

ORDINANCE #387

AN ORDINANCE RELATING TO THE PROTECTION OF PUBLIC HEALTH, SAFETY AND WELFARE BY PROTECTING RESOURCE LANDS AND CRITICAL AREAS.

WHEREAS: The Town Council of Yacolt, Washington, is in regular session this 19th day of July, 1999; and

WHEREAS: All members of the Town Council have had notice of time, place, and purpose of said meeting; and

WHEREAS: The Town Council members having considered all of the foregoing; and

NOW THEREFORE: BE IT ORDAINED BY THE TOWN COUNCIL OF YACOLT, WASHINGTON, as follows:

INTERIM CRITAL LANDS ORDINANCE #387

AUTHORITY:

This Section is adopted pursuant to the authority of the Town of Yacolt under RCW 35.63, and in accordance RCW 36.70A, implementing Substitute House Bill No. 2929, known as the Growth Management Act, and its amending legislation.

PURPOSE:

The purpose of this ordinance is to protect the public health, safety, and welfare by protecting resource lands and critical areas. The Town of Yacolt finds that development in resource lands and critical areas pose threats to the public health, safety and welfare, to clean water and to wildlife habitats. This ordinance aims to protect critical areas and to channel development to less ecologically sensitive areas.

DEFINITIONS:

- (a) "Critical areas" include the following areas and ecosystems:
 - (1) Wetlands
 - (2) Areas within a Category 1 Recharge Area as defined by Clark County's CARA ordinance, CCC 13.70 and the Yacolt Critical Lands Water Features map adopted herein,
 - (3) Wildlife habitat conservation areas,
 - (4) Frequently flooded areas, or
 - (5) Geologically hazardous areas.
- (b) "Wildlife habitat conservation areas" include:
 - (1) Areas within which endangered, threatened, and sensitive species have primary association,
 - (2) Habitats and species of local importance,
 - (3) Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide wildlife habitat.
- (c) "Frequently flooded areas" include those flooded areas in the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance program and other frequently flooded areas. This shall mean the same as "area of special flood hazard" as defined in Section 2 of the Town of Yacolt Zoning Ordinance.

- (d) "Geologically hazardous area" means areas that are susceptible to erosion, sliding earthquake or other geologic events and are therefore not suited to the development or siting of commercial, residential or industrial development consistent with public health or safety concerns (RCW 36.70A). For purposes of this ordinance the areas are as delineated on Yacolt Critical Lands Geologic Hazards Map and adopted herein. The maps are based upon information developed and obtained from Clark County Departments of Community Development and Assessment and GIS. The maps are intended to meet the designation listed by the WAC 365-190-080 and are based on the best available information.
- (e) "Wetlands" are as defined in Section 2, Definitions, of the Town of Yacolt Zoning Ordinance and as adopted by reference in Town Ordinance #328 and subsequent amendments thereto.
- (f) "Steep slopes" means slopes that are, or exceed, 25 percent (25%) in a direction greater than forty-five (45) degrees east or west of true south, or severe topographic relief.
- (g) "Aquifer recharge areas": Aquifer Recharge Areas are areas having a critical recharging effect on aquifers used for potable water where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the certifiable potability of water (WAC 365.190.030). These areas are identified on the Yacolt Critical Lands Water Features Map, adopted herein.
- (h) "Buffer zone": An area required by this section that provides a natural vegetated zone surrounding a natural, restored or newly created critical area which serves as a buffer between the critical area and its associated upland areas and is an integral part of the habitat ecosystem.
- (i) "Grading": Any movement, removal or placement of earth, rock or ground cover by hand, mechanical or other means which equals or exceeds 20 cubic yards in quantity.
- (j) "Mitigation": A negotiated action involving the avoidance, reduction or compensation for possible adverse impacts. In the following order of preference this includes:
 - (1) Avoiding the impacts altogether by not taking action;
 - (2) Reducing or eliminating impacts by preservation or maintenance;
 - (3) Minimizing impacts by limiting degree or magnitude of development;
 - (4) Rectifying impacts by repairing, rehabilitating or restoring;
 - (5) Compensating for impacts by in-kind replacements; or
 - (6) Monitoring impacts by a planned evaluation process.

APPLICABILITY:

New permits are required for activities in Critical Areas. The following activities shall require a special critical areas permit if the activity is not already approved through a more general permit, such as a development plan, grading or building permit in which the applicant has reported a possible impact on a critical area:

1. Fish and Wildlife Habitat Conservation Areas: Any land use, grading or other development activity having the potential to significantly degrade or harm the existing or future habitat of fish or wildlife.
2. Frequently Flooded Areas: Any land use or other development or grading activity likely to contribute to a significant increase in flood hazards or to place a significant number of people in danger. The high water mark water features are identified in the mapping of the FEMA 100-year flood area and therefore are subject to FEMA 100-Year Flood Plain regulations as well as the state Shoreline Management Act.

3. Geologically Hazardous Areas:
 - (a) Any development or grading activities in, or adjacent to (within 100 feet), of geologic hazard areas except those activities exempted in subsection (b) of this section. The regulated geologic hazards include those areas in steep slopes, landslide and/or seismic hazard areas as identified on the Yacolt Critical Lands Geologic Hazards map, adopted herewith.
 - (b) This chapter applies to all development or grading activities that contain or are adjacent to a geologic hazard area other than the following exempt activities:
 - i) Emergency activities which require immediate action to prevent imminent threat to health, safety or property. As soon as practical, the responsible party shall provide written notification to the Town Council and obtain all applicable permits.
 - ii) The expansion, remodel, reconstruction or replacement of any structures which will be set back from the geologic hazard areas a distance which is greater than or equal to the setback of the original structure and which will not increase the size of the building footprint by more than one thousand (1000) square feet inside a steep slope or landslide hazard area or their buffers;
 - iii) 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;
 - iv) Normal and routine maintenance and repair of existing utility facilities, equipment and appurtenances;
 - v) Any development activity on or adjacent to steep slopes that have been created through previous, legal grading activities is exempt from steep slope hazard regulations; and
 - vi) All forest practices other than Class IV G (conversions).
4. Wetlands: All activities regulated under Town Ordinance #328, dated February 18, 1992 and amendments thereto, are adopted herein.

CONSISTENCY WITH OTHER LAWS AND REGULATIONS:

- (a) It is not intended that this chapter repeals, nullifies, or impairs any existing regulations, easements, covenants, or deed restrictions. However, when this chapter imposes greater restrictions, the provisions of this chapter shall prevail.
- (b) Interpretation. The provisions of this chapter shall be literally construed to serve the purposes of this chapter.

PERMITS:

All applications for permits to conduct activities having a potential significant impact on critical areas must identify the critical areas affected on a site plan and make an estimate of the probable impact. The Director of Public Works shall deny all requests for permits which would result in activities that result in degrading a wetland, or fish and wildlife habitat conservation area; which would put people or property in a position of unacceptable risk with respect to floods or geologic hazards; which would tend to aggravate geologic hazards; or which would harm critical recharging areas for aquifers. The Director of Public Works may, however grant permits which include mitigating measures if those measures adequately protect the critical areas and people potentially impacted. In approving, denying or conditioning such permits the Town shall enforce at a minimum the threshold determinations and guidelines of the Town's SEPA ordinance and the state Shoreline Management Act, as applicable.

NONCONFORMING ACTIVITIES:

A regulated activity that was approved prior to the passage of this chapter and to which significant economic resources, defined as at least 30 percent of the estimated cost of the completed construction, have been committed pursuant to such approval, but which does not conform to this chapter, may be continued subject to the following:

- (a) No such activity shall be expanded, changed, enlarged, or altered in any way that increases the extent of its con-conformity without a permit issued pursuant to the provisions of this chapter.
- (b) Except for cases of discontinuance as part of a normal agricultural activity, if a non-conforming activity is discontinued for twelve consecutive months, any resumption of the activity shall conform to this chapter.
- (c) If human activities or natural disaster destroys a non-conforming use or activity, it shall not be resumed except in conformity with the provisions of this chapter, as applicable.
- (d) Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as non-conforming activities.

APPEALS:

Any aggrieved party dissatisfied with a permitting decision may appeal the decision to the Yacolt Town Council, provided that the person file a notice of appeal within 20 calendar days of the date of the decision. Those who have filed for, and a decision is rendered in, an administrative appeal may file any subsequent appeal in Superior Court if it is filed within 30 days of the date of the administrative appeal final decision.

ENFORCEMENT:

Enforcement shall be in accordance with Section 17 of the Yacolt Zoning Ordinance. Parties aggrieved by activities requiring a permit, and carried on without one, may bring a civil action to enforce the penalty provisions and the court shall order the defendant to pay the plaintiff's costs and reasonable attorney's fees if the action is successful.

FEES:

All fees provided for in this section shall be payable at the time of submission of an application for processing. Fees shall not be refundable, except that the Town Council may authorize a total or partial refund where no processing or review costs have been incurred by the Town. In addition to other fees charged for land use reviews as listed in Section 18 of the Yacolt Zoning Ordinance, the following fees for critical lands permits shall be charged in accordance with the fee schedule listed below:

<u>Short Plats and Subdivisions</u>		<u>Other Developments</u>
1-4 lots	\$50.00 per project	\$200.00 per project
5-10 lots	\$100.00 per project	
11 or more lots	\$200.00 per project	

EFFECTIVE DATE:

The Ordinance shall take effect immediately upon adoption and publication according to law.

Passed by the Town Council of the Town of Yacolt, Washington this 19th day of July, 1999.

AYES Kaski, Messer, Smith

NAYES None

ABSENT Milman, Robertson

MAYOR *Dennis Case*

ATTEST *Brenda Finnegan*

I hereby certify that this is a true and correct copy of Ordinance #387, as read before the Council and passed on the date herein mentioned and passed according to law.

ATTEST: *Brenda Finnegan*
Brenda Finnegan, Clerk/Treasurer