, modification, installation, or construction by a state or locally franchised utility company in an improved right-of-way or utility corridor;
 - d. Normal and routine maintenance and repair of existing utility facilities, equipment, and appurtenances;
 - e. Any development activity on or within 100 feet of steep slopes that have been created through previous, legal grading activities is exempt from steep slope hazard regulations; and,
 - f. All forest practices other than Class IV G (conversions).
 - 3. This section applies to Class IV G forest practices (conversions).
- C. Geologic Hazard Area Maps and Designation Criteria.
 - 1. Maps.
 - a. Adopted Maps. The following maps are adopted by reference and in the Town of Yacolt Comprehensive Growth Management Plan. GIS Map Store produces maps for free in the following link: Critical Areas Ordinances Maps, (<https://gis.clark.wa.gov/gishome/mapstore/%20-%20/mapProducts>).
 - b. Identification. Geologic hazards are usually localized individual occurrences that may affect only small, separate areas. In addition, activities such as grading and clearing can create or increase slope instability where none was previously identified. Because of this, geologic hazard areas have not been identified on a site-specific basis.
 - c. Source Data. The approximate location and extent of geologic hazard areas are shown on the geologic hazard area maps adopted herein. Clark County will adopt updated mapping as more detailed information becomes available. The maps are intended to meet the designation criteria listed in WAC 365-190-080 and are based on the best available information, including:

- (1). Slope areas mapping for Clark County, Clark County Department of Assessment and GIS, and the Town of Yacolt;
 - (2). Slope Stability of Clark County, Washington State Department of Natural Resources, 1975, and landslides mapped in Geologic Map of the Vancouver Quadrangle, Washington and Oregon, Washington State Department of Natural Resources, 1987; Construction of Liquefaction Susceptibility and NEHRP Soil-type Maps for Clark County, Washington, Washington Department of Natural Resources, 2004;
 - (3). Volcanic hazard zonation for Mount St. Helens, Washington, U.S. Geological Survey, 1995; and,
 - (4). Natural Resources Conservation Service, Soil Survey Geographic Database (SSURGO), 2004.
 2. Designation Criteria. Along with geologic hazard area mapping, designation criteria for steep slope hazard areas, landslide areas, and seismic hazard areas are listed below. Where the geologic hazard area maps and designation criteria conflict, the designation criteria shall prevail.
 - a. Steep slope hazard areas are areas where there is not a mapped or designated landslide hazard, but there are steep slopes equal to or greater than 40 percent slope. Steep slopes which are less than 10 feet in vertical height and not part of a larger steep slope system, and steep slopes created through previous legal grading activity are not regulated steep slope hazard areas. The presence of steep slope suggests that slope stability problems are possible.
 - b. Landslide hazard areas are areas that, due to a combination of slope inclination, soil type, and presence of water, are susceptible to land sliding in accordance with any of the following criteria:
 - (1). Areas of previous slope failures including areas of unstable old or recent landslides;
 - (2). Areas with all three of the following characteristics:
 - (a). Slopes steeper than 15 percent;
 - (b). Hillsides intersecting geologic contacts with permeable sediment overlying a low permeability sediment or bedrock; and,
 - (c). Any springs or groundwater seepage.
 - (3). Areas mapped by:
 - (a). Washington State Department of Natural Resources, Open File Report: Slope Stability of Clark County, as having potential instability, historical, or active landslides, or as older landslide debris, or;
 - (b). The Washington State Department of Natural Resources Open File Report Geologic Map of the Vancouver Quadrangle, Washington and Oregon, as landslides.
- D. Reasonable Use Assurance. Nothing in this Section shall preclude the issuance of a single-family building permit on a lawfully created lot in accordance with YMC 16.020.110.

16.30.020 - Standards.

- A. General. The following requirements for development activities in geologic hazard areas list prohibited activities, buffer requirements, and setback requirements. This Section describes required buffers and setbacks, and general requirements for development activities in geologic hazard areas.
 1. Development on steep slope hazard areas is regulated to prevent potential landslide damage by placing improvements away from steep slopes and leaving steep slopes in natural vegetation.
 2. Development in landslide hazard areas is generally not allowed, and requires buffers that keep vegetation in a natural state on and around the landslide hazard area.
 3. Seismic hazards due to liquefaction, ground shaking amplification, and landslides exist for large areas of Clark County. Only detailed site analysis can determine how soils and Structures will respond at a particular site. Site investigation requirements of the Uniform Building Code are used to ensure that

Structures are built to minimum safety standards based on existing knowledge of earthquake hazard.

4. If an applicant wishes to perform development activities not allowed by Subsections D and E of this Section, a geologic hazard area study meeting the requirements of YMC 16.30.030C must be completed. The development proposal may be approved, approved with conditions, or denied based on the responsible official's evaluation of the suitability of the mitigation measures proposed by the geologic hazard area study to protect life, safety, and slope stability on abutting properties.
- B. Erosion Requirements. All activities on hillsides subject to severe erosion hazard must minimize erosion by following up to date BMPs.
- C. Stormwater Requirements. For projects within 100 feet of steep slope hazard areas or landslide hazard areas, runoff shall not be infiltrated into the ground. Runoff should be directed through a water-tight pipe beyond the base of the slope or landslide area and discharged to a suitable drainage way. An energy dissipating device shall be placed at the discharge point.
- D. Steep Slope Hazard Areas.
 1. Except for mineral extraction practices, development activity on or within 100 feet of slopes steeper than 40 percent that do not have a mapped or designated landslide hazard shall comply with the requirements of this Section.
 2. Buffer and Setback Distances.
 - a. For slopes greater than or equal to 40 percent and less than 100 percent, buffers shall extend a distance away from the toes of the slope that is equal to the vertical height of the slope divided by two, but not to exceed 15 feet (Figure 16.30.020-1). For slopes less than 100 percent, the toe of the slope is defined as a distinct break in slope at the base of a steep slope.
 - b. For slopes greater than 100 percent, the buffer shall extend a distance back from the toe of the slope equal to the height of the slope divided by two, not to exceed 15 feet. The buffer shall be measured horizontally from a plane, drawn tangent to the top of the slope at an angle of 45 degrees to the proposed Structure (Figure 16.30.020-2).
 - c. The setback shall be eight feet (8') beyond the buffer.
 3. The responsible official may approve buffers and setbacks which differ from those required by Subsection D2 of this Section if the applicant submits a geologic hazard area study described in YMC 16.30.030C, which technically demonstrates and illustrates that the alternative buffer provides protection which is greater than or equal to that provided by the buffer required in Subsection D2 of this Section.
 4. The responsible official may increase buffers or setbacks where necessary to meet requirement of the Uniform Building Code.
 5. All portions of steep slope hazard areas and steep slope buffers on the site which areas are planned to be undisturbed by permitted development activities shall be designated as landslide protection areas in accordance with this Section.
 6. Other than for exemptions listed in YMC 16.30.010B and 16.30.030B, vegetation removal is not allowed on slopes over 40 percent without an approved geologic hazard area study described in YMC 16.30.030C.
 7. Buffers, landslide protection areas, and setbacks for steep slopes on projects having approved grading shall be based on regulated steep slopes that remain after that grading.
- E. Landslide Hazard Areas.
 1. A development proposal on a site containing a landslide hazard area shall meet the following requirements:
 - a. A minimum buffer of 50 feet shall be established from all edges of the landslide hazard area. The buffer shall be extended as required to mitigate a steep slope or erosion hazard or as otherwise necessary to protect the public health, safety, and welfare; and,
 - b. All portions of landslide hazard areas and buffers shall be designated as landslide protection areas in accordance with YMC 16.30.030B.
 2. Other than exempt activities, clearing or alteration of a landslide is allowed only if the following conditions

are met:

- a. A development proposal does not decrease slope stability on contiguous properties;
 - b. Mitigation is based on best available engineering and geological practice and is described in an approved geologic hazard area study as specified in YMC 16.30.030C; and,
 - c. Such clearing or alteration of a landslide is certified safe as designed and under anticipated conditions by a registered geotechnical engineer or geologist licensed in the State of Washington.
3. Neither buffers nor a landslide protection area will be required if the activity meets the requirements of Subsection E2 of this Section.

Slope Setback Diagrams
Figure 16.30.020-1

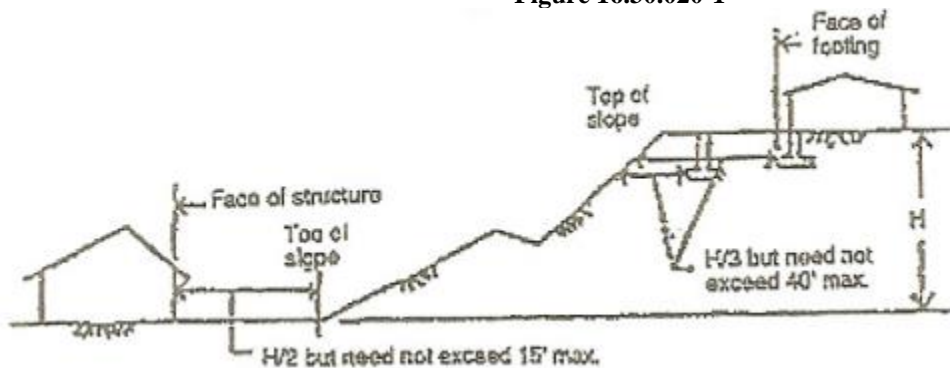
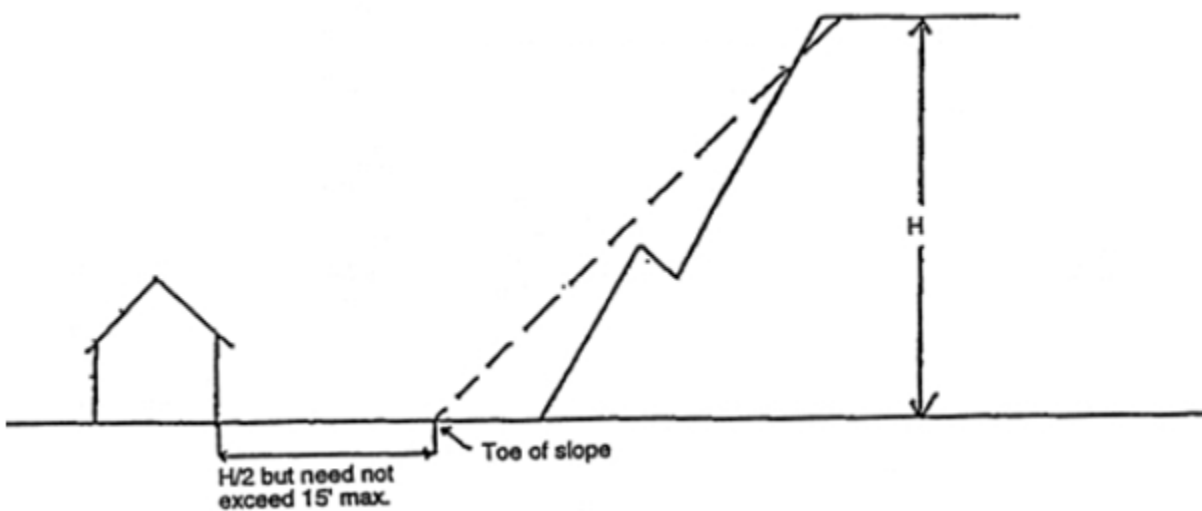


Figure 16.30.020-2



16.30.030 - Administration.

- A. Binding Predetermination. Prior to submittal of a triggering application, a person may request from the responsible official a written binding predetermination of whether a probable regulated geologic hazard area exists on or within one hundred feet (100') of any parcel less than forty (40) acres. The predetermination shall be binding on the responsible official for a period of three (3) years; provided that such predetermination shall be subject to administrative appeal upon its application in conjunction with a triggering application. A complete predetermination application shall include a list of the submittal requirements for a site description under Subsection C3 of this Section. Additional submittal requirements may later be required as a part of a geologic

hazard area study under Subsection C4 of this Section if the proposal intends to develop within a steep slope or landslide hazard area, or their buffers.

B. Establishment of Landslide Protection Areas.

1. Steep slope hazard areas and landslide areas and buffers for which permanent protection is required pursuant to YMC 16.30.020D and E shall be designated landslide protection areas.
2. Landslide protection area requirements apply only to site plans and land divisions.
3. For all development activities subject to this Section, landslide protection areas shall be delineated on binding site plans and plots which shall be recorded with the Clark County Auditor.
4. A conservation covenant applicable to the designated landslide protection area shall be recorded in a form approved by the Town Attorney as adequate to incorporate the restrictions of this Chapter.
5. Prior to any site development activity, the applicant shall mark with temporary markers in the field the boundary of all landslide protection areas required by this Chapter, or the limits of the proposed site disturbance outside of the landslide protection areas, using methods and materials acceptable to the Town of Yacolt.
6. Landslide protection area boundaries shall be permanently marked on the site prior to final inspection using methods and materials acceptable to the Town of Yacolt.
7. Vegetation clearing requirements for development in landslide protection areas, steep slope hazard areas, and landslide hazard areas:
 - a. Clearing or vegetation removal in landslide protection areas, steep slope hazard areas, or landslide hazard areas or their buffers is prohibited except for:
 - (1). Activities included in an approved geologic hazard area study as defined in Subsection C of this Section;
 - (2). Limited vegetation removal for surveying and testing necessary for development approvals;
 - (3). Emergency or fire hazard removal authorized by the District fire chief;
 - (4). Removal of nuisance vegetation using methods which minimize disruption of soil and non-nuisance vegetation;
 - (5). Clearing necessary for placement or maintenance of fencing;
 - (6). Clearing necessary for hillside vegetation restoration;
 - (7). Clearing necessary for vegetation or resource conservation projects authorized by a public agency; and,
 - (8). Clearing for three-foot-wide or narrower foot paths surfaced with wood, soil, or gravel.
 - b. Proposals for clearing may also be subject to other critical areas regulations. Wildlife habitat near streams, which have clearing requirements under the habitat conservation regulations, often overlap with steep slopes included in geologic hazard areas.

C. Submittal Requirements.

1. For development activity regulated by this Chapter, submittal requirements will vary depending on the type of project and the type of hazard mitigations that are proposed. A review of a geologic hazard area will be conducted in conjunction with the primary development application. Projects are required to submit a basic site description sufficient to verify that the location of proposed building and access road improvements comply with buffers, setbacks, and vegetation preservation required by YMC 16.30.020D and E. If a regulated activity is proposed within a geologic hazard area, additional information in the form of a geologic hazard area study must be provided to assure the project is feasible and will not cause an increased geologic hazard. The information required for a site description is included in Subsection C3 of this Section. The requirements for a geologic hazard area study for projects wishing to build in a geologic hazard area are included in Subsection C4 of this Section.
2. The responsible official shall waive parts of these submittal requirements if it is determined that they are

not applicable to the proposed activity.

3. **Site Description.** As part of the development permit application, the following information describing the subject property and areas within 25 feet of the property lines or smaller area of concern as deemed appropriate by the responsible official, drawn to an engineering scale no larger than one inch equals 20 feet and no smaller than one inch equals 100 feet as deemed appropriate by the responsible official:
 - a. The site boundary lines;
 - b. The topography at contour interval of no greater than five feet;
 - c. The location and size of all existing and proposed site improvements including Structures, wells, drain fields, drain field reserve areas, public and private right-of-way easements, and utilities;
 - d. The location of all drainage-flow characteristics, streams, groundwater seeps, springs, and evidence of seasonal surface water runoff or groundwater;
 - e. The location and extent of all existing and proposed grading activities and existing natural or artificial drainage control facilities and systems;
 - f. The location and description of all geologic hazards located on the site and observed on properties within 100 feet of site boundaries;
 - g. The general location of all vegetation and the general location, number, and description of all trees over six-inch diameter measured three feet above the ground; and,
 - h. The location of all proposed buffers and setbacks.
4. **Geologic Hazard Area Study.** A geologic hazard area study is required if the proposed development does not comply with requirements of YMC 16.30.020D, Steep Slope Hazard Areas, or 16.30.020E, Landslide Hazard Areas. Geologic investigation may also be required in some cases to meet Uniform Building Code requirements for foundations and for seismic design. Geologic hazard area studies shall be prepared, stamped, and signed by a licensed geotechnical engineer or geologist. Based on the site characteristics and the information submitted by the applicant, the responsible official may require all or part of the following information to be included in a geotechnical report:
 - a. The requirements for the site description listed above in Subsection C3 of this Section;
 - b. Site geology information:
 - (1). Topographic contours at two-foot intervals or as specified by the responsible official;
 - (2). Subsurface data that includes the exploration method, location of soil borings, borings, logs, soil and rock stratigraphy, and groundwater levels including seasonal changes;
 - (3). The location of landslides, or down-slope soil movement, faults, and geologic contacts on the subject property and adjacent properties;
 - (4). A site history that describes any prior grading, soil instability, or slope failure; and,
 - (5). A description of the site vulnerability to seismic events.
 - c. Geotechnical information and plan requirements:
 - (1). A slope stability study and opinion of slope stability on the subject property and adjacent properties;
 - (2). Grading plan;
 - (3). Structural foundation requirements and estimated foundation settlements;
 - (4). Soil compaction criteria;
 - (5). Allowable soil-bearing pressure for foundations, minimum footing widths, piling recommendations for foundations, and design pressure for retaining walls;
 - (6). Laboratory data and soil index properties for soil samples;
 - (7). Suitability for fill;

- (8). Lateral earth pressures;
 - (9). Description of erosion vulnerability and an erosion control plan;
 - (10). An evaluation of proposed surface and subsurface drainage in a stormwater control plan;
 - (11). Building limitations; and,
 - (12). A vegetation management and restoration plan or other means for maintaining long-term stability of slopes;
- d. A site evaluation that describes the suitability of the site to accommodate the proposed activity; and,
- e. Such additional information describing existing physical features for the site and surrounding area as required by the responsible official to complete review of the project under standards of the Uniform Building Code.

Chapter 16.35 FREQUENTLY FLOODED AREAS

Sections:

- 16.35.010 - Introduction
- 16.35.020 - Standards
- 16.35.030 - Administration

16.35.010 - Introduction.

- A. Purpose. It is the purpose of this Chapter to safeguard public health, safety and welfare by placing limitations on development in areas susceptible to Flood waters consistent with the requirements of the Growth Management Act and WAC 365-190.
- B. Applicability. After the adoption of this Chapter, no Structure shall hereafter be constructed, substantially improved, located, extended, converted, or replaced, nor any land altered without full compliance with the terms of this Chapter and other applicable regulations.
 - 1. Frequently Flooded Areas may include lands outside of Federal Emergency Management Agency defined Special Flood Hazard Area floodplains and shall include:
 - a. Areas Identified on the Flood Insurance Map(s). Those areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled The Flood Insurance Study (FIS) for Clark County and Incorporated Areas, dated January 19, 2018, with accompanying flood insurance rate maps (FIRM) and any revisions thereto. The flood insurance study and accompanying map(s) are hereby adopted by reference, declared part of this Chapter, and are available for public review at the Clark County Public Works Department.
 - b. Areas Identified by the Public Works Director. Those areas of special flood hazard identified by the Public Works Director based on review of base flood elevation and floodway data available from federal, state, county, or other valid sources when base flood elevation data has not been provided from the Federal Insurance Administration (A and V zones of the flood insurance map(s)).
 - c. Use of Additional Information. The Public Works Director may use additional flood information, such as provided by the Army Corps of Engineers, that is more restrictive or detailed than that provided in the flood insurance study conducted by the Federal Emergency Management Agency to designate Frequently Flooded Areas. The flood insurance maps are to be used as a guide for the Town, project applicants and/or property owners, and the public and should be considered a minimum designation of Frequently Flooded Areas. As flood insurance maps may be continuously updated as areas are reexamined or new areas are identified, newer and more accurate information for flood hazard area identification shall be the basis for regulation, including photographs of past flooding, location of restrictive floodways, maps showing future build-out conditions, maps that show riparian habitat areas, or similar information.
 - 2. This Chapter is not intended to repeal or impair any existing easements, covenants or deed restrictions.
 - 3. In the interpretation and application of this Chapter, all provisions shall be:
 - a. Considered as minimum requirements;
 - b. Liberally construed to achieve the purposes of this Chapter; and,
 - c. Deemed neither to limit nor repeal any other powers granted under state statutes.
- C. Definitions. For the purposes of this Chapter and Title, the following definitions shall apply:
 - 1. Base Flood. "Base Flood" means the Flood having a one percent (1%) chance of being equaled or exceeded in any given year and is also referred to as the one-hundred-year (100-year) Flood.
 - 2. Base Flood Elevation. "Base Flood Elevation" means the height in relation to the North American Vertical Datum (NAVD) 1988 expected to be reached by the waters of the Base Flood at pertinent points in the Floodplains of coastal and riverine areas.
 - 3. Basement. "Basement" means any area of the building having its floor subgrade below ground level on all sides.

4. Critical Facility. "Critical Facility" means the following:
 - a. Structures or facilities that produce, use or store highly volatile, flammable, explosive, toxic and/or water-reactive materials;
 - b. Hospitals, nursing homes, and housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a Flood;
 - c. Police stations, fire stations, vehicle and equipment storage facilities, and emergency operations centers that are needed for Flood response activities before, during and after a Flood; and,
 - d. Public and private utility facilities that are vital to maintaining or restoring normal services to Flooded areas before, during, and after a Flood.
5. Development. "Development" means, in addition to the definition in YMC 18.10.010, the storage of equipment and materials.
6. Elevation Certificate. "Elevation Certificate" means the official form (FEMA 81-31) used to record the elevation of a Structure on a given property relative to the NAVD 1988.
7. Encroachment. "Encroachment" means the intrusion of any building, Structure, vegetation, fill, excavation, or other Development or use into a Special Flood Hazard Area which may impede or alter the flow through or storage capacity of a Special Flood Hazard Area.
8. FEMA. "FEMA" means the Federal Emergency Management Agency.
9. Flood or Flooding. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland waters; and/or,
 - b. The unusual and rapid accumulation of runoff of surface waters from any source.
10. Flood Insurance Rate Maps. "Flood Insurance Rate Maps" (FIRMs) mean the official maps on which the Federal Insurance Administration has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the county.
11. Flood Insurance Study. "Flood Insurance Study" means an official report published by FEMA in conjunction with the community's Flood Insurance Rate Maps (FIRMs). The study contains such background data as the Base Flood discharges and water surface elevations that were used to prepare the FIRMs.
12. Floodproofing. "Floodproofing" means any combination of structural and nonstructural additions, changes or adjustments to properties and Structures which reduce or eliminate Flood damages to lands, water and sanitary facilities, and Structures and their contents.
13. Floodway. "Floodway" means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the water surface elevation more than one (1) foot.
14. Lowest Floor. "Lowest Floor" means the Lowest Floor of the lowest enclosed area (including the Basement). An unfinished or Flood-resistant enclosure usable solely for parking of vehicles or for 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 YMC 16.35.020B2.
15. Special Flood Hazard Area, or Floodplain. "Special Flood Hazard Area" or "Floodplain" means any land area subject to a one percent (1%) or greater chance of Flooding in any given year.
16. Start of Construction. "Start of Construction" means, in addition to the definition in YMC 18.10.010, for a Substantial Improvement, 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.
17. Structure. "Structure" means, in addition to the definition in YMC 18.10.010:
 - a. A gas or liquid storage tank that is principally above ground; and,

- b. A manufactured home.
- 18. 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 fifty percent (50%) of the market value of the Structure before the damage occurred.
- 19. Substantial Improvement. "Substantial Improvement" means any repair, reconstruction, or improvement of a Structure, the cost of which is equal to or greater than fifty percent (50%) of the market value of the Structure either:
 - a. Before the improvement or repair is started; or
 - b. If the Structure has been damaged and is being restored, before the damage occurred.Substantial Improvement can exclude:
 - a. Any project for improvement of a Structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been identified by a code enforcement official and which are the minimum necessary to assure safe living conditions; or,
 - b. Any alteration of a Structure listed on the National Register of Historic Places or the Clark County Heritage Register.
- D. Flood Insurance Study and Maps.
 - 1. The Special Flood Hazard Areas identified by the Federal Emergency Management Agency (FEMA) in a report entitled "Flood Insurance Study, Clark County, Washington and Incorporated Areas" (FIS), effective January 19, 2018, and accompanying Flood Insurance Rate Maps (FIRMs) and any revisions thereto are hereby adopted by reference. The FIS and the FIRMs are on file with the Clark County Public Works Department.
 - 2. For the FIS and the FIRMs, the vertical datum was converted from the National Geodetic Vertical Datum of 1929 (NGVD29) to the North American Vertical Datum of 1988 (NAVD88). In addition, the Transverse Mercator, State Plane coordinates, previously referenced to the North American Datum of 1927 (NAD27), are now referenced to the North American Datum of 1983 (NAD83).
 - 3. The best available information for Special Flood Hazard Area identification as outlined in YMC 16.35.010D shall be the basis for regulation until new information is incorporated into the FIRMs.
- E. Warning and Disclaimer of Liability. The degree of Flood protection required by this Chapter is considered reasonable for regulatory purpose, and is based upon scientific and engineering considerations. Larger Floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This Chapter does not imply that land outside Special Flood Hazard Areas, or uses permitted within such areas, will be free from Flooding or Flood damages. This Chapter shall not create liability on the part of the Town of Yacolt, any officer or employee thereof, or the Federal Emergency Management Agency for any Flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

16.35.020 - Standards.

- A. Uses.
 - 1. Allowed uses in Special Flood Hazard Areas.
 - a. Development may be allowed for those uses in underlying zoning district with a Flood hazard permit pursuant to YMC 16.35.030C.
 - b. Park, recreational, agricultural, and other similar open space uses allowed in the underlying zoning district, which do not involve Development as defined in this Chapter, are permitted outright in Special Flood Hazard Areas.
 - 2. Prohibited uses in Special Flood Hazard Areas.
 - a. Construction or reconstruction of residential Structures is prohibited in the Floodway, except in accordance with Chapter RCW 86.16 for repairs, reconstruction, or improvements to a lawfully-established Structure:

- (1). Which do not increase the ground floor area; and,
 - (2). That is not a Substantial Improvement.
 - b. Floodway Encroachments are prohibited unless certification by an Engineer as defined in YMC 16.20.260 is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that Encroachments shall not result in any increase in Flood levels during the occurrence of the Base Flood discharge. If it has been adequately demonstrated through calculations that the Encroachment will not result in increased Flood levels, all new nonresidential construction and nonresidential Substantial Improvements shall comply with all applicable Flood hazard reduction provisions of this Chapter.
 3. Special Flood Hazard Area with Base Flood Elevation but No Floodways. In areas with Base Flood Elevation but where a regulatory Floodway has not been designated, no new construction, Substantial Improvements, or other Development (including fill) shall be permitted within Zone AE, 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 (1) foot at any point in the Town.
- B. General Construction Standards.
1. In all Special Flood Hazard Areas, the following standards are required:
 - a. Anchoring, in accordance with FEMA requirements.
 - (1). All new construction and any Substantial Improvements shall be anchored to prevent flotation, collapse, or lateral movement of the Structure.
 - (2). 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, and additional techniques referenced in the current FEMA's guidebook FEMA P-85, Protecting Manufactured Homes from Floods and Other Hazards.
 - b. Construction Materials and Methods, in accordance with FEMA Technical Bulletin 2.
 - (1). All new construction and any Substantial Improvements shall be constructed with materials and utility equipment resistant to Flood damage.
 - (2). All new construction and any Substantial Improvements shall be constructed using methods and practices that minimize Flood damage.
 - (3). Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed, elevated or located so as to prevent water from entering or accumulating within the components during Flooding.
 - c. Utilities.
 - (1). All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of Floodwaters into the system.
 - (2). New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of Floodwaters into the systems and discharge from the systems into Floodwaters.
 - (3). On-site waste disposal systems shall be located or designed to avoid impairment to them or contamination from them during Flooding.
 - (4). Water wells shall not be located in the Floodway or areas subject to ponding.
 - d. Subdivision Proposals shall:
 - (1). Identify lots and portions of lots in special Flood hazard areas as part of preliminary plat submittal;
 - (2). Be designed to minimize Flood damage;
 - (3). Have any public utilities and facilities such as sewer, gas, electrical, and water systems located

- and constructed to minimize Flood damage;
- (4). Have adequate drainage provided to reduce exposure to Flood damage;
 - (5). Have roadways designed such that, in the event of a one hundred (100) year Flood, one (1) travel lane in either direction shall not be covered by more than six (6) inches of water; and,
 - (6). Have adequate drainage provided to reduce exposure to Flood damage.
2. Specific Construction Standards. In all Special Flood Hazard Areas the following construction standards are required:
- a. Residential Construction.
 - (1). New residential construction and Substantial Improvement of any residential Structure shall have the Lowest Floor, including the Basement, elevated to at least one (1) foot above Base Flood Elevation.
 - (2). Fully enclosed areas below the Lowest Floor that are subject to Flooding are prohibited, unless 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 licensed engineer as defined in YMC 16.20.260 or must meet or exceed the following minimum criteria:
 - (a). 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;
 - (b). The bottom of all openings shall be no higher than one foot above grade; and,
 - (c). Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of Floodwaters.
 - (3). Below-Grade Crawl Spaces.
 - (a). Below-grade crawl spaces will not be considered Basements if constructed to the following criteria:
 - (i). The interior grade of the crawl space is not more than two (2) feet below the lowest adjacent exterior grade.
 - (ii). The height of the below-grade crawl space, measured from the interior grade of the crawl space to the top of the crawl space foundation wall, must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for Flood hazard areas.
 - (iii). There must be an adequate drainage system that removes Floodwaters from the interior area of the crawl space.
 - (iv). The velocity of Floodwaters at the site should not exceed five (5) feet per second for any crawl space. For velocities in excess of five (5) feet per second, other foundation types should be used.
 - (v). Utility systems within the crawl space, particularly ductwork, must be elevated above the Base Flood Elevation, or designed so that Floodwaters cannot enter or accumulate within system components, or be damaged during Flood conditions.
 - (vi). All insulation must be located above the Base Flood Elevation.
 - (b). Buildings that have below-grade crawl spaces may have higher Flood insurance premiums than buildings that have the preferred crawl space construction with the interior elevation at or above the lowest adjacent grade.
 - (c). For additional information and diagrams see FEMA Technical Bulletin 11.
 - b. Nonresidential Construction. New construction and Substantial Improvement of any commercial, industrial, or other nonresidential Structure shall either have the Lowest Floor, including the

Basement, elevated to at least one foot above Base Flood Elevation; or, together with attendant utility facilities shall:

- (1). Be Floodproofed so that the Structure is watertight with walls substantially impermeable to the passage of water up to one (1) foot above the Base Flood Elevation;
 - (2). Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
 - (3). Be certified by a licensed engineer as defined in YMC 16.20.260 that the design and methods 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 on FEMA Form 81-65 and provided to the responsible official;
 - 4). Nonresidential Structures that are elevated, not Floodproofed, must meet the same standards for space below the Lowest Floor as described in Subsection B2a(1) of this Section; and,
 - (5). Applicants Floodproofing nonresidential buildings shall be notified that Flood insurance premiums will be based on rates for Floodproofing to one foot below the Floodproofed level (e.g., a building constructed to the Base Flood level will be rated as one foot below that level).
- c. **Manufactured Homes.** All manufactured homes to be placed or substantially improved within a Special Flood Hazard Area shall be elevated on a permanent foundation such that the Lowest Floor of the manufactured home is at least one (1) foot above the Base Flood Elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement in accordance with the provisions of Subsection B1a(2) of this Section.
- d. **Travel Trailers and Recreational Vehicles.** Travel trailers and recreational vehicles are allowed as follows:
- (1). In the Floodway on a seasonal basis between May 1st and October 1st of the same year and within the Floodway fringe areas on a temporary basis for fewer than 180 consecutive days.
 - (2). Vehicle remains fully licensed or has a valid trip permit from the Washington State Department of Licensing 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.
- e. **Critical Facilities.**
- (1). New Critical Facilities shall be outside of Special Flood Hazard Areas unless no feasible alternative site is available.
 - (2). Critical Facilities constructed within the Special Flood Hazard Areas shall have;
 - (a). The Lowest Floor elevated three feet above the Base Flood Elevation or to the height of 500-year Flood, whichever is higher;
 - (b). Access to and from the Critical Facility should be protected to the height utilized above; and,
 - (c). Floodproofing and sealing measures to ensure that toxic substances will not be displaced by or released into Floodwaters.
3. **Floodways.** Areas designated as Floodways are located within Special Flood Hazard Areas established in YMC 16.35.010 Since the Floodway is an extremely hazardous area due to the velocity of Floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:
- a. There is a prohibition on Encroachments, including fill, new construction, Substantial Improvements, and other Development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that Encroachments shall not result in any increased Flood levels during the occurrence of the Base Flood discharge.
 - b. If it has been adequately demonstrated that the Encroachment will not result in increased Flood

levels, all new construction and Substantial Improvements shall comply with all applicable Flood hazard reduction provisions of this Section.

16.35.030 - Administration.

- A. Establishment of Floodplain Review. The Public Works Director or his/her designee is the responsible official for purposes of administering this Chapter. A review shall be obtained before construction or Development begins within any Special Flood Hazard Areas established in this Chapter.
- B. Flood Hazard Inquiry.
 - 1. Flood Plain review application forms shall be furnished by the responsible official.
 - 2. The responsible official shall review the application and other pertinent information, and make a determination as to whether the proposed Development is in a Special Flood Hazard Area and whether a Flood hazard permit is required. The responsible official shall inform the applicant in writing whether or not a permit is required. The Public Works Director shall render a decision on the proposal within 30 days after receiving the application unless additional information is needed from the applicant, in which case a decision shall be made within 30 days after receiving the information necessary to complete the review.
- C. Flood Hazard Permit.
 - 1. A Flood hazard permit must be obtained before construction or Development begins within any Special Flood Hazard Area. The review shall be for all Structures and Development as defined in YMC 18.10.010 and this Chapter.
 - 2. For land divisions, a Flood hazard permit will be issued as part of the land division review process. The following information is required:
 - a. Floodplain and Floodway limits;
 - b. Finished grading;
 - c. Building envelopes; and,
 - d. Hydrologic and hydraulic calculations used to determine the impact of the proposed Development on Base Flood Elevation. Where Base Flood Elevation data is not available from the Flood Insurance Study, FIRMs, or from another authoritative source, it shall be provided by the applicant for subdivisions and other proposed Development which contain at least fifty (50) lots or five (5) acres, whichever is less. This documentation shall be prepared by an engineer as defined in YMC 16.20.260.
 - 3. For building permits, a Flood hazard review will be done as part of the building permit review process. The following information is required:
 - a. Floodplain and Floodway limits;
 - b. Finished grading;
 - c. Building envelopes; and,
 - d. Hydrologic and hydraulic calculations used to determine the impact of the proposed Development on Base Flood Elevation. Where Base Flood Elevation data is not available from the Flood Insurance Study, FIRMs, or from another authoritative source, the applicant shall assure that proposed construction will be reasonably safe from Flooding. The test of reasonableness shall be a judgment of the responsible official who shall consider historical data, high water marks, and photographs of past Flooding, where available. This documentation shall be prepared by a licensed professional engineer registered in the state of Washington. Failure to elevate the Lowest Floor at least two (2) feet above the highest adjacent grade in these zones may result in higher insurance rates.
 - 4. Application for a Flood hazard permit shall be made to the responsible official on a form furnished by the responsible official.
 - 5. The application shall include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, and existing or proposed Structures, fill,

storage of materials, and drainage facilities. Specifically, the following information is required:

- a. Elevation, in relation to mean sea level as determined by the National Geodetic Vertical Datum (NGVD) of 1988, of the Lowest Floor (including Basement) of all Structures;
 - b. Elevation, in relation to NGVD of 1988, to which any Structure has been Floodproofed;
 - c. Certification by a licensed engineer as defined in YMC 16.20.260 that the Floodproofing methods for any nonresidential Structure meet the Flood-proofing criteria in YMC 16.35.020B2b;
 - d. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed Development; and,
 - e. Hydrologic and hydraulic calculations used to determine the impact of the proposed Development on Base Flood Elevation. If hydraulic modeling software is utilized for these calculations, all electronic files shall be submitted prior to Flood hazard permit approval.
6. Responsibilities of the Responsible Official. The responsible official will:
- a. Review all proposed Developments with respect to the Flood Insurance Study and accompanying maps and zoning district boundaries;
 - b. Make interpretations where needed as to the exact location of Special Flood Hazard Area boundaries;
 - d. When Base Flood Elevation data has not been provided in accordance with YMC 16.35.030C shall obtain, review and reasonably utilize any Base Flood Elevation and Floodway data available from an agency of federal or state government, or other sources, in order to enforce the provisions of this Chapter;
 - e. Review all proposals to determine that the requirements of this Chapter have been satisfied;
 - f. Review all proposals to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required; and,
 - g. Issue a Flood hazard permit with any conditions necessary to ensure that the Development meets the requirements of this Chapter.
7. Elevation Certificates Required. Elevation Certificates are required to verify elevations of Structures and above-ground equipment, and shall be submitted prior to receiving an inspection for footing, framing and certificate of occupancy. Elevation Certificates shall be prepared by a licensed professional surveyor registered in the State of Washington.

D. Variances.

1. Generally, variances may be issued for new construction and Substantial Improvements to be erected on a lot of one-half acre or less in size, abutting and surrounded by lots with existing Structures constructed below the Base Flood level, provided items in YMC 16.35.030E1 have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation, or restoration of Structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Chapter.
3. Variances may be granted pursuant to the National Flood Insurance Program and applicable state law, and shall only be issued if the following are met:
 - a. The proposal has been designed to reasonably minimize the impact on the floodplain and its functions;
 - b. No increase in Flood levels during the Base Flood discharge would result;
 - c. The variance is the minimum necessary, considering the Flood hazard, to afford relief;
 - d. Failure to grant the variance would result in exceptional hardship to the applicant;
 - e. The hardship is not created by the property owner or its immediate predecessor in the title; and,

- f. The granting of a variance will not result in increased Flood heights, additional threats to public safety, or extraordinary public expense, create nuisances, cause fraud on or victimization of the public.
 4. Variances, as interpreted in the National Flood Insurance Program, are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the Structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the Flood elevations should be quite rare.
 5. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of Flood-proofing than watertight or dry Flood-proofing, where it can be determined that such action will have low damage potential and otherwise complies with Subsection 16.35.020B2b.
 6. Any applicant to whom a variance is granted shall be given written notice that the Structure will be permitted to be built with a Lowest Floor elevation below the Base Flood Elevation, and that the cost of Flood insurance will be commensurate with the significantly increased risk resulting from the reduced Lowest Floor elevation.
 7. Variances may be issued for new construction and Substantial Improvements to be erected on a lot that is one-half (½) acre or less in size, abutting and surrounded by lots with existing Structures constructed below the Base Flood level, provided that the items in YMC 16.35.030 have been fully considered.
 8. The Public Works Director shall report any variances to the Federal Emergency Management Agency upon request.
- E. Appeals. Administrative decisions rendered by the responsible official or the Public Works Director are subject to appeal according to the Town of Yacolt appeals process.
 1. In acting on appeals, the hearings examiner shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this Chapter, as well as:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to Flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to Flood damage, and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use, which are not subject to Flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated Development;
 - h. The relationship of the proposed use to the comprehensive plan and Floodplain management program for that area;
 - i. The safety of access to the property in times of Flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the Floodwaters, and the effects of wave action, if applicable, expected at the site; and,
 - k. The costs of providing governmental services during and after Flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
 2. Upon consideration of the factors of Subsection E1 of this Section and the purposes of this Chapter, the hearings examiner may attach such conditions to actions on appeals as it deems necessary to further the purpose of this Chapter.
 3. The responsible official shall obtain and/or maintain the following:
 - a. Where Base Flood Elevation data is provided through the Flood Insurance Study, FIRMs, or as

required in YMC16.35.030, obtain and record the actual elevation (in relation to mean sea level based on the NAVD 1988) of the Lowest Floor (including the Basement) of all new or substantially improved Structures, and whether or not the Structure contains a Basement.

- b. For all new or substantially improved Flood-proofed nonresidential Structures, verify and record the actual elevation (in relation to mean sea level based on the NAVD 1988) to which the Structure was Flood-proofed, and maintain the Flood-proofing certifications required in YMC 16.35.030C5c.
- c. All records for public inspection pertaining to the provisions of this Chapter.

Chapter 16.40 PRIORITY HABITAT AREAS

Sections:

- 16.40.010 - Introduction
- 16.40.020 - Applicability
- 16.40.030 - Standards and nonregulatory measures
- 16.40.040 - Agricultural uses in riparian priority habitat
- 16.40.050 - Habitat permit applications

16.40.010 - Introduction.

The purpose of this Chapter is to further the goal of no net loss of habitat functions and values within designated habitat areas by protecting environmentally distinct, fragile and valuable fish and wildlife habitat areas, as defined in YMC 16.40.020C, for present and future generations, while also allowing for reasonable use of private property. This Chapter intends to conserve the functional integrity of the habitats needed to perpetually support fish and wildlife populations.

- A. General - Basic Criteria. Applicants proposing activities subject to this Chapter shall demonstrate that the activity:
 - 1. Results in no net loss in the level of habitat functions and values as characterized and documented using best available science;
 - 2. Minimizes habitat disruption or alteration beyond the extent required to undertake the proposal; and,
 - 3. Includes mitigation sequencing in YMC 16.20.170.
- B. Within areas designated by this Chapter, development or clearing activities which degrade habitat should generally be avoided where possible. However, activities listed as exempt in this Chapter can be undertaken in habitat areas without additional review. Activities not listed as exempt can be undertaken following Town review if they do not substantially diminish the habitat functions and values present.
- C. The provisions of this Chapter dealing with existing agricultural activities are designed to balance conflicting Growth Management Act goals to preserve both agricultural uses and habitat areas, and recognize:
 - 1. That the maintenance and enhancement of natural resource-based industries, including agriculture, is a goal of the state Growth Management Act;
 - 2. That any regulation should be consistent with WAC-395-196-830;
 - 3. That agricultural lands can provide habitat;
 - 4. That habitat protection must relate to the baseline of existing functions and values given historic agricultural practices, rather than seeking to restore pre-agricultural conditions;
 - 5. That since agricultural activities are dynamic, habitat functions and values can be expected to fluctuate during the course of an agricultural cycle, which fluctuation must be considered in identifying existing functions and values; and,
 - 6. That it is expected that continuation of existing agriculture will not degrade existing functions and values unless sediment, nutrients, or chemicals are allowed to enter streams, or existing beneficial canopy in close proximity to streams is significantly degraded.

16.40.020 - Applicability.

- A. General. Review under the standards of this Chapter shall apply to any proposed development or nondevelopment clearing activities within designated habitat areas as defined in Subsection C of this Section.
 - 1. Development activities are those proposals already subject to existing Town land division, building, grading, or other review processes.
 - 2. Nondevelopment clearing activities are proposals which are not otherwise subject to Town review, but involve the alteration or removal of native vegetation in designated habitat areas.

- B. Exempt Activities.
1. All proposed activities outside designated habitat areas are exempt from review under this Chapter, except where noted in Subsection A of this Section.
 2. Within designated habitat areas exempt activities are listed in YMC 16.40.020G. These do not require review.
- C. Habitat Areas Covered by This Chapter. This Chapter shall apply to nonexempt activities as defined in Subsection A of this Section that are proposed within the following habitat areas:
1. Riparian, Priority Habitat. Areas extending outward from the ordinary high water mark of a river, stream, or creek to the edge of the 100-year Floodplain, or the following distances, whichever is greater:
 - (a). DNR Type S waters, two hundred fifty (250) feet;
 - (b). DNR Type F waters, two hundred (200) feet;
 - (c). DNR Type Np waters, one hundred (100) feet;
 - (d). DNR Type Ns waters, seventy-five (75) feet.

Water types are defined and mapped based on WAC 222-16-030, (Forest Practices Rules). Type S streams include shorelines of the state and have flows averaging twenty (20) or more cubic feet per second; Type F streams are those that are not Type S but still provide fish habitat; and Type N streams do not have fish habitat and are either perennial (Np) or seasonal (Ns). All streams are those areas where surface waters flow sufficiently to produce a defined channel or bed as indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. Ns streams must connect to another stream above ground. Seasonal or intermittent streams are surface streams with no measurable flow during thirty (30) consecutive days in a normal water year.
 2. Other Priority Habitats and Species (PHS). Areas identified by and consistent with the Washington State Department of Fish and Wildlife priority habitats and species criteria, including areas within 1,000 feet of individual species point sites. The Town shall defer to the Washington State Department of Fish and Wildlife in regard to classification, mapping, and interpretation of priority habitat species.
<http://wdfw.wa.gov/conservation/phs/>.
- D. Mapping. The above habitat areas are mapped on a Town-wide basis in the adopted Yacolt Critical Lands Priority Habitats and Species Map. Maps are on file with the Town and are available for public viewing and circulation. Maps of individual locations of sensitive, threatened, or endangered wildlife species are maintained separately. Under law, this information is not available for widespread public distribution unless authorized by the Washington State Department of Fish and Wildlife. GIS Map Store produces maps for free in the following link: Critical Areas Ordinances Maps. (<https://gis.clark.wa.gov/gishome/mapstore/%20-%20/mapProducts>) Official maps will be updated by the Town as warranted by the availability of new information.
- E. Best Available Science. Definitions and maps of habitat areas are based on best available science described in the documents listed below. (Best available scientific data supporting this Chapter may be updated and/or re-evaluated as part of future Title 16 updates.)
1. Washington State Department of Fish and Wildlife Priority Habitats and Species List, (most up to date version);
 2. Management Recommendations for Washington's Priority Habitats and Species, (most up to date version). Best available scientific data supporting this Chapter may be updated and/or reevaluated as part of future amendments; and,
 3. Associated GIS data files maintained by Clark County Department of Assessment and GIS.
- F. Determining Site Specific Applicability. In the event of inconsistencies, official habitat area definitions and on-site assessments shall prevail over Town-wide maps in determining applicability of this Chapter. The Town shall follow the recommendations of the Washington State Department of Fish and Wildlife in the interpretation of site-specific conditions as they relate to the definition of priority habitat and species.
- G. Activities Reviewed Under this Chapter applies to activities within designated priority and locally important habitat areas as described in Table 16.40.020-01.

Table 16.40.020-1. Exempt and Reviewed Activities		
Proposal	Is a clearing review required?	Are any additional fees or review timelines required?
Land division or lot reconfiguration entirely outside habitat areas, except as subject to YMC 16.40.020C1a.	No. Exempt	Fees pursuant to Chapter 18.110
Land division or lot reconfiguration containing habitat areas, except as subject to YMC 16.40.020C1a.	Exempt if impacted lots establish building and clearing envelopes outside of habitat	Fees pursuant to Chapter 18.110
Any activities on lots not in habitat areas, except as subject to YMC 16.40.020C1a.	Exempt	None
Any activities on portions of lots not containing habitat areas, except as subject to YMC 16.40.020C1a.	Exempt	None
Remodeling, replacement of, or additions to existing homes and associated appurtenances that expand the original footprint by no more than 900 square feet within the outer 50 percent of the riparian habitat area and do not require clearing of native trees or shrubs.	Exempt	None
Clearing as minimally necessary for placement of fencing, private wells, septic systems or individual lot sewer, water, electrical or utility connections in habitat areas, where practical alternatives do not exist.	Exempt	None
Clearing as minimally necessary for stream bank restoration, for native replanting or enhancements in habitat areas.	Exempt	None
Clearing as minimally necessary for routine road maintenance activities in habitat areas consistent with Regional Road Maintenance ESA Program Guidelines.	Exempt	None
Clearing as minimally necessary for soil, water, vegetation or resource conservation projects having received an environmental permit from a public agency in habitat areas.	Exempt	None
Clearing as minimally necessary for creating a 4-foot or narrower path using natural, wood-based, or	Exempt	None

Table 16.40.020-1. Exempt and Reviewed Activities		
Proposal	Is a clearing review required?	Are any additional fees or review timelines required?
vegetated pervious surfacing in habitat areas.		
Clearing as minimally necessary for surveying or testing in habitat areas	Exempt	None
Clearing or development in riparian habitat areas which is at least one hundred (100) feet from the waterline and separated by a continuous public or private roadway serving three (3) or more lots.	Exempt	None
Clearing of defined nuisance vegetation in habitat areas which utilizes methods that minimize disturbance of soils and non-nuisance vegetation. Replanting with native vegetation should be pursued to prevent re-infestation.	Exempt	None
Emergency clearing to abate immediate danger to persons or property. For emergency clearing of hazard trees, remove only that portion of a hazard tree as is minimally necessary to remediate the hazard. Cut wood should be left in the habitat area.	Exempt	None
Existing agricultural uses within non-riparian habitat areas.	Exempt	None
Existing agricultural uses within riparian habitat areas.	Reviewed under YMC16.40.020A2.	None
New home or other construction in habitat areas.	Review required	No additional timelines. Applicable review (building permit, etc.) must comply with Code standards. Fees pursuant to Chapter 18.110.
All other vegetation clearing in habitat areas.	Review required	Fees pursuant to Chapter 18.110. Applicable review, if any, must comply with Code standards. If no other review involved, clearing request will be reviewed administratively.

16.40.030 - Standards and nonregulatory measures.

- A. Approval Criteria. Approval shall be granted for all proposals demonstrating compliance with the following criteria. Approval shall be required prior to clearing or development.

1. Intent. Designated habitats are to be protected through avoidance or reduction of the impacts of activities. This Section provides standards for the review of proposed nonexempt activities within designated habitat areas.
2. Mitigation Measures.
 - a. Disrupted functions and values shall be mitigated on-site as a first priority, and off-site thereafter.
 - b. An up-to-date science-based guide should be used to guide on-site mitigation. Off-site mitigation should be guided by applicable watershed, fish recovery, sub-basin or other science-based plans. Any science used to guide mitigation actions, whether on-site or off-site, must meet the criteria and characteristics of best available science listed in WAC 365-195-905 (Criteria for determining which information is the “best available science”), or the state standards in effect at the time of application.
 - c. Mitigation sequencing shall follow YMC 16.20.170, and the following:
 - (1). Exploring alternative on-site locations to avoid or reduce impacts of activities; and,
 - (2). Preserving important vegetation and natural habitat features by establishing buffers or by limiting clearing or alteration;
 - d. Subject to individual circumstances, potential mitigation measures may include, but are not limited to, the following:
 - (1). Replacing invasive exotic plants with native species (refer to the Clark County Native Plant Communities Guide or other relevant publication for guidance);
 - (2). Prohibiting introduction of invasive plant species in habitat areas;
 - (3). Enhancing, restoring or replacing vegetation or other habitat features and functions. In riparian areas, this may include riparian zone averaging as specified in Chapter 16.40.030C;
 - (4). Using native plants where appropriate when planting within habitat areas (refer to the Clark County Native Plant Communities Guide or other relevant publication for guidance);
 - (5). Managing access to habitat areas, including exclusionary fencing for livestock if needed;
 - (6). Stream crossings:
 - (a). Using existing stream crossings whenever a review of suitability, capacity, access and location, habitat impacts of alternatives, maintenance, liability and economics indicate the existing crossing is feasible; or,
 - (b). Constructing new stream crossings, when necessary, in conformance to the water crossing Structure standards in WAC 220-660-190 (Hydraulic Code Rules), which are incorporated by reference;
 - (7). Seasonally restricting construction activities;
 - (8). Implementing best management practices and integrated management practices;
 - (9). Monitoring or review of impacts and assurance of stabilization of the area;
 - (10). Establishing performance measures or bonding;
 - (11). Establishing conservation covenants and other mechanisms to ensure long-term preservation or maintenance of mitigation actions;
 - (12). Utilizing low impact development techniques;
 - (13). Promoting water quality by limiting the use of lawn and garden chemicals in habitat areas;
 - (14). Avoiding topsoil removal and minimizing topsoil compaction; and,
 - (15). Providing off-site mitigation, subject to the following conditions:
 - (a). When the combination of on-site and off-site mitigation fails to substantially maintain functions and values within the stream system, the application shall be denied;
 - (b). All reasonable on-site mitigation alternatives have been exhausted;

- (c). Off-site mitigation is functionally equivalent to the impacts;
 - (d). Off-site mitigation is appropriate in size and scale to the impacts that are not fully mitigated on the original site;
 - (e). Proposed off-site mitigation is reviewed by the Town on a case-by-case basis with input from Washington Department of Fish and Wildlife (WDFW);
 - (f). Off-site mitigation may be in the form of:
 - i. The purchase of credits from a permitted habitat bank, or
 - ii. A specific mitigation project:
 - [a]. Specific off-site mitigation projects for all habitat areas must be in an area as close as possible to the original site,
 - [b]. Public regional development activities that are reviewed and approved by federal and state agencies are exempt from these geographic restrictions; and,
 - (g). Adequate enforcement authority must be delegated to the Town, as approved by the Town Attorney.
 - 3. The responsible official shall approve, approve with conditions or deny proposals based on compliance with the criteria and the adequacy of proposed mitigation measures to ensure compliance, and applicable reasonable use assurances of YMC 16.40.030B.
 - 4. The responsible official shall retain final authority for such determinations, which shall be issued consistent with the review timelines of YMC 18 and shall be based on best scientific information and analysis available within those timelines.
 - 5. Modifications to conservation covenants established under this Title shall be consistent with the standards of this Chapter and will be processed subject to the following:
 - a. Modification to a covenant approved by the Town Council following public notice of the action and a hearing:
 - (1). Does not increase the potential adverse impact to habitat;
 - (2). Does not involve an issue of broad public interest, based on the record of the decision; and,
 - (3). Does not require further SEPA review.
 - b. Modification requests submitted with other applications will be processed as specified in YMC 18.
 - 6. Removal of conservation covenants shall be approved by the Town Council.
 - 7. The responsible official shall consult with and substantially follow the resulting recommendations of Washington Department of Fish and Wildlife (WDFW), unless alternative determinations are supported by scientific analysis.
- B. Reasonable Use Assurances. The Town assures property owners of the reasonable use of their property, as long as impacts are mitigated to the maximum extent practicable. Permit conditions limiting locations and requiring mitigations may be imposed, and erosion control measures may be required:
 - 1. This Chapter shall not be used to prohibit:
 - a. Placement of a single-family residence and residential accessory Structures on an otherwise legally buildable lot of record;
 - b. Expansion of a home existing prior to 2006, not to exceed twenty-five percent (25%) of the 2006 footprint;
 - c. Replacement of a single-wide mobile home with another dwelling, not to exceed twice the footprint of the original mobile home; or,
 - d. Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or fire chief guidelines.

2. This Chapter shall not be used to deny all reasonable economic use of private property. These criteria must be met in order to verify denial of all reasonable economic use:
 - a. The application of this Chapter would deny all reasonable economic use of the property;
 - b. No other reasonable economic use of the property has less impact on the habitat area; and,
 - c. Any habitat alteration is the minimum necessary to allow for reasonable economic use of the property.
3. This Chapter shall not be used to deny a development proposal from a public agency or public utility, if:
 - a. There is no practical alternative to the proposed project with less impact on the habitat area;
 - b. The ability of the public agency or utility to provide services to the public would be unreasonably restricted; and,
 - c. The application is approved through the Public Hearing Procedures process pursuant to YMC Chapter 18.95. Fees are subject to the fee schedule in Chapter 18.110.
- C. Regulatory alternative to the standards of this Chapter. Required riparian zone widths on clearing proposals on existing lots may be varied through the use of internal riparian zone averaging. Subject to review under this Chapter, for clearing proposals on existing lots, portions of the riparian zone can be reduced up to fifty percent (50%) from the normal standards of this Chapter if riparian zone widths are correspondingly increased elsewhere within the applicant parcel, such that the overall size and function and values of the riparian zone are maintained in the parcel. Riparian zone averaging proposals must clearly identify the existing riparian functions and values on the parcel and any impacts that the proposed averaging may have upon them.

16.40.040 - Agricultural uses in riparian priority habitat.

- A. Agricultural Uses. Where applicable, the following options are available to be used for compliance with this Section.
 1. Agricultural/Habitat Protection Plan Option.
 - a. Regulated Area. For the purposes of an agricultural/habitat protection plan, the regulated riparian area shall be one hundred (100) feet from the ordinary high-water mark of Type F streams, and seventy-five (75) feet from the ordinary high water mark of Type Ns streams. The plan may include practices and other mitigation measures on land outside the regulated riparian area to achieve the standard set forth in Subsection A1b of this Section.
 - b. Standard. An agricultural/habitat protection plan shall be approved if its implementation will not substantially degrade habitat functions and values that existed within the area designated in Subsection A1a of this Section on July 11, 2006, considering normal fluctuations due to the agricultural cycle. A plan may be submitted by a group of neighborhood owners whose properties are in close proximity in which case the foregoing standard shall be applied to the common plan.
 - c. Plan Contents. Agricultural/habitat protection plans shall, at a minimum, include the following:
 - (1). An approximate mapping of existing and proposed structures, roads, driveways, utilities, property lines, and agricultural uses;
 - (2). A map of regulated riparian habitat areas;
 - (3). Identification of existing habitat functions and values within the regulated habitat area on July 11, 2006, taking into account agricultural cycles that involve varying intensity of agricultural use;
 - (4). A description of best management practices and other mitigation measures to be undertaken in order to achieve the standard in Subsection A1b of this Section;
 - (5). The owner's signature attesting that the information in the plan is accurate to the best of the owner's knowledge, and the mitigation measures specified in the plan will be implemented; and,

- (6). The signature of an ag-habitat technician certified by the Town attesting that he/she has inspected the area covered by the plan and that the plan satisfies the standard in Subsection A1b of this Section.
 - d. Guidelines. The responsible official shall follow Clark County's Guide for Agricultural Technicians.
 - e. Approval. Agricultural/habitat protection plans shall be prepared or reviewed and approved by an ag-habitat technician certified by the responsible official to have completed a training program on application of the guidelines. An ag-habitat technician shall approve the plan as meeting the standard and content requirements of YMC 16.40.040A1b and c. An owner dissatisfied with the review by an ag-habitat technician may seek approval of the proposed management plan by the responsible official whose decision may be appealed under the provisions of YMC 8.05 and YMC 18.
 - f. Filing. The ag-habitat technician shall notify the Town responsible official of the adoption of an approved agricultural/habitat protection plan by a property owner indicating the property covered by the plan and, at the choice of the property owner, either providing a copy of the plan or summarizing the contents of the plan. Notice of such approval shall also be recorded with the Clark County Auditor and run with the land unless the plan is modified or rescinded.
 - g. Modification/Rescission. Agricultural/habitat protection plans may be modified by the owner at any time utilizing the same process as applicable to initial approval. Plans may be rescinded by the owner with approval of the responsible official if the owner certifies either that future agricultural activity will be undertaken utilizing the default option or agricultural activities have ceased. Notice of modification/rescission shall be recorded with the Clark County Auditor.
- 2. Default Option.
 - a. Regulated Area. For the purposes of the default option, the regulated riparian area is divided into two zones. Except as provided below, the inner zone, closest to the stream, extends from the ordinary high-water mark outward fifty (50) feet on Types S and F streams and thirty (30) feet on Type N streams. The outer zone extends an additional fifty (50) feet on Types S and F streams and forty-five (45) feet on Type N streams. Where slopes exceed twenty-five percent (25%), the inner zone is the greater of the prescribed zone or the top of the slope break. Where wetlands are present within the inner zone, the zone is extended to the greater of the prescribed width of the inner zone or the wetland buffer as designated in Chapter 16.45 (Wetlands). However, in no case is the inner zone greater than the combined widths prescribed for in the inner and outer zones for that stream type. Where there is an existing road within the inner zone, the zone stops at the edge of the road improvement that is closest to the stream and the outer zone extends outward from that edge.
 - b. Standard. Clearing within the inner zone is allowed only to enhance habitat functions and values. Animal husbandry within the inner zone is prohibited. Clearing and animal husbandry within the outer zone shall not substantially degrade habitat functions and values as they existed on July 11, 2006, after considering normal fluctuations due to the agricultural cycle. Although it is presumed that continuation of agricultural activities within the outer zone that existed on July 11, 2006, will not substantially degrade existing habitat functions and values, evidence of substantial degradation, such as excess sediment, nutrients or chemicals moving from the outer zone into the stream resulting from agricultural activities, constitute grounds for enforcement action which may require restoration of lost functions and values. Pesticide application within the outer zone must conform to label specifications and application within the inner zone must be by a licensed applicator.
 - c. Reasonable Use. If the inner zone impacts more than fifty percent (50%) of a parcel that is ten (10) acres or less in area, or more than twenty-five percent (25%) of a parcel that is five (5) acres or less in area, the responsible official may approve a reasonable use reduction to the width of the inner zone. In such case, clearing and animal husbandry may be allowed up to ten (10) feet from the ordinary high water mark; provided, that reasonable practices and other appropriate mitigation measures are employed to limit sediment, nutrients and chemicals from entering the stream.
- B. Administration.
 - 1. No application fees apply to the approval of agriculture/habitat protection plans.
 - 2. No Town review is associated with the default option unless the owner seeks approval of a reasonable use reduction of the inner zone, which application shall be processed without application fees.

3. Evidence of violation of the standards in YMC 16.40.030A shall be grounds for enforcement action under YMC Chapter, 8.05, YMC Title 18, and the Town's general authority to enforce laws and regulations.

16.40.050 - Habitat permit applications.

- A. The applicant shall provide the following information in support of a Habitat Permit Application:
 1. Name, address, and contact information for the Applicant;
 2. Location, address / parcel number of the proposed site;
 3. Description of existing conditions, information, natural and manmade features on the site;
 4. Description and mapping of proposed activities and how this would change existing conditions on the site;
 5. Where required by state law, a completed environmental checklist pursuant to the State Environmental Policy Act (SEPA) shall also be submitted unless categorically exempted by the SEPA Rules; and,
 6. Report(s) or other assistance from a biologist, botanist, ecologist, or other similarly qualified or trained professional are encouraged and may be required by the responsible official.
- B. Permit Authority and Timelines.
 1. An approval granted under this Chapter shall remain valid until proposed activities are undertaken and completed. An approved permit not acted upon shall be valid for two (2) years, and upon showing of good cause, may be extended for an additional twelve (12) months.
 2. Approval for habitat area activities as part of other Town development approvals shall be valid for a time period specified by the other permit(s) involved.
- C. Appeals. Appeals of Town decisions under this Chapter may be filed under the provisions of YMC 8.05 and YMC 18.95.
- D. Enforcement. At such time as a violation of this Chapter has been determined, enforcement action shall be commenced in accordance with the enforcement provisions of YMC Chapter 8.05 and YMC Title 18. Applications for Town land use permits on sites that have been found to be in violation of this Chapter pursuant to the process set forth in YMC 16, YMC 8.05 or YMC 18 shall not be processed until three (3) years after the violation. The three (3) year period may be reduced upon approval and implementation of a restoration or mitigation plan, to include the following:
 1. A plan for the replanting of trees, brush and groundcover of a type and distribution comparable to that existing prior to clearing; provided, that the responsible official may approve alternative species in order to promote expedient soil stabilization, and may require additional tree planting as mitigation for the loss of mature trees;
 2. A monitoring plan to assure at least a ninety percent (90%) survival rate of re-established plantings after at least three (3) but not more than eight (8) growing seasons;
 3. Where fish and wildlife habitat areas are cleared in violation of this Chapter, a plan to restore habitat functionality, as it existed prior to the violation, subject to the review and evaluation of Washington Department of Fish and Wildlife, (WDFW);
 4. Satisfaction of the terms and conditions of any judgement or order entered based upon the violation; and,
 5. Financial assurances in the form of a bond or other security acceptable to the Town, in an amount sufficient to re-establish the mitigation in the event of failure or subsequent disturbance may be required by the responsible official. The financial assurances shall remain in place for the length of the time specified for monitoring in the plan and shall be released after a request by the applicant and a final inspection. In the event of failure of the mitigation, failure to fully execute the mitigation plan, or subsequent disturbance, forfeiture of the financial assurances shall be required and the funds shall be used to re-establish the mitigation or to complete the execution of the plan, and to reimburse the Town for its costs, fees, (including attorney's fees), and expenses of enforcement and abatement. In the event that such re-establishment or completion is deemed impractical by the Director, the funds shall accrue to the established cumulative effects fund for the watershed within which the site is located.

Chapter 16.45 WETLANDS

Sections:

- 16.45.010 - Introduction
- 16.45.020 - Wetland rating
- 16.45.030 - Standards
- 16.45.040 - Wetland permits

16.45.010 - Introduction.

- A. It is the purpose of this Chapter to provide balanced wetland protection measures pursuant to the Washington State Growth Management Act (GMA, RCW 36.70A.172) that:
 - 1. Include best available science to protect the functions and values of wetlands with special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries;
 - 2. Further the goal of no net loss of wetland functions;
 - 3. Encourage restoration and enhancement of degraded and low quality wetlands;
 - 4. Provide a high level of protection for higher-quality wetlands;
 - 5. Complement state and federal wetland protective measures; and,
 - 6. Allow reasonable use of property.
- B. Applicability.
 - 1. The provisions of this Chapter apply to all land uses and development activity, and all Structures and facilities in the Town, whether or not a permit or permit authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the Town. No person, company, agency, or applicant shall alter a wetland or wetland buffer except as consistent with this Chapter.
 - 2. The Town will not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any Structure or improvement in, over, or on a wetland or wetland buffer, without first ensuring compliance with the requirements of this Chapter, including, but not limited to, the following development permits:
 - a. Building permit;
 - b. Grading permit;
 - c. Forest practices conversion permit regulated by WAC 222;
 - d. Conditional use permit;
 - e. Short subdivision;
 - f. Subdivision;
 - g. Planned unit development;
 - h. Site plan; or,
 - i. Zoning variance.
 - 3. Reasonable Use Exceptions. The responsible official will use the following exceptions that shall apply in implementing the standards of this Chapter, although the standards shall be applied to the maximum extent practicable to avoid and minimize impacts on wetland functions and values. Mitigation for unavoidable adverse impacts shall be required. The standards of this Chapter shall not be used to preclude the following activities in wetland areas:
 - a. The placement of a single-family residence and normal accessory Structures on an otherwise legally buildable lot of record. The following standards may be applied on established properties to limit the

proposed location and size of Structures, and proposed removal of vegetation:

- (1). The expansion of a home on a lot that does not show building or development envelopes, wetlands or wetland buffers on the recorded plat, shall not to exceed twenty-five percent (25%) of the existing building footprint. Expansion should only be allowed on the upland side; i.e., not encroaching farther towards the wetland;
 - (2). The replacement of single-wide mobile home with another dwelling and normal accessory Structures. Expansion should only be allowed on the upland side; i.e., not encroaching farther towards the wetland; and,
 - (3). Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or fire chief guidelines.
 - b. The standards of this Chapter shall not be used to deny all reasonable economic use of private property. The following criteria must be met in order to verify that all reasonable economic use of the property has been denied:
 - (1). The application of this Chapter would deny all reasonable economic use of the property;
 - (2). No other reasonable economic use of the property has less impact on the wetland and buffer area;
 - (3). Any wetland or buffer alteration is the minimum necessary to allow for reasonable economic use of the property; and,
 - (4). The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the date of adoption of this Code provision.
 - c. The application of this Chapter shall not be used to deny a development proposal for a linear facility from a public agency or public utility provided the agency or utility meets the following criteria:
 - (1). There is no practical alternative to the proposed project with less impact on the wetland and buffer area; and
 - (2). The application of this Chapter would unreasonably restrict the ability to provide public utility services to the public.
 - d. Approval of a development permit application pursuant to the provisions of this Chapter does not discharge the obligation of the applicant to comply with the provisions of this Chapter.
4. Exempted Activities. All exempted activities shall use reasonable methods to avoid potential impacts to wetlands and buffers. Exemptions from permits are not exemptions from wetland stewardship responsibilities. The following developments, activities, and associated uses shall be exempt from the provisions of this Chapter; provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:
 - a. Reconstruction of damaged or destroyed Structures within the same building footprint. Expansion or reconstruction within a new or expanded footprint that affects a nonexempt wetland or wetland buffer is subject to the provisions of this Title. Such expansion or reconstruction shall occur in a 1-year time limit.
 - b. The harvesting or normal maintenance of vegetation in a manner that is not injurious to the natural reproduction of such vegetation.
 - c. Existing agricultural activities and Structures:
 - (1). Agricultural activities and Structures in operation at the time of adoption of this Code provision that are affecting wetlands not associated with a riparian corridor are exempt from regulation under this Chapter;
 - (2). Changes in agricultural practices within the same “footprint” as the existing agricultural activities in Subsection B4c(1) of this Section, including reconstruction of existing agricultural Structures, or construction of new agricultural Structures, are exempt from regulation under this Chapter; and,
 - (3). Agricultural activities and Structures in operation at the time of adoption of this Code provision

that are affecting wetlands associated with riparian corridors shall be regulated through Chapter 16.40, Priority Habitat Areas.

- d. The removal or eradication of Nuisance Vegetation or other exotic nuisance plants including non-native blackberries; provided, that ground disturbing heavy machinery (scrapping, ripping, etc.) is not used. Cutting, mowing, and ground disturbance with hand tools is allowed.
 - e. Site investigative work necessary for land use application submittals such as surveys, soil logs, and percolation tests.
 - f. Emergency clearing to abate immediate danger to persons or property. For emergency clearing of hazard trees, remove only that portion of the hazard tree as necessary to remediate the hazard.
 - g. Clearing necessary for the emergency repair of utility or public facilities. Emergency work that causes substantial degradation to functions and values must be reported to the Town in a timely manner.
 - h. Clearing for operation, maintenance, or repair of existing utilities or public facilities that does not further increase the impact to, or encroach further within, the wetland or wetland buffer.
 - i. Clearing, as minimally necessary, for placement of fencing, private wells, septic systems or individual lot sewer, water, electrical, or utility connections in wetland buffers, where practical alternatives do not exist.
 - j. Clearing, as minimally necessary, for stream bank restoration, for native replanting or enhancements in wetlands and wetland buffers.
 - k. Clearing in wetlands and wetland buffers, as minimally necessary, for soil, water, vegetation and resource conservation projects having received an environmental permit from a public agency.
 - l. Clearing in wetlands and wetland buffers, as minimally necessary, for creating a four (4) foot or narrower path using natural, wood-based or vegetated pervious surfacing.
 - m. Land disturbance in wetlands and wetland buffers cumulatively less than five (5) cubic yards in volume and three hundred (300) square feet in area; provided, that the wetland hydroperiod is not significantly affected.
5. Exempted Wetlands. This Chapter shall not apply to the following wetlands:
- a. All isolated Category IV wetlands less than 4,000 square feet that:
 1. Are not associated with riparian areas or their buffers;
 2. Are not associated with shorelines of the state or their associated buffers;
 3. Are not part of a wetland mosaic;
 4. Do not score 5 or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology); and,
 5. Do not contain a Priority Habitat Area or a Priority Area [1] for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in Chapter 16.40.
 - b. Buffer provisions for wetlands less than 1,000 square feet that meet the criteria described in Subsection 5a above, and do not contain federally listed species or their critical habitat.
 - c. Artificial. Wetlands intentionally created from nonwetland upland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, stormwater management facilities, farm ponds, landscape amenities, and unintentionally created wetlands created as a result of the construction of a public or private road, street, or highway after July 1, 1990; provided, that wetlands created as mitigation shall not be exempted.
 - d. Riparian. Wetlands less than five (5') feet measured horizontally, of bank-full width for streams.
6. Interpretation.

- a. This Chapter shall apply in addition to zoning and other regulations adopted by the Town.
- b. When there is a conflict between any provisions of this Chapter or any other regulations adopted by Yacolt, the regulations providing the most protection to affected critical areas shall apply.
- c. Compliance with this Chapter does not constitute compliance with other federal, state and local regulations and permit requirements (for example, shoreline substantial development permits, hydraulic project approval (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, National Pollutant Discharge Elimination System (NPDES) permits, or DOE Section 401 Water Quality Certification). The applicant is responsible for complying with all requirements, apart from the provisions of this Chapter.

16.45.020 - Wetland rating.

- A. Rating System Document. Wetlands shall be rated according to the Washington State Department of Ecology's wetland rating system found in the *Washington State Wetland Rating System for Western Washington - 2014 Update*, (Ecology Publication #14-06-029, October 2014).
- B. Wetland Rating System. The rating system contains a general description of each wetland category followed by specific criteria. If the specific criteria conflict with the general description, the Town shall determine the most appropriate classification as applied to a particular site. The Rating System Document contains the definitions and methods for determining if the criteria below are met:
 1. Category I. Category I wetlands represent unique or rare wetland types; are more sensitive to disturbances than most wetlands; are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or, provide a high level of functions. Category I wetlands are:
 - a. Relatively undisturbed estuarine wetlands larger than one (1) acre;
 - b. Wetlands that are identified by scientists of the Washington Natural Heritage Program as high-quality wetlands;
 - c. Bogs;
 - d. Mature and old-growth forested wetlands larger than one acre; or,
 - e. Wetlands that function at high levels (scoring twenty-three (23) points or more) on the rating form. These wetlands:
 2. Category II. Category II wetlands are wetlands that perform functions well, as characterized by a score of twenty (20) through twenty-two (22) on the rating form.
 3. Category III. Category III wetlands are wetlands with a moderate level of functions (scoring between sixteen (16) and nineteen (19) points on the rating form); Generally, wetlands in this category have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
 4. Category IV wetlands have the lowest levels of functions (scoring less than sixteen (16) points on the rating form) and are often heavily disturbed. These are wetlands that should be replaceable, or in some cases may be improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and also need to be protected.
- C. Date of Wetland Rating. Wetland rating categories shall be applied as the wetland exists on the date of adoption of the rating system by Clark County, as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities. Wetland rating categories shall not change due to illegal modifications.

16.45.030 – Standards.

- A. General. The standards apply whenever a nonexempt project (see YMC 16.45.010B4) is proposed on a parcel of real property containing a nonexempt wetland or wetland buffer (see YMC 16.45.010B5).
 1. For the purpose of computing the processing limitation period applicable to a development permit application, the application shall not be deemed fully complete until completion (if required) of the wetland determination pursuant to YMC 16.45.030C, the wetland delineation pursuant to YMC 16.45.030D, and the buffer designation pursuant to YMC 16.45.030E. This Subsection shall not be construed in any way to

delay vesting under Washington law.

2. Administrative appeals of determinations made under YMC 16.45.030 must be filed in conjunction with, and within the limitation period applicable to, an available administrative appeal of the development permit application; provided, that an aggrieved party may appeal preliminary decisions deciding an exemption, determining or delineating a wetland, determining a buffer, or otherwise finally applying the provisions of this Chapter, in the same manner, and within the limitation period applicable to, appeals from responsible official decisions under YMC 16.05.220.
- B. Binding Pre-Determination. Prior to submittal of a triggering application, a person may request from the responsible official, a written binding pre-determination of whether a probable regulated wetland area exists on or within one hundred feet (100') of any parcel less than forty (40) acres. The pre-determination shall be binding on the responsible official for a period of three (3) years; provided that such pre-determination shall be subject to administrative appeal upon its application in conjunction with a triggering application.
- C. Wetland Determination. In conjunction with the submittal of a development permit application, the responsible official shall determine the probable existence of a wetland on the parcel involved in the development permit application. If wetlands or wetland buffers are found to exist on a parcel, wetland delineation is required.
- D. Wetland Delineation.
1. Methodology. The location of a wetland and its boundary shall be determined through the performance of a field investigation in accordance with the approved federal wetland delineation manual and applicable regional supplements. If a wetland is located off-site and is inaccessible, the best available information shall be used to determine the wetland boundary and category.
 2. Information Requirements. Wetland boundaries shall be staked and flagged in the field and a delineation report shall be submitted to the Public Works Department. The report shall include the following information:
 - a. USGS quadrangle map with site clearly defined;
 - b. Topographic map of area;
 - c. National wetland inventory map showing site;
 - d. Soil Conservation Service soils map showing site;
 - e. Site map, at a scale no smaller than one (1) inch equals one hundred (100) feet, (1" = 100', a scaling ratio of 1:1,200), if practical, showing the following information:
 - (1). Wetland boundaries;
 - (2). Sample sites and sample transects;
 - (3). Boundaries of forested areas; and,
 - (4). Boundaries of wetland classes if multiple classes exist;
 - f. Discussion of methods and results with special emphasis on technique used from the Wetlands Delineation Manual;
 - g. Acreage of each wetland on the site based on the survey if the acreage will impact the buffer size determination or the project design; and,
 - h. All completed field data sheets per the Wetlands Delineation Manual, numbered to correspond to each sample site.
 3. Responsibility. The wetland delineation is the responsibility of the applicant. The responsible official shall verify the accuracy of the boundary delineation within twenty eight (28) working days of receiving the delineation report. This review period may be extended when excessively dry conditions prohibit the confirmation of the wetland delineation. If the delineation is found to not accurately reflect the boundary of the wetland, the responsible official shall issue a report, within twenty eight (28) working days of receiving the applicant's delineation report, citing evidence (for example, soil samples) that demonstrates where the delineation is in error. The applicant may then revise the delineation and submit another report or administratively appeal.

- E. Buffers. Wetland buffer widths shall be determined by the responsible official in accordance with the standards below:
1. All buffers shall be measured horizontally outward from the delineated wetland boundary or, in the case of a stream with no adjacent wetlands, the ordinary high water mark as surveyed in the field.
 2. Buffer widths, which are based on wetland category and modified by the intensity of the impacts from the proposed land uses, are as follows:

Table 16.45.030-1 Buffers Required to Protect Water Quality Functions

Wetland Rating	Low Intensity Use	Moderate Intensity Use	High Intensity Use
Category I	50 ft.	75 ft.	100 ft.
Category II	50 ft.	75 ft.	100 ft.
Category III	40 ft.	60 ft.	80 ft.
Category IV	25 ft.	40 ft.	50 ft.

3. Buffer widths to protect habitat functions in Category I, II, and III wetlands, which are based on wetland category and modified by the intensity of the impacts from the proposed land uses, are as follows:

Table 16.45.030-2 Buffers Required to Protect Habitat Functions in Wetlands

Habitat Score in the Rating Form	Low Intensity Use	Moderate Intensity Use	High Intensity Use
4 points or less	See Table 16.45.030-1	See Table 16.45.030-1	See Table 16.45.030-1
5 points	70 ft.	105 ft.	140 ft.
6 points	90 ft.	135 ft.	180 ft.
7 points	110 ft.	165 ft.	220 ft.
8 points	130 ft.	195 ft.	260 ft.
9 points	150 ft.	225 ft.	300 ft.

4. See Table below for types of land uses that can result in low, moderate, and high impacts to wetlands.

Table 16.45.030-3 Land Use Intensity Matrix

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations
High	• Commercial
	• Urban
	• Industrial
	• Institutional
	• Retail sales
	• Residential (more than 1 unit/acre)

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations
	• Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.)
	• High-intensity recreation (golf courses, ball fields, etc.)
	• Hobby farms
Moderate	• Residential (1 unit/acre or less)
	• Moderate-intensity open space (parks with biking, jogging, etc.)
	• Conversion to moderate-intensity agriculture (orchards, hay fields, etc.)
	• Paved trails
	• Building of logging roads
	• Utility corridor or right-of-way shared by several utilities and including access/maintenance road
Low	• Forestry (cutting of trees only)
	• Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.)
	• Unpaved trails
	• Utility corridor without a maintenance road and little or no vegetation management

F. Buffer Standards and Authorized Activities. The following additional standards apply for regulated activities in a wetland buffer:

1. Reduced Width Based on Modification of Land Use Intensity. The required buffer width shall be decreased if design techniques are used that reduce the land use intensity category delineated in Table 16.45.030-2. Eligible design measures include the following in a and b below:
 - a. General Site Design Measures. High intensity buffers may be reduced to moderate intensity buffers if all of the following mitigation measures are applied to the greatest extent practicable:
 - (1). Buffer Enhancement. Improve the function of the buffer such that buffer areas with reduced function can function properly. This could include the removal and management of noxious weeds and/or invasive vegetation or specific measures to improve hydrologic or habitat function.
 - (2). Shielding of High Intensity Uses.
 - (a). Lights. Direct all lights away from wetlands;
 - (b). Noise. Locate activity that generates noise away from wetlands. If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source. For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer;

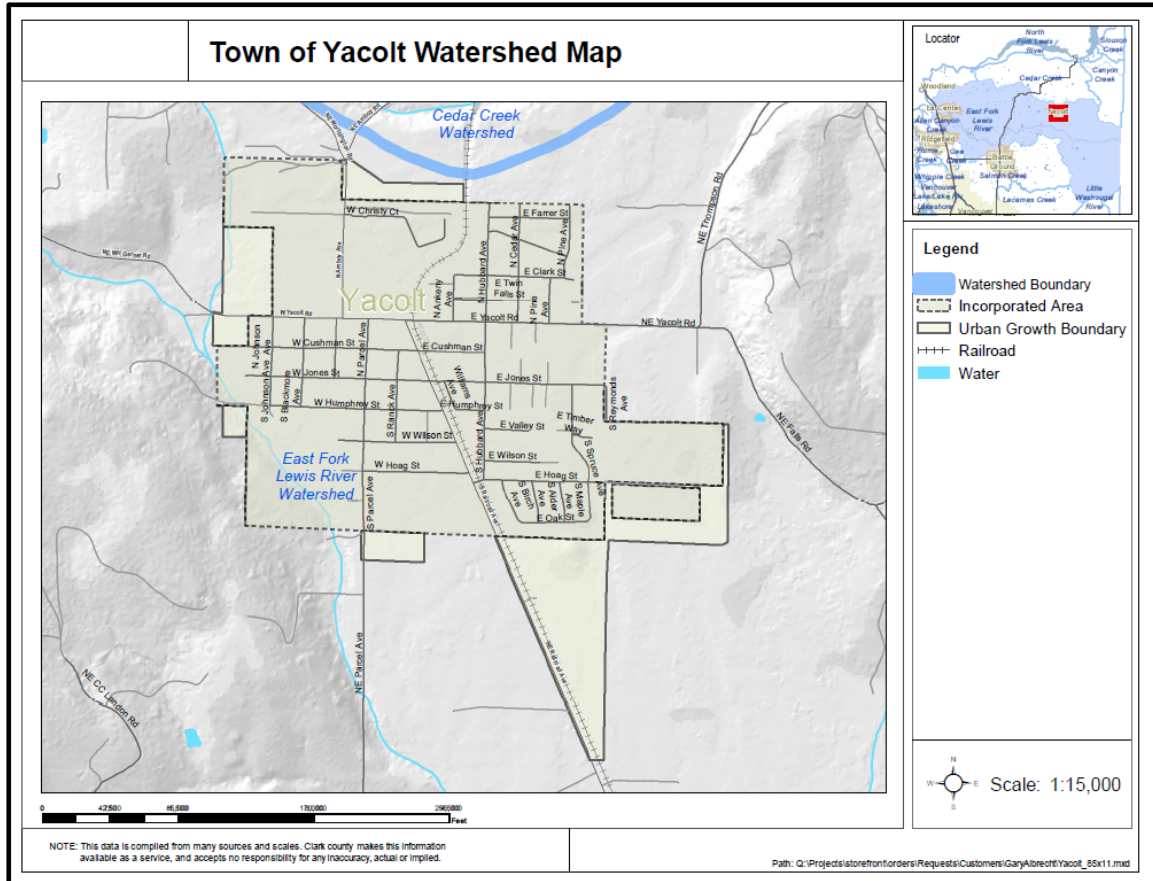
- (c). Pets and Human Disturbance. Use privacy fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the eco-region. Place wetland and its buffer in a separate tract;
 - (d). Toxic runoff. Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered. Establish covenants limiting use of pesticides within 150 feet of wetland. Apply integrated pest management;
 - (e). Stormwater runoff. Retrofit stormwater detention and treatment for roads and existing adjacent development. Prevent channelized flow from lawns that directly enters the buffer. Use Low Intensity Development techniques (for more information refer to the drainage ordinance and manual). Use Low Intensity Development techniques (for more information refer to the Department of Ecology's 2012 Stormwater Management Manual for Western WA), (as amended in 2014);
 - (f). Change in water regime. Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns; and,
 - (g). Dust. Use best management practices to control dust.
 - b. Habitat Corridors. Establishment of a minimum one hundred (100) foot wide functioning or enhanced vegetated corridor between the wetland and any other priority habitat areas as defined by the Washington State Department of Fish and Wildlife reduces a high land use intensity buffer to a moderate land use intensity buffer provided both of the following conditions are met:
 - (1). Applies only to wetlands with habitat function scores higher than four (4) on the rating system form;
 - (2). The habitat corridor must be protected for the entire distance between the wetland and the priority habitat area by some type of permanent legal protection such as a covenant or easement.
 - c. The responsible official may determine that proposed measures, other than those specifically listed in YMC 16.45.030F1a and b, will effectively reduce land use intensity and protect or enhance and values of wetlands and, therefore, allow buffer modifications where appropriate.
- 2. Buffer Averaging. The boundary of the buffer zone may be modified by averaging buffer widths. Averaging may not be used in conjunction with any of the other provisions for reduction. If buffer averaging is used, the following conditions must be met:
 - a. A maximum of twenty-five percent (25%) of the total required buffer area on the site (after all reductions are applied) may be averaged; and,
 - b. The total area contained in the buffer, after averaging, shall be at least functionally equivalent and equal in size to the area contained within the buffer prior to averaging.
- 3. Road and Utility Crossings. Crossing buffers with new roads and utilities is allowed provided all of the following conditions are met:
 - a. Buffer functions, as they pertain to protection of the adjacent wetland and its functions, are replaced according to the ratios determined in YMC 16.45.030 based on the quality of the impacted buffer type;
 - b. Impacts to the buffer and wetland are minimized; and,
 - c. The use of best management practices in maintaining existing utility corridors where such maintenance activities do not expand further into the critical area.
- 4. Stormwater Management Facilities. Stormwater management activities should be allowed only if they do not alter the hydroperiod of the wetland or adversely affect water quality. Category I and II wetlands should never be used for regional detention, and Category III and IV should be used only under certain conditions. At a minimum, stormwater facilities should be limited to dispersion outfalls and bioswales and should be allowed in the outer 25% of the buffer of Category III or IV wetlands only, except as allowed in wetlands approved for hydrologic modification and/or treatment in accordance with Guide Sheet 2 in Appendix I-D: Guidelines for Wetlands when Managing Stormwater
<<https://fortress.wa.gov/ecy/madcap/wq/2014SWMMWWinteractive/Content/Topics/VolumeI2014/VolI>

[%20AppD%202014.htm](#)> of the Department of Ecology's 2012 (as amended in 2014) Stormwater Management Manual for Western WA.

5. Other Activities in a Wetland Buffer. Regulated activities not involving stormwater management facilities or road and utility crossings are allowed provided all of the following conditions are met:
 - a. The activity is temporary and will cease or be completed within three (3) months of the date the activity begins;
 - b. The activity will not result in a permanent Structure in or under the buffer;
 - c. The activity will not result in the reduction of buffer acreage, type, or functions; and,
 - d. The activity will not result in a reduction of wetland acreage, classification, or functions.
- G. Standards – Wetland Activities. The following additional standards apply to the approval of all activities permitted within wetlands under this Chapter:
 1. Sequencing. Applicants shall demonstrate that a range of project alternatives have been given substantive consideration with the intent to avoid or minimize impacts to wetlands. Documentation must demonstrate that the following hierarchy of avoidance and minimization has been pursued:
 - a. Avoid impacts to wetlands providing the responsible official finds that, for Category III and IV wetlands, avoiding all impact will result in a project that is either:
 - (1). Inconsistent with the Town of Yacolt Comprehensive Growth Management Plan;
 - (2). Inconsistent with county-wide critical area conservation goals; or,
 - (3). Not feasible to construct.
 - b. Minimize impacts to wetlands if complete avoidance is infeasible. The responsible official must find that the applicant has limited the degree or magnitude of impact to wetlands by using appropriate technology and by taking affirmative steps to reduce impact through efforts such as:
 - (1). Seeking easements or agreements with adjacent land owners or project proponents where appropriate;
 - (2). Seeking reasonable relief that may be provided through application of other Town zoning and design standards;
 - (3). Site design; and,
 - (4). Construction techniques and timing.
 - c. Compensate for wetland impacts that will occur, after efforts to minimize have been exhausted. The responsible official must find that:
 - (1). The affected wetlands are restored to the conditions existing at the time of the initiation of the project;
 - (2). Unavoidable impacts are mitigated in accordance with this subsection; and
 - (3). The required mitigation is monitored and remedial action is taken when necessary to ensure the success of mitigation activities.
 2. Location of Wetland Mitigation. Wetland mitigation for unavoidable impacts shall be located using the following prioritization:
 - a. On-site. Locate mitigation according to the following priority:
 - (1). Within or adjacent to the same wetland as the impact;
 - (2). Within or adjacent to a different wetland on the same site;
 - b. Off-site. Locate mitigation within the same watershed, as shown on Figure 16.45.030-1, or use an established wetland mitigation bank; the service area determined by the mitigation bank review team and identified in the executed mitigation bank instrument;
 - c. In-kind. Locate or create wetlands with similar landscape position and the same hydro-geomorphic

- (HGM) classification based on a reference to a naturally occurring wetland system; and,
- d. Out-of-kind. Mitigate in a different landscape position and/or HGM classification based on a reference to a naturally occurring wetland system.
3. Types of Wetland Mitigation. The various types of wetland mitigation allowed are listed below in the general order of preference. The ratios presented are based on the type of compensatory mitigation proposed (e.g., restoration, creation, and enhancement). In the 2008 Federal Mitigation Rule, the U.S. Army Corps of Engineers provided definitions for these types of compensatory mitigation. For consistency, this document uses the same definitions which are provided below:
- a. Restoration. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland is restoration. For the purpose of tracking net gains in wetland acres, restoration is divided into:
 - (1). Reestablishment. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland is reestablishment. Reestablishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.
 - (2). Rehabilitation. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland is rehabilitation. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a Floodplain or return tidal influence to a wetland.
 - b. Creation (Establishment). The manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deep water site where a wetland did not previously exist is creation. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydro-period, create hydric soils, and support the growth of hydrophytic plant species.
 - c. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present is enhancement. Enhancement is undertaken for specified purposes such as water quality improvement, Floodwater retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydro-periods, or some combination of these activities.

Figure 16.45.030-1
Town of Yacolt Watershed Map



- d. Protection/Maintenance (Preservation). Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with the term preservation. Preservation does not result in a gain of wetland acres, may result in a gain in functions, and will be used only in exceptional circumstances.
- e. Wetland Mitigation Ratios
 - (1). Standard Wetland Mitigation Ratios. The following mitigation ratios for each of the mitigation types described in Table 16.45.030-4 apply:

MITIGATION RATIOS
Table 16.45.030-4 Standard Wetland Mitigation Ratios

Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only	Reestablishment or Creation (R/C) plus Rehabilitation (RH)	Reestablishment or Creation (R/C) plus Enhancement (E)	Enhancement Only
All Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
All Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II	Case-by-case	4:1 Rehabilitation of an estuarine	Case-by-case	Case-by-case	Case-by-case

Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only	Reestablishment or Creation (R/C) plus Rehabilitation (RH)	Reestablishment or Creation (R/C) plus Enhancement (E)	Enhancement Only
Estuarine		wetland			
All Other Category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1
Category I Based on score for functions	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1
Category I Natural Heritage site	Not considered possible	6:1 Rehabilitation of a Natural Heritage site	R/C Not considered possible	R/C Not considered possible	Case-by-case
Category I Bog	Not considered possible	6:1 Rehabilitation of a bog	R/C Not considered possible	R/C Not considered possible	Case-by-case
Category I Estuarine	Case-by-case	6:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case	Case-by-case

- (2). The responsible official has the authority to reduce wetland mitigation ratios under the following circumstances:
- (a). Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions have a very high likelihood of success based on prior experience;
 - (b). Documentation by a qualified wetland specialist demonstrates that the proposed actions for compensation will provide functions and values that are significantly greater than the wetland being affected;
 - (c). The proposed actions for compensation are conducted in advance of the impact and are shown to be successful;
 - (d). In wetlands where several HGM classifications are found within one (1) delineated wetland boundary, the areas of the wetlands within each HGM classification can be scored and rated separately and the mitigation ratios adjusted accordingly, if all the following apply:
 - i. The wetland does not meet any of the criteria for wetlands with “Special Characteristics,” as defined in the rating system;
 - ii. The rating and score for the entire wetland is provided as well as the scores and ratings for each area with a different HGM classification;
 - iii. Impacts to the wetland are all within an area that has a different HGM classification from the one used to establish the initial category; and
 - iv. The proponents provide adequate hydrologic and geomorphic data to establish that the boundary between HGM classifications lies at least fifty (50) feet outside of the

footprint of the impacts.

4. Wetland Buffers Required for Mitigation. Wetland mitigation shall be protected by a buffer that is wide enough to protect the most sensitive function, according to Tables 16.45.030-1 and 2:
 - a. Reductions to the required buffers may be applied in accordance with YMC 16.45.030F;
 - b. All wetland buffers shall be included within the mitigation site and subject to the conservation covenant required under YMC 16.45.030H3.
- H. Standard Requirements. Any action granting or approving a development permit application shall be conditioned on the following:
1. Marking buffer during construction. The location of the outer extent of the wetland buffer shall be marked in the field and such markings shall be maintained throughout the duration of the permit;
 2. Permanent Marking of Buffer Area. A permanent physical demarcation along the upland boundary of the wetland buffer area shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or hedge row, fencing, or other prominent physical marking approved by the responsible official. In addition, small signs shall be posted at an interval of one (1) per lot or every one hundred (100) feet, whichever is less, and perpetually maintained at locations along the outer perimeter of the wetland buffer approved by the responsible official worded substantially as follows:

Wetland and Buffer –
Please retain in a natural state
 3. A conservation covenant shall be recorded in a form approved by the Town Attorney as adequate to incorporate the other restrictions of this Section and to give notice of the requirement to obtain a wetland permit prior to engaging in regulated activities within a wetland or its buffer; and,
 4. In the cases of plats, short plats, and recorded site plans, include on the face of such instrument the boundary of the wetland and its buffer and a reference to the separately recorded conservation covenant provided for in YMC 16.45.030H3.
- I. Standard Requirements – Waivers. The responsible official shall waive the requirements of YMC 16.45.030D, E and H in certain cases described below if the applicant designates development envelopes which are clearly outside of any wetland or buffer. The responsible official may require partial wetland delineation to the extent necessary to ensure eligibility for this waiver:
1. Residential building permits and home businesses;
 2. Land divisions:
 - a. Development envelopes shall be required for a fully complete preliminary application;
 - b. Development envelopes shall be shown on the final plat; and,
 - c. A note referencing the development envelopes shall be placed on the final plat.
 3. Site plan reviews where the responsible official determines that all development is clearly separated from the wetlands and wetland buffers:
 - a. Development envelopes shall be required for a fully complete preliminary application;
 - b. Development envelopes shall be shown on the final site plan; and,
 - c. A note referencing the development envelopes shall be placed on the final site plan.
- J. Mitigation Plans.
1. General. Mitigation plans are required for activities in a buffer or wetland. Content requirements which are inappropriate and inapplicable to a project may be waived by the responsible official upon request of the applicant.
 2. Preliminary Mitigation Plan. The purpose of the preliminary plan is to determine the feasibility of the project before extensive resources are devoted to the project. The responsible official may waive the requirement for a preliminary mitigation plan when a wetland permit is not associated with a development permit application listed in YMC 16.45.010B. The preliminary mitigation plan consists of two (2) parts:

baseline information for the site and a conceptual plan. If off-site wetland mitigation is proposed, baseline information for both the project site and mitigation site is required.

- a. Baseline information shall include:
 - (1). Wetland delineation report as described in YMC 16.45.030D2;
 - (2). Copies of relevant wetland jurisdiction determination letters, if available, such as determinations of prior converted crop lands, correspondence from state and federal agencies regarding prior wetland delineations, etc.;
 - (3). Description and maps of vegetative conditions at the site;
 - (4). Description and maps of hydrological conditions at the site;
 - (5). Description of soil conditions at the site based on a preliminary on-site analysis;
 - (6). A topographic map of the site; and,
 - (7). A functional assessment of the existing wetland and buffer.
 - (a). Application of the rating system in YMC 16.45.020B will generally be considered sufficient for functional assessment.
 - (b). The responsible official may accept or request an alternate functional assessment methodology when the applicant's proposal requires detailed consideration of specific wetland functions.
 - (c). Alternate functional assessment methodologies used shall be scientifically valid and reliable.
- b. The contents of the conceptual mitigation plan shall include:
 - (1). Goals and objectives of the proposed project;
 - (2). A wetland buffer width reduction plan, if width reductions are proposed, that includes:
 - (a). The land use intensity, per Table 16.45.030-2, of the various elements of the development adjacent to the wetlands;
 - (b). The wetland buffer width(s) required by Tables 16.45.030-1 and 16.45.030-2;
 - (c). The proposed buffer width reductions, including documentation that proposed buffer width reductions fully protect the functions of the wetland in compliance with YMC 16.45.040F;
 - (3). A wetland mitigation plan that includes:
 - (a). A sequencing analysis for all wetland impacts;
 - (b). A description of all wetland impacts that require mitigation under this Chapter; and,
 - (c). Proposed mitigation measures and mitigation ratios;
 - (4). Map showing proposed wetland and buffer. This map should include the existing and proposed buffers and all proposed wetland impacts regulated under this Chapter;
 - (5). Site plan;
 - (6). Discussion and map of plant material to be planted and planting densities;
 - (7). Preliminary drainage plan identifying location of proposed drainage facilities including detention structures and water quality features (e.g., swales);
 - (8). Discussion of water sources for all wetlands on the site;
 - (9). Project schedule;
 - (10). Discussion of how the completed project will be managed and monitored; and,
 - (11). A discussion of contingency plans in case the project does not meet the goals initially set for the

project.

3. Final Mitigation Plan. The contents of the final mitigation plan shall include:

- a. The approved preliminary mitigation plan and all conditions imposed on that plan. If the preliminary mitigation plan requirement is waived, the final plan shall include the content normally required for the preliminary plan listed in YMC 16.45.030J2a, J2b(1), and J2b(2).
- b. Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the mitigation project are being met. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.
- c. Detailed Construction Plans. Written specifications for the mitigation project shall be provided. The specifications shall include: the proposed construction sequence, grading and excavation details, water and nutrient requirements for planting, specification of substrate stockpiling techniques, and planting instructions, as appropriate. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.
- d. Monitoring Program. The mitigation plan shall include a description of a detailed program for monitoring the success of the mitigation project.
 - (1). The mitigation project shall be monitored for a period necessary to establish that the mitigation is successful, but not for a period of less than five (5) years. Creation and forested wetland mitigation projects shall be monitored for a period of at least ten (10) years;
 - (2). Monitoring shall be designed to measure the performance standards outlined in the mitigation plan and may include but not be limited to:
 - (a). Establishing vegetation plots to track changes in plant species composition and density over time;
 - (b). Using photo stations to evaluate vegetation community response;
 - (c). Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions, (pH, nutrients, heavy metals);
 - (d). Measuring base flow rates and stormwater runoff to model and evaluate water quality predictions, if appropriate;
 - (e). Measuring sedimentation rates, if applicable; and,
 - (f). Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity;
 - (3). A monitoring protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the project;
 - (4). Monitoring reports shall be submitted annually, or on a pre-arranged alternate schedule, for the duration of monitoring period; and,
 - (5). Monitoring reports shall analyze the results of monitoring, documenting milestones, successes, problems, and recommendations for corrective and/or contingency actions to ensure success of the mitigation project.
- e. Associated Plans and Other Permits. To ensure consistency with the final mitigation plan, associated plans and permits shall be submitted, including, but not limited to:
 - (1). Engineering construction plans;
 - (2). Final site plan or proposed plat;
 - (3). Final landscaping plan;
 - (4). An as-built plan for projects that require wetland creation or wetland construction;

- (5). Final drainage plan;
 - (6). Final erosion and sediment control plan;
 - (7). Habitat permit;
 - (8). WDFW HPA;
 - (9). USACE Section 404 permit; and,
 - (10). WDOE Administrative Order or Section 401 certification.
- f. Evidence of Financial and Scientific Proficiency. A description of how the mitigation project will be managed during construction and the scientific capability of the designer to successfully implement the proposed project. In addition, a demonstration of the financial capability of the applicant to successfully complete the project and ensure it functions properly at the end of the specific monitoring period.
 - g. Contingency Plan. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.

16.45.040 - Wetland permits.

A. General.

1. A wetland permit is required for any development activity that is not exempt pursuant to YMC 16.45.010B4 and B5 within wetlands and wetland buffers.
2. Standards for wetland permits are provided in YMC 16.45.030.
3. All wetland permits require approval of a preliminary and final mitigation plan in accordance with the provisions of YMC 16.45.030J unless the preliminary mitigation plan requirement is waived under the provisions of YMC 16.45.030J1 or J2.
4. Wetland permit application, processing, preliminary approval, and final approval procedures are set out in YMC 16.45.040C and D.
5. Provisions for programmatic permits are provided by YMC 16.45.040E.
6. Provisions for emergency wetland permits are provided by YMC 16.45.040F.

B. Standards – General. Wetland permit applications shall be based upon a mitigation plan and shall satisfy the following general requirements:

1. The proposed activity shall not cause significant degradation of wetland functions; and,
2. The proposed activity shall comply with the Town of Yacolt's Stormwater Management Plan, YMC 13.10.

C. Wetland Permit – Applications.

1. Applications for wetland permits shall be made to the Town on forms furnished by the Town. The Town shall process a wetland permit application as a request for land use approval pursuant to existing land use review procedures.
2. Wetlands Permit Applications shall include:
 - a. Wetland delineations and required buffer width;
 - b. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than one inch equals 400 feet showing the location, width, depth, and length of all existing and proposed Structures, roads, stormwater management facilities, sewage treatment, and installations within the wetland and its buffer;
 - c. The exact sites and specifications for all regulated activities including the amounts and methods; and,
 - d. A proposed preliminary mitigation plan meeting the requirements of this Chapter.

D. Wetland Permit – Approval.

1. The Town shall issue final approval of the wetland permit authorizing commencement of the activity permitted thereby upon:
 - a. Submittal and approval of a final mitigation plan;
 - b. Installation and approval of the required field markings; and,
 - c. The recording of a conservation covenant.
 2. Conditions. An approval of a wetland permit shall incorporate the following conditions:
 - a. Posting of a cash performance bond or other security acceptable to the Town in an amount and with surety and conditions sufficient to fulfill the initial (first year) requirements of the required final plan and mitigation plan, and to secure compliance with other conditions and limitations set forth in the permit.
 - (1). The Town shall release the performance bond upon determining that all initial (first year) activities, including any required compensatory mitigation, have been completed in accordance with the terms and conditions of the permit and the requirements of this Chapter.
 - (2). Upon forfeiture of a performance bond, the proceeds thereof shall be utilized either to correct deficiencies which resulted in forfeiture or, if such correction is deemed by the Town to be impractical or ineffective, to enhance other wetlands in the same watershed.
 - b. Posting of a cash maintenance bond or other security acceptable to the Town in an amount and with surety and conditions sufficient to fulfill the requirements of the required final plan and mitigation plan and to secure compliance with other conditions and limitations set forth in the permit for the duration (beyond one year) of the required monitoring and maintenance time period.
 - (1). The Town shall release the maintenance bond at the end of the approved monitoring and maintenance time period upon determining that all activities, including any required compensatory mitigation, have been completed in accordance with the terms and conditions of the permit and the requirements of this Chapter.
 - (2). Upon forfeiture of a performance or maintenance bond, the proceeds thereof shall be utilized either to correct deficiencies which resulted in forfeiture or, if such correction is deemed by the Town to be impractical or ineffective, to enhance other wetlands in the same watershed.
 3. Duration. Wetland permit final approval shall be valid for a period of two years from the date of issuance unless:
 - a. A longer period, not to exceed five years, is specified in the permit; or,
 - b. The Town grants an extension upon the written request of the original permit holder or successor in title demonstrating to the satisfaction of the Town:
 - (1). That the original intent of the permit would not be altered or enlarged by the extension;
 - (2). That relevant circumstances and standards have not changed substantially since the permit application; and,
 - (3). That the applicant has complied with the terms of the permit.
 4. Revocation. In addition to other remedies provided for elsewhere, the Town may suspend or revoke a permit if the applicant or permittee has not complied with any of the conditions or limitations set forth in the permit, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the permit.
- E. Programmatic Permits for Routine Maintenance and Operations of Utilities and Public Facilities. The responsible official may issue programmatic wetland permits for routine maintenance and operations of utilities and public facilities within wetlands and wetland buffers, and for wetland enhancement programs. It is not the intent of the programmatic permit process to deny or unreasonably restrict a public agency or utility's ability to provide services to the public. Programmatic permits only authorize activities specifically identified in and limited to the permit approval and conditions.
1. Application Submittal Requirements. Unless waived by the responsible official with specific findings in the approval document in accordance with YMC 16.45.030J2 and J3, applications for programmatic

wetland permits shall include a programmatic permit plan that includes the following:

- a. A discussion of the purpose and need for the permit;
 - b. A description of the scope of activities in wetlands and wetland buffers;
 - c. Identification of the geographical area to be covered by the permit;
 - d. The range of functions and values of wetlands potentially affected by the permit;
 - e. Specific measures and performance standards to be taken to avoid, minimize and mitigate impacts on wetland functions and values including:
 - (1). Procedures for identification of wetlands and wetland buffers;
 - (2). Maintenance practices proposed to be used;
 - (3). Restoration measures;
 - (4). Mitigation measures and assurances;
 - (5). Annual reporting to the responsible official that documents compliance with permit conditions and proposes any additional measures or adjustments to the approved programmatic permit plan;
 - (6). Reporting to the responsible official any specific wetland or wetland buffer degradations resulting from maintenance activities when the degradation occurs or within a timely manner;
 - (7). Responding to any Public Works Department requests for information about specific work or projects;
 - (8). Procedures for reporting and/or addressing activities outside the scope of the approved permit; and,
 - (9). Training all employees, contractors and individuals under the supervision of the applicant who are involved in permitted work.
2. Findings. A decision preliminarily approving or denying a programmatic wetland permit shall be supported by findings of fact relating to the standards and requirements of this Chapter.
 3. Approval Conditions. Approval of a programmatic wetland permit shall incorporate at least the following as conditions:
 - a. The approved programmatic permit plan;
 - b. Annual reporting requirements; and,
 - c. A provision stating the duration of the permit.
 4. Duration and Re-authorization.
 - a. The duration of a programmatic permit is for five (5) years, unless:
 - (1). An annual performance-based re-authorization program is approved within the permit; or,
 - (2). A shorter duration is supported by findings.
 - b. Requests for re-authorization of a programmatic permit must be received prior to the expiration of the original permit.
 - (1). Re-authorization is reviewed and approved through the process described in YMC 16.45.040E1.
 - (2). Permit conditions and performance standards may be modified through the re-authorization process.
 - (3). The responsible official may temporarily extend the original permit if the review of the re-authorization request extends beyond the expiration date.
- F. Emergency Wetland Permit.

1. Authorization. Notwithstanding the provisions of this Chapter, the Mayor or his or her designee may issue a temporary emergency wetland permit prospectively or, in the case of imminent threats to public health, safety, or welfare, retroactively, where the anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this Title and other applicable laws.
2. Prior to issuing an emergency wetland permit, the Mayor or his or her designee shall issue a finding that extraordinary circumstances exist and that the potential threat to public health, safety, or welfare from the emergency situation is clearly significant and substantial.
3. Conditions. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this Chapter and shall:
 - a. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days; and,
 - b. Require, within this 90-day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete the restoration. If the restoration takes more than one year to complete, or if it is a forested system, then mitigation for temporal loss may be required.
4. Notice. Notice of issuance of an emergency permit shall be published in a newspaper having general circulation in the Town of Yacolt not later than 21 days after issuance of such permit.
5. Termination. The emergency permit may be terminated at any time without process upon a determination by the Town that the action is no longer necessary to protect human health or the environment.



Town of Yacolt

Request for Council Action

Proposed Meeting Date: Monday, March 19, 2018 Agenda Item:

Contact Information for Person/Group/Department Requesting Council Action:

Requester's Name Mayor Myers

Group Name (if applicable)

Address

Daytime Phone

Alternate Phone

E-Mail Address

Item Title:

Community Development Block Grant (CDBG)

Action Requested of Council:

Proposed Motion:

Summary / Background:

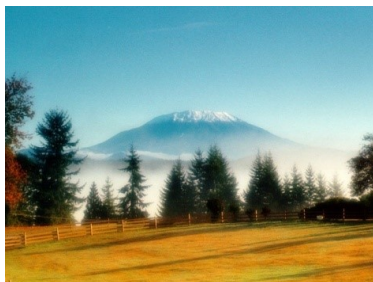
Governing Legislation:

Budget/Finance Impacts:

Attachments, (previous ordinance, resolution, proposed ordinance, etc.):

Staff Contact(s):

Staff



Town of Yacolt

Request for Council Action

Proposed Meeting Date: Monday, March 19, 2018 Agenda Item:

Contact Information for Person/Group/Department Requesting Council Action:

Requester's Name	Todd Witthauer, Manager and Will Block, President
Group Name (if applicable)	KWRL Baseball Centerfield Cannons
Address	
Daytime Phone	Todd 360-771-6877 / Will 360-553-9948
Alternate Phone	
E-Mail Address	Todd centerfieldcannons@gmail.com / Will wkiseblock@yahoo.com

Item Title:

KWRL Baseball Inquiry

Action Requested of Council:

Proposed Motion:

Summary / Background:

Mr. Block would like to use the large field at NCLL. It is not being used for 50/70, Juniors or seniors and is inquiring on behalf of KWRL Babe Ruth about use of the field for some games and practice opportunities. 7 of his 9 players live in the Yacolt/Amboy area. The group would help with field maintenance.

Governing Legislation:

Budget/Finance Impacts:

Attachments, (previous ordinance, resolution, proposed ordinance, etc.):

NCLL Lease

Staff Contact(s):

Katie Younce

LICENSE AGREEMENT BETWEEN THE TOWN OF YACOLT AND NORTH CLARK LITTLE LEAGUE

This Agreement is made this 16 day of April, 2012, by and between the Town of Yacolt, a Washington municipal corporation, ("*Yacolt*" or "*Licensors*"), and North Clark Little League, a Washington licensed public benefit corporation, ("*NCLL*" or "*Licensee*").

Background

Whereas, Yacolt is the owner of Property commonly known as the 'Old Ball Park', (approximately 2.9 acres), and the 'Big League Field', (approximately 3 acres), legally described in Exhibit A, and as such parcels may have been altered by events including boundary line adjustments of record, (together the "*Property*");

Whereas, NCLL has used the Property for many years to support little league baseball and related activities for children, and desires to continue to use the Property for such purposes;

Whereas, the Yacolt Town Council believes that NCLL's continued use of the Property stimulates business, tourism and revenue for the community, promotes community pride and involvement, and is therefore in the public interest; and,

Whereas, the Yacolt Town Council has passed Resolution #476 authorizing the execution of this Agreement to give permission to NCLL to make non-exclusive use of the Property as described herein:

Now, therefore, in consideration of the mutual covenants and provisions set forth herein, the parties agree as follows:

Agreement

1. **Grant of License.** The Town of Yacolt hereby grants to NCLL, its agents, guests and invitees, a non-exclusive license and privilege to use the Property for the purposes and at such times and in such manner as hereinafter set forth.
2. **Purpose of License:** NCLL is authorized to use the Property for the purpose of Little League baseball fields, and all other reasonable uses related to that purpose. NCLL agrees that its use of the Property shall be proper, legal and safe.
3. **Term of License.** This Agreement shall commence upon the effective date of the Agreement described above, and shall continue for ten (10) years, at which time the Agreement shall terminate automatically unless extended by the parties.
4. **Termination.** Either party may terminate this Agreement at any time and for any reason by giving to the other party sixty (60) days written notice.

5. **No Transfer or Assignment.** The license granted to NCLL under this Agreement is personal to NCLL. Any attempt to transfer or assign this Agreement by the Licensee shall terminate this Agreement.
6. **Cooperation and Scheduling.** NCLL understands that its license to use the Property is non-exclusive, and that Yacolt and other licensees are also expected to use the Property during the term of this Agreement. In order to avoid scheduling conflicts, NCLL agrees to provide a schedule of anticipated uses as least thirty (30) days in advance of all activities on the Property, including planned T-ball, baseball, and softball practices and games, and to obtain written approval from the Licensor for said schedule. NCLL agrees that it shall not unreasonably interfere with the normal operations and activities of Licensor, and NCLL agrees to use ordinary care in its activities on the Property to minimize damage to the Property and inconvenience to the Licensor, its agents, employees, licensees and invitees. For its part, Yacolt agrees that it will provide to Licensee a schedule of the Town's desires and intentions to use the Property that provides at least thirty (30) days advance notice of the Town's planned use of the Property. As a form of advance notice through this Agreement, Yacolt discloses that it intends to regularly use some or all of the Property for events including, without limitation, annual events such as the Town Easter Egg Hunt, the 4th of July Celebration, and the Spring Clean-Up. In the case of any scheduling conflict, NCLL understands and agrees that the use of the Property by the Licensor shall be considered a priority over use of the Property by the Licensee. As a general matter, the parties agree to work cooperatively and in reasonable fashion to avoid scheduling conflicts over the use of the Property.
7. **Compliance with Applicable Law / Necessary Permits.** At all times during the term of this Agreement, NCLL will comply with any and all applicable federal, state and local laws, rules and regulations, and shall obtain or cause to be obtained any and all state or local licenses or permits required of or applicable to the uses to be made of the Property.
8. **Maintenance of Property.**
 - 8.1 NCLL agrees to pay all costs involved in construction, repairs and maintenance of the buildings and grounds related to its use of the Property. All construction, plumbing and electrical work shall comply with all applicable laws and codes. NCLL agrees to reasonably clean the Property following activities to ensure debris from an event does not damage or impact public property. NCLL agrees to obtain written permission prior to constructing or altering the Property or its improvements other than general clean up, lawn mowing and tilling. NCLL agrees to notify Yacolt and Clark Public Utilities in writing prior to any grading or excavating on the Property. NCLL assumes all responsibility for utility maintenance improvements and security of Property. NCLL agrees that NO herbicides, pesticides, fungicides or dust palliatives may be applied to the soil or vegetation. Any substance used to enhance or decrease growth in vegetation must be verified to be a safe product for use near a well field. NCLL agrees to obtain in writing approval from the Public Works Department of the Licensor and Clark Public Utilities prior to use of any such substance.
 - 8.2 **Repair and Restoration.** If Licensee, its agents or contractors cause any damage to the Property or to Licensor's roads, infrastructure or other property and improvements, Licensee shall repair and restore the Property and improvements to their original condition prior to Licensee's use of the Property under this Agreement. In the event that repair and restoration is performed following the termination this Agreement, the Licensee's indemnity and

insurance obligations under this Agreement shall continue until repair and restoration is completed.

9. **Revenue from Activities.** All proceeds from activities under this Agreement including revenue from concessions and memorabilia sales shall belong to NCLL or its designee.
10. **Breach and Cure.** In the event that Licensee breaches any of its obligations under this Agreement, Licensor shall send Licensee a written notice specifying the nature of such breach. Licensee shall have ten (10) days from the receipt of such notice to cure such breach. If more time is reasonably required for Licensee's performance, then Licensee shall commence performance within such ten (10) day period and, thereafter, diligently proceed to completion. If Licensee fails to cure or to commence cure within such ten (10) day period, then Licensor shall have the right to terminate this License immediately by serving Licensee with written notice of termination. Licensor shall have all rights and remedies available under Washington law including, but not limited to, actions for damages and specific performance, for any breach of Licensee's obligations hereunder. In the event litigation arises out of this Agreement, the losing party agrees to pay the prevailing party's attorney's fees incident to said litigation, together with all costs and expenses incurred in connection with such action, and whether or not incurred in the trial court or on appeal.
11. **Alteration in Writing.** This Agreement supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to the subject matter of this License. No alteration or variation of this Agreement shall be valid unless made in writing and signed by Licensor and Licensee.
12. **Notices.** All notices and other communications between the parties shall be in writing and may be hand-delivered or mailed by first-class mail, postage prepaid, to the parties hereto at the appropriate address below. The parties shall keep each other advised of their mailing addresses to enable the notices anticipated herein.

Licensor:	Town of Yacolt P.O. Box 160 Yacolt, WA 98675 (physical address) 202 W. Cushman Street Yacolt, WA 98675
Licensee:	North County Little League P.O. Box 732 Yacolt, WA 98675 (physical address) 202 W. Christy Yacolt, WA 98675

13. **Indemnification.**

- 13.1 **Licensee's Obligation.** Licensee shall indemnify, defend and hold harmless Licensor, its officers, agents, partners and employees, from and against any Claims, arising out of or in

any way connected with this License including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons but only in proportion to and to the extent that such Claims arise from the negligent or intentional acts or omissions of Licensee, its officers, agents, or employees.

13.2 Licensor's Obligation. Licensor shall indemnify, defend, and hold harmless Licensee, its officers, agents and employees, from and against any claims, damages, costs, expenses, or liabilities (collectively "Claims") arising out of or in any way connected with this License including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons but only in proportion to and to the extent that such Claims arise from the negligent or intentional acts or omissions of Licensor, its officers, agents, partners or employees.

14. Insurance. The Town of Yacolt agrees that it is responsible for its own insurance coverage with respect to claims or losses as a result of the Town's actions and events on the Property and/or the Town's use of the Property. The insurance required by Licensee under this Paragraph is to provide coverage for the obligations or actions of the Licensee and/or its agents, guests and invitees, as described in this Agreement. Licensee, at its sole cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force and maintain insurance as described below. NCLL shall provide a certificate of insurance for all liabilities prior to the beginning of each year's activities.

14.1 General Liability Insurance, (contractual liability included), with minimum limits of \$1,000,000 per each occurrence, with a general aggregate of coverage of \$2,000,000.00, with such coverage to be described on an occurrence basis rather than a claims-made basis, by a carrier licensed to conduct business in the State of Washington.

14.2 Property, Fire and Extended Coverage in an amount sufficient to reimburse Licensee for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises including improvements hereinafter constructed or installed.

14.3 Worker's Compensation Insurance, to the extent required by the laws of the State of Washington.

14.4 The coverages required under this Section 14 shall not limit the liability of Licensee.

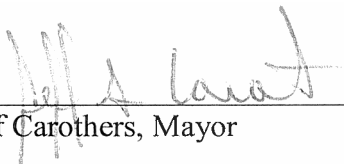
14.5 The coverages referred to under Section 14.1 and 14.2 shall include Licensor as an additional insured. Upon the execution of this Agreement and with respect to all insurance renewals, Licensee shall furnish Licensor with certificates of insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30) days advance written notice to Licensor of any material modification, change or cancellation of the above insurance coverages.

14.6 Waiver of Subrogation. The Licensee hereby waives any right of recovery against the Licensor as a result of loss or damage to the property of either Licensee or Licensor when such loss or damage arises out of an Act of God or any of the property perils insurable under extended coverage, whether or not such peril has been insured, self-insured, or non-insured.

15. **Lien Free Condition.** Licensee shall not cause or permit any liens to be placed against the Property as a result of Licensee's exercise of rights under this Agreement. In the event of the filing of any such liens, Licensee shall promptly cause such liens to be removed.
16. **Additional Rules.** The Yacolt Town Council may by resolution adopt additional rules and regulations for NCLL's use of the Property for any reason that the Council considers appropriate, including an effort to minimize strain upon Town services. Such additional rules and regulations shall become effective sixty (60) days after written notice to NCLL.
17. **Nondiscrimination of Services and Employment.** NCLL covenants and agrees that in all matters pertaining to the performance of this Agreement, NCLL shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons with respect to race, color, national origin, religion, gender, age, marital status, or disability, including compliance with all requirements of applicable federal, state and local laws and regulations issued pursuant thereto relating to the establishment of any nondiscriminatory requirements in hiring and employment practices.

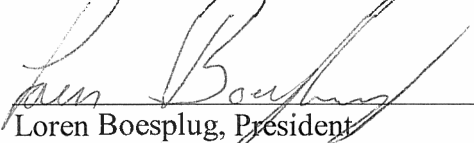
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

Town of Yacolt
"Yacolt" or "Licensor"



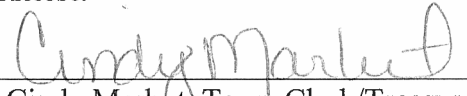
Jeff Carothers, Mayor

North Clark Little League
"NCLL" or "Licensee"

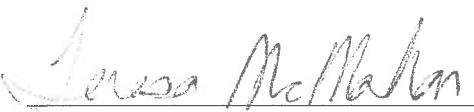


Loren Boesplug, President

Attest:



Cindy Marbut, Town Clerk/Treasurer



Teresa McMahon, Secretary

Approved as to Form:



David W. Ridenour, Town Attorney