

# AGENDA YAKIMA CITY COUNCIL

# August 2, 2021

#### City Hall -- Council Chambers

5:30 p.m. Regular meeting; 6:00 p.m. Public hearings. This meeting will be conducted in person, live streamed at www.yakimawa.gov and telecast live on Y-PAC, Spectrum Cable Channel 194 or you may call in and listen by dialing 1-253-215-8782 or 1-971-247-1195. When prompted for the meeting ID enter 966 7680 9298#. When prompted for the participant ID enter #. When prompted for the meeting password enter 505184#. Public comment is limited to items on the agenda and may be made in person or by phone if arranged in advance of the meeting at https://www.yakimawa.gov/council/public-comment/ and must be received by 3 PM the day of the meeting. The request for oral comments must include your full name, city of residence, email address, phone number you will be calling from and the agenda topic you will address. Please note, the information you provide may be subject to disclosure pursuant to Washington State's Public Record Act, chapter 42.56 RCW.

- 1. Roll Call
- 2. Pledge of Allegiance
- 3. Interpreter Services
- 4. Open Discussion for the Good of the Order
  - A. Proclamations
    - i. National Health Center Week proclamation
  - B. Presentations / Recognitions / Introductions
    - i. Introduction of Jennifer Ferrer-Santa Ines, Director of Finance and Budget

#### 5. Council Reports

A. Discussion of an application for a grant for a feasibility study for an anaerobic digester

#### 6. Consent Agenda

Items listed are considered routine by the City Council and will be enacted by one motion without discussion. A Council member may request to remove an item from the Consent Agenda and, if approved, it will be placed on the regular agenda for discussion and consideration.

- A. Approval of minutes from the July 20, 2021 City Council regular meeting and July 27, 2021 City Council study session
- B. Project Completion and Contract Acceptance for Arlington Stormwater

- Improvements Project SW2522
- C. Project Completion and Contract Acceptance for the Wastewater UV Slide Gate Replacement Project # WP2525
- D. Resolution authorizing an Interagency Agreement with the Washington Traffic Safety Commission for School Zone Rectangular Rapid Flashing Signage at Roosevelt Elementary and McKinley Elementary Schools
- E. Resolution ratifying the declaration of an emergency and authorizing execution of all applicable contracts for the labor and materials to replace 340 linear feet of failed sanitary sewer collection pipe
- F. Resolution ratifying the declaration of an emergency and authorizing the rental of a biosolids dewatering centrifuge for the Wastewater Treatment Plant
- G. Resolution authorizing an Agreement with Infrastructure Management Services for the Pavement Condition Index (PCI) of the City's streets
- H. Resolution extending the existing Operations and Maintenance Agreement with the Yakima Area Arboretum

#### 7. Public Comment

Community members are invited to address items listed on the meeting agenda. There will be 35 minutes allotted for public comment with two and a half (2.5) minutes per speaker in order to allow as much opportunity as possible for audience participation. Written communication and e-mail messages are strongly encouraged.

#### **PUBLIC HEARINGS**

8. Public Hearing and Ordinance on the Shoreline Master Program Periodic Update

#### **DEPARTMENT ITEMS**

- 9. Ordinance amending the 2021 Budget for the City of Yakima; and increasing the Convention Center Fund 170 revenue budget with a \$500,000 allocation from the American Rescue Plan Act (ARPA) Fiscal Recovery Funds (First Reading)
- 10. 2020 City of Yakima Transportation Benefit District Annual Report
- 11. Yakima Police Department red light camera report
- 12. Requested Charter change language that would prohibit a local income tax
- 13. Appointment of Members to Pro/Con Committees

#### 14. Other Business

A. Executive session to consider acquisition of real estate under RCW 42.30.110(1)(b)

#### 15. Adjournment

#### 16. Council General Information

- A. Council General Information
- B. Report on Planning Commission Structure

#### 17. Confidential

A. Confidential

Any invocation that may be offered before the official start of the Council meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Council. The views or beliefs

expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.

A Council packet is available for review at the City Clerk's Office and on-line at www.yakimawa.gov. The City provides special accommodations, such as hearing devices, wheelchair space or language interpreters, for City meetings. Anyone needing special assistance please contact the City Clerk's office at (509) 575-6037 at least two business days prior to the meeting. All meetings are live streamed on the City of Yakima website at www.yakimawa.gov and telecast live on Y-PAC, Spectrum Cable Channel 194.



Item No. A.i.

For Meeting of: August 2, 2021

ITEM TITLE: National Health Center Week proclamation

SUBMITTED BY: Cally Price, Assistant to the City Manager

**SUMMARY EXPLANATION:** 

Yakima Neighborhood Health CEO, Rhonda Hauff, and Board Chairman Don Hinman will be accepting the proclamation.

**ITEM BUDGETED:** 

STRATEGIC PRIORITY:

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

**RECOMMENDATION:** 

ATTACHMENTS:

Description Upload Date Type

□ National Health Center Week proclamation 7/20/2021 Cover Memo

# CITY OF YAKIMA PROCLAMATION

WHEREAS, Yakima Neighborhood Health Services is a vital part of our community's health care system; and

WHEREAS, our community's health centers expand access to quality health care for all people, helping to contain costs by encouraging prevention and integrating the delivery of primary care with outreach, patient education, translation, and other services; and

WHEREAS, during National Community Health Center Week, we annually recognize the importance of these health centers for their role in providing affordable and accessible care; and

WHEREAS, community health centers also play a significant role as major local employers and an important source of economic growth; and

WHEREAS, Yakima Neighborhood Health Services, partnering with the other community health centers and many agencies in Yakima County, has led the effort to help uninsured residents enroll in a health insurance plan that meets their needs and their budget; and

WHEREAS, Yakima Neighborhood Health Services has grown from a staff of five to more than 300 employees serving more than 100,000 people up and down the Yakima Valley,

NOW, THEREFORE, I, Patricia Byers, Mayor of the City of Yakima and on behalf of the Yakima City Council, do hereby proclaim the week of August 8-14, 2021 as

# "NATIONAL HEALTH CENTER WEEK"

in the city of Yakima and urge our community to recognize the multitude of ways in which community health centers help those in need.

Dated this 2 <sup>nd</sup> day of August, 2021
Patricia Byers, Mayor



Item No. B.i.

For Meeting of: August 2, 2021

ITEM TITLE: Introduction of Jennifer Ferrer-Santa Ines, Director of Finance and

Budget

**SUBMITTED BY:** Robert Harrison, City Manager

#### **SUMMARY EXPLANATION:**

Jennifer Ferrer-Santa Ines has been appointed as the City's Finance and Budget Director on July 26th, and most recently served as the finance director for the City of Normandy Park, Washington. She had worked for the City of Normandy Park since February 2015. Before that, Ferrer-Santa Ines was a senior fiscal coordinator for the City of Tukwila from 2009 to 2015 and a fiscal coordinator for Tukwila from February to October 2009. She was an accountant for the City of Burien from 2003 to 2009 and was an accountant for the Highline Water District in Kent from 1999 to 2003.

Ferrer-Santa Ines earned a bachelor of science in accounting degree from Central Washington University in 2002 and a master in accounting/finance degree from City University in 2006. Ferrer-Santa Ines is the past president of the Puget Sound Finance Officers Association, a member of the Local Government Investment Pool Advisory Board, and a member the StART Federal Policy Working Group. She earned an International City/County Management Association certificate in 2020 and is a 2021 graduate of the Northwest Women's Leadership Academy, a program of the Washington City/County Management Association.

As Yakima's finance and budget director, Ferrer-Santa Ines will oversee a staff of about 35 employees in the Financial Services, Purchasing, and Utility Services divisions. The total budget for the City's Finance and Budget Department in 2021 is about \$4,200,000.

**ITEM BUDGETED:** 

STRATEGIC PRIORITY:

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:



Item No. 5.A.

For Meeting of: August 2, 2021

ITEM TITLE: Discussion of an application for a grant for a feasibility study for an

anaerobic digester

**SUBMITTED BY:** Robert Harrison, City Manager

**SUMMARY EXPLANATION:** 

At the July 20, 2021 Council meeting, staff was directed to add this item to the August 2 agenda.

**ITEM BUDGETED:** 

STRATEGIC PRIORITY:

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

#### RECOMMENDATION:

Direct staff to apply for a grant to conduct a Feasibility Study on possible waste reduction/management with the use of anaerobic digester.



Item No. 6.A.

For Meeting of: August 2, 2021

ITEM TITLE: Approval of minutes from the July 20, 2021 City Council regular

meeting and July 27, 2021 City Council study session

**SUBMITTED BY:** Sonya Claar Tee, City Clerk

**SUMMARY EXPLANATION:** 

See attached.

**ITEM BUDGETED:** 

STRATEGIC PRIORITY:

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

**RECOMMENDATION:** 

Approve minutes.

**ATTACHMENTS:** 

 Description
 Upload Date
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 □ 7-20
 7/27/2021
 Cover Memo

 □ 7-27
 7/29/2021
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# MINUTES YAKIMA CITY COUNCIL July 20, 2021

#### City Hall -- Council Chambers

5:00 p.m. Executive Session; 5:30 p.m. Regular meeting; 6:00 p.m. Public hearings.

#### **EXECUTIVE SESSION**

#### 1. Executive Session regarding pending litigation

Present: Mayor Patricia Byers, presiding, Assistant Mayor Holly Cousens and Councilmembers Kay Funk, Brad Hill (attending via speakerphone), Soneya Lund and Eliana Macias

Staff: Acting City Manager Scott Schafer, City Attorney Sara Watkins and City Clerk Sonya Claar Tee

Absent: Councilmember Jason White

MOTION: Cousens moved and Macias seconded to adjourn to Executive Session for up to 30 minutes to discuss pending litigation. The motion carried by unanimous vote, White absent.

Executive Session was held and adjourned at 5:29 p.m.

#### 1. Roll Call

Present: Mayor Patricia Byers, presiding, Assistant Mayor Holly Cousens and Councilmembers Kay Funk, Brad Hill (attending via speakerphone), Soneya Lund, Eliana Macias and Jason White (attending via speakerphone)

Staff: Acting City Manager Scott Schafer, City Attorney Sara Watkins and City Clerk Sonya Claar Tee

#### 2. Pledge of Allegiance

Mayor Byers led the Pledge of Allegiance.

#### 3. Interpreter Services

Mayor Byers introduced Aurora who announced interpreter services are available in Spanish.

#### 4. Open Discussion for the Good of the Order

#### A. Proclamations

i. National Night Out proclamation

Councilmember Soneya Lund proclaimed Tuesday, August 3, 2021 as "Yakima's Night Out Against Crime & Drugs." Adrianne Garner and Anthony Peterson accepted the proclamation via the telephone.

#### 5. Council Reports

A. Discussion regarding the City Council Rules of Procedures for appointing Council members to outside boards

Councilmember Funk outlined her proposal regarding appointing Council members to outside boards and committees.

MOTION: Funk moved and Hill seconded to accept the attached redline version as an amendment to the Council Rules of Procedures. Mayor Byers read the amendment as follows: (h) In accordance with our City Charter, the Mayor has no executive authority. All appointments to represent the City of Yakima and the Yakima City Council to outside groups are full Council decisions. There will be an exception when state statute requires representation from the Mayor. The motion carried by a 4-3 vote, Cousens, Byers, and White voting no.

B. Discussion regarding allowing street legal altered leisure vehicles on streets within City limits

Acting City Manager Schafer introduced the item. After Council discussion,

MOTION: Lund moved and Cousens seconded to direct staff to bring back an ordinance allowing street legal altered vehicles according to Washington state laws. The motion carried by unanimous vote.

C. Proposed resolutions associated with requested Charter change language

City Attorney Sara Watkins briefed Council on the proposed Charter amendments. Ms. Watkins stated each ballot measure will need to have a three member pro/con committee, which could be formed at the August 2 Council meeting.

After Council discussion, the City Clerk read the resolutions by title only.

MOTION: Funk moved and Macias seconded to adopt the resolution for proposition 1 amendment for Council attendance. The motion carried by unanimous vote.

Proposition 1: **RESOLUTION NO. R-2021-093, A RESOLUTION** providing for the submission to the qualified electors of the City of Yakima at an election to be held on November 2, 2021, of a Proposition on whether Article VI, Section 4 of the Charter of the City of Yakima should be amended to add language regarding attendance and vacancies of City Council members; approving ballot title; making ancillary and corrective amendments throughout the Charter; and requesting the Yakima County Auditor to submit the Proposition to the voters on the regular municipal general election to be held November 2, 2021.

MOTION: Funk moved and Cousens seconded to adopt the resolution proposal for the amendment clarification for housekeeping as written. The motion carried by unanimous vote.

Proposition 2: RESOLUTION NO. R-2021-094, A RESOLUTION providing for the

submission to the qualified electors of the City of Yakima at an election to be held on November 2, 2021, of a Proposition on whether Articles II, VI, VII, XIII, and XV of the Charter of the City of Yakima should be amended to make corrective and clarifying amendments throughout, conforming to state law provisions regarding purchases of supplies, material, equipment or services, appropriations, amendments to the Charter and civil service; approving ballot title; making ancillary and corrective amendments throughout the Charter; and requesting the Yakima County Auditor to submit the Proposition to the voters on the regular municipal general election to be held November 2, 2021.

#### 6. Consent Agenda

Mayor Byers referred to the items placed on the Consent Agenda, questioning whether there were any additions or deletions from Council members present. There were no changes. The City Clerk read the Consent Agenda items, including resolutions and ordinances, by title. (Items on the Consent Agenda are handled under one motion without further discussion—see motion directly below.)

**MOTION:** Cousens moved and Lund seconded to approve the consent agenda. The motion carried by unanimous vote.

- A. Approval of minutes from the June 29, 2021 City Council special meeting, July 6, 2021 City Council regular meeting and July 13, 2021 City Council study session
- B. Approve payment of disbursements for the period June 1 30, 2021
- C. 2021 2nd Quarter Treasury Report
- D. Request for authorization to purchase fire engines
- E. Resolution authorizing acceptance of a grant from the Federal Aviation Administration (FAA) under the American Rescue Plan Act to provide economic assistance in response to COVID-19 operational impacts

**RESOLUTION NO. R-2021-095, A RESOLUTION** authorizing acceptance of a grant from the Federal Aviation Administration (FAA) under the American Rescue Plan Act to provide economic assistance in response to COVID-19 operational impacts.

F. Resolution authorizing a contract with Thayer Excavating LLC for Wetland Mitigation Area Construction Project 2549 as part of Phase 2 of the Spring Creek Road Improvments

**RESOLUTION NO. R-2021-096, A RESOLUTION** authorizing an Agreement with Thayer Excavating LLC to establish wetland mitigation site within the Wastewater Treatment Plant property for Project 2549 as part of Phase 2 of the Spring Creek Road Improvement Project.

G. Resolution authorizing an Agreement with M Sevigny Construction Inc for the Yakima Police Department Special Investigations Unit Office Construction Project

**RESOLUTION NO. R-2021-097, A RESOLUTION** authorizing an agreement with M Sevigny Construction Inc for the Yakima Police Department Special Investigation Unit Office Construction Project

H. Resolution authorizing settlement of a damage claim filed by Central Washington Railroad ("CWRR") and the associated suit for declaratory judgment filed by Yakima County, including all cross claims and counter claims between the parties

**RESOLUTION NO. R-2021-098, A RESOLUTION** authorizing settlement of a damage claim filed by Central Washington Railroad ("CWRR") and the associated suit for declaratory judgment filed by Yakima County, including all cross claims and counter claims between the parties

 Ordinance amending the 2021 Budget for the City of Yakima; and making appropriations from Unappropriated Fund Balances within various Funds for expenditure during 2021 for various purposes (Second Reading)

**ORDINANCE NO. 2021-013, AN ORDINANCE** amending the 2021 Budget for the City of Yakima; and making appropriations from Unappropriated Fund Balances within various funds for expenditure during 2021 for various purposes described in the attached Schedule.

J. Ordinance amending section 6.05.130, for the purpose of adopting the equivalent Revised Code of Washington statute; and enacting a new section relating to exposing minor child(ren) to domestic violence

**ORDINANCE NO. 2021-014, AN ORDINANCE** relating to Public Safety; amending the City of Yakima Municipal Code; amending section 6.05.130, for the purpose of adopting the equivalent Revised Code of Washington statute; and enacting a new section relating to exposing minor child(ren) to domestic violence.

#### 7. Public Comment

Joey Anderson, city resident, wanted to speak on a non agenda item. Mayor Byers indicated that public comment is limited to items listed on the agenda.

Gary Kissling, city resident, spoke in support of the street legal altered vehicle.

Liz Hallock, city resident, spoke via telephone in support of the ordinance relating to domestic violence in the presence of a minor.

#### **PUBLIC HEARINGS**

8. Public Hearing and resolution authorizing an Interlocal Agreement with Yakima County regarding the 2021 Justice Assistance Grant

Chief Murray briefed Council on the item.

Mayor Byers opened the public hearing and, with no one coming forward to speak, closed the hearing.

The City Clerk read the resolution by title only.

**MOTION:** Cousens moved and Funk seconded to adopt the resolution. The motion carried by unanimous vote.

**RESOLUTION NO. R-2021-099, A RESOLUTION** ratifying an application for a grant in the total amount of \$63,105 from the United States Department of Justice, Bureau of Justice Administration, Edward Byrne Memorial Justice Assistance Grant Program

#### **DEPARTMENT ITEMS**

#### 9. Equipment Repair and Replacement Plan

Chief Markham reviewed the Fire Department's equipment repair and replacement plan and answered questions by Council members.

#### 10. Other Business

MOTION: Funk moved and Macias seconded that we add to the August 2 Business meeting agenda, discussion of an application for a grant for a feasibility study for an anaerobic digester. The motion carried by unanimous vote.

MOTION: Funk moved that we add to the August 2 Business meeting agenda, review of the credentials or resume of our previous Deputy Fire Chief, Patrick Reid, the incoming Deputy Fire Chief and the other applicants for the position. The motion died for a lack of a second.

Councilmember Funk requested information and regular updates on the staff recommendations to actualize our affordable housing plan, and noted the City is not adding very many housing units despite our housing crisis.

MOTION: Byers moved and Cousens seconded to direct staff to bring back to the next Council meeting, a resolution putting forth to a vote of the people whether to change the Yakima City Charter to prohibit a local income tax and any other documents needed to put such a Charter resolution on the November 2021 ballot. The motion carried by a 5-2 vote, Funk and Macias voting no.

Councilmember Funk again brought up the credentials of former and current Deputy Fire Chief's. Assistant Mayor Cousens raised a Point of Order, stating the topic is not in the purview of the Council to make that determination. Mayor Byers stated the point is well taken. Councilmember Funk appealed the Mayor's ruling, which died for lack of a second.

#### 11. Adjournment

MOTION: Cousens moved and Lund seconded to adjourn to a City Council study session on July 27, 2021 at 5 p.m. in the Council Chambers. The motion carried by unanimous vote. The meeting adjourned at 6:37 p.m.

CERTIFICATION READ AND CERTIFIED ACCURATE BY		
	COUNCIL MEMBER	DATE
	COUNCIL MEMBER	

CITY CLERK MAYOR





# MINUTES YAKIMA CITY COUNCIL STUDY SESSION July 27, 2021

City Hall -- Council Chambers 5 p.m.

#### 1. Roll Call

Present: Mayor Patricia Byers, presiding, Assistant Mayor Holly Cousens (attending via speakerphone) and Councilmembers Kay Funk, Brad Hill (present at 6:14 p.m.) and Soneya Lund

Staff: City Manager Robert Harrison and City Clerk Sonya Claar Tee

Absent: Councilmember Eliana Macias (excused) and Councilmember Jason White

2. Public comment (allow 15 minutes)
None.

3. Program Updates on Uncollectible Debt and Write-Offs

James Dean, Utility Customer Service Manager, provided an update and some background information on uncollectible debt and write-offs, including parking citations and others. Councilmember Funk expressed interest in receiving quarterly or biannual reports on this topic.

4. Vacant Building Registry and Standards

Sara Watkins, City Attorney, reported on previous Council discussions regarding a vacant building registry and maintenance standards for the downtown business areas. Assistant Mayor Cousens provided background on the issue as a former Council Economic Development Committee member. Councilmember Funk shared the importance of utilizing vacant commercial buildings as small residential units. Mayor Byers noted these commercial buildings are privately owned.

5. Animal Control Program and Licensing

Tony Doan, Supervising Code Inspector, reported on the current status of Animal Control. Councilmember Funk shared several concerns she has with Animal Control. Councilmember Lund raised a Point of Order that members should not chastise staff. Mayor Byers ruled the point was well taken. Councilmember Funk appealed the Mayor's ruling, which died due to lack of a second. Mayor Byers thanked Mr. Doan for his work.

6. Preliminary Findings on Building Permit Fee Study

Glenn Denman, Code Administration Manager, presented on preliminary permit fees and where the Codes Division believes improvements can be made to cover the costs associated with issuing of permits, as well as increase customer service by streamlining processes. Tony Doan, Supervising Code Inspector, reviewed fire operational permit fees. Councilmember Funk criticized past Council and former City Manager actions. Assistant Mayor Cousens raised a Point of Order that members should not criticize past actions of Council and staff. Mayor Byers ruled the point is well taken. City Manager Harrison reported it is staff's intention to do a fee study on permit costs and there were no objections.

#### 7. Adjournment

MOTION: Lund moved and Hill seconded to adjourn to the next Council regular meeting on August 2, 2021, at 5:30 p.m. in the Council Chambers at City Hall. The motion carried by unanimous vote, Macias and White absent. The meeting adjourned at 6:18 p.m.

CERTIFICAT	ΓΙΟΝ			
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	CITYCLERK		MAYOR	



Item No. 6.B.

For Meeting of: August 2, 2021

ITEM TITLE: Project Completion and Contract Acceptance for Arlington

Stormwater Improvements Project SW2522

SUBMITTED BY: Scott Schafer, Director of Public Works

David Brown, Assistant Director of Public Works

Mike Price, Wastewater/Stormwater Manager (509) 249-6815

#### **SUMMARY EXPLANATION:**

City Project # SW2522 installed 2,200 linear feet of new storm drain collection pipe in Arlington Avenue from South 50th Avenue to South 56th Avenue to alleviate re-occurring flooding during rain events. The project also constructed 150 linear feet of new storm drain pipe, one catch basin, and curb and gutter improvements at Skyline Way to improve surface drainage.

Final inspection for this project was made and the recommendation is that the project be accepted. Project completion is subject to issuance of Certificate of Payment by the Department of Revenue and authorizations from state agencies allowing final payment. A final payment of \$15,299.19 (retainage) is due from the City to TTC Construction Inc. for the completion of the work.

Project Manager: Randy Meloy Contractor: TTC Construction Inc Contract Awarded: 1/15/2021 Contract Cost: \$ 305,983.78 Retainage Due: \$ 15,299.19

The total contract cost is for construction only and does not include engineering and other costs. City Council action is required to accept the project and approve the final construction costs.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Public Safety

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

# Accept Project

## ATTACHMENTS:

Description Upload Date Type

□ Project Completion 7/20/2021 Backup Material



# Notice of Completion of Public Works Contract

Department Use Only						
Assigned to	Date Assigned					

Date	Form Version Original		Revision Reason	1					
Awarding Agency Info									
Company Name					UBI Number				
City of Yakima - Sto	rmwater Divis	ion					7: 0 1		
Address 202 West Pine Stre	et			<sup>City</sup> <b>Yakima</b>		State WA	Zip Code 98902		
Contact Name			Number	Email Address	ر بر هادامه مین				
Randy Meloy, PE		(509)	576-6606	randy.meio	y@yakimaw	a.gov			
	Prime Contractor Information								
Company Name TTC Construction, I	nc.				UBI Number 603 295 16				
Address 12871 Summitview		<sup>City</sup> <b>Yakima</b>		State WA	Zip Code 98908				
Contact Name McKay Perman			Number 457-3969	Email Address mckay.ttc@	gmail.com				
Project Information									
Project Name Arlington St. Storm	Drain Line-50	th-56tl		act Number 2522, 20120	С	Affidavit ID Nur 1121038	mber		
Jobsite Address Arlington Street 50t	h Ave 56th A	٩ve.		<sup>ity</sup> ′akima		State <b>WA</b>	Zip Code 98908		
Date Awarded 01/15/2021	Date Work 0 03/01/20			ate Work Complete 7/09/2021	ed	Date Work Ac	cepted		
Is this a Federally Funder	Transportation Pr	oject?	☐ Ye:	s 🗵 No I	If yes, attach the	Contract Bond	Statemer	t	
Have Subcontractors bee	n used?		⊠ Ye	s 🗌 No I	f yes, complete	Addendum A			
	Bond Waive	ed? [	☐ Yes ☐ No	☐ Retair	nage Bond V	Vaived?	Yes 🗌	No	
Detailed Description of W	ork Completed								
DOR Tax Information									
	lated Amount _\$3	205 005	5.00	Liquida	ted Damages				
0.00	Additions (+) \$9	78 78	7.00		unt Disbursed	\$290.684.59			
F	Reductions (-)	/10./0			ount Retained				
	Sub-Total \$	305 983	3.78						
Sales	s Tax Amount	200.00	<i></i>	Sa	ales Tax Rate		<del>(Ka</del> )		
	Total \$3	305.983	3.78		Total	\$305,983.78			
	Both tota	ls must	to be equal - I	f multiple sales ta	x rates, attach a				
<b>Apprentice Utilization</b>	Information								
Was apprentice utilization	required?	Yes	⊠ No	Engine	er's Estimate: \$	345,243.00	)		
Utilization %:	If utilization did	not mee	et or exceed 15%	6, was a Good F	aith Estimate ap	proved?	Yes [	] No	
Comments									
r									

The Disbursing Officer must submit this completed notice immediately after acceptance of the work done under this contract. **No payment shall be made from the retained funds** until receipt of all release certificates and affidavits.

Complete and submit for by email to all three agencies below



Washington State Department of Labor & Industries Contract Release (855) 545-8163, option # 4 ContractRelease@LNI.WA.GOV



#### Addendum A: Please List all Subcontractors and Sub-tiers Below

This addendum can be submitted in other formats.

Provide known affidavits at this time. No L&I release will be granted until all affidavits are listed.

bcontractor's Name:	UBI Number: (Required)	Affidavit ID*
Withrow Construction, Inc.	601 081 673	1018044
D Fence Fencing Company	603 420 653	1037836
Stripe Rite, Inc.	601 048 084	1037742
Precision Paving & Grading, Inc.	602 441 641	1021812/ 103627
Interstate Sawing & Drilling, LLC	602 901 191	1024194
Wheeler Rock Products, LLC LT to Withrow	603 619 522	1018990/ 101899
Ken Leingang Excavating, Inc. LT to Precision	600 370 806	1018133
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For tax assistance or to request this document in an alternate format, please call 1-800-647-7706. Teletype (TTY) users may use the Washington Relay Service by calling 711.

REV 31 0020e Addendum (10/26/15)

F215-038-000 05-2020



July 9, 2021

City of Yakima – Stormwater Division 202 West Pine Street Yakima. WA 98902

Attn: Mr. Randy Meloy, PE

Re: City of Yakima

ARLINGTON STREET STORM DRAIN LINE - 50TH AVE. TO 56TH AVE.

City Project No.: SW2522 HLA Project No.: 20120C

Final Progress Estimate and Project Acceptance

#### Dear Randy:

Enclosed is Progress Estimate No. 2 designated as the Final for work performed by TTC Construction, Inc., through October 31, 2021, in connection with their contract on the above referenced project. The amount due the Contractor of \$0.00 is net after retainage, as per the contract documents. We recommend this Final Progress Estimate be considered and accepted by the Yakima City Council.

Work on this project was physically complete on July 9, 2021, following completion of all remaining punch list items, including submission of required project documentation. Record drawings were emailed to you on June 14, 2021. The required project labor and equal employment opportunity documents were emailed to you on July 9, 2021. Enclosed is a notarized certificate from the Contractor stating that all labor and materials furnished on this project have been paid.

This letter also serves as our recommendation for acceptance of this project by the City of Yakima. We have reviewed the work performed by TTC Construction, Inc., on this project and believe it has been completed satisfactorily. Please provide us a copy of the Council resolution authorizing project acceptance.

Enclosed for your action is the "Notice of Completion of Public Works Contract" to be completed and sent to the Department of Revenue, Department of Labor and Industries, and Employment Security Department in Olympia. Forward one (1) copy each of the Notice of Completion to the Department of Revenue, Department of Labor and Industries, and the Employment Security Department as soon as the Yakima City Council has accepted the project.

The retainage on this project in the amount of \$15,299.19 should be released to TTC Construction, Inc., after final acceptance of the project and when the following conditions have been satisfied:

1. There are no liens or claims for labor and materials furnished on this project filed against the retainage.

City of Yakima – Stormwater Divisions July 9, 2021 Page 2 of 2

2. The City has received lien releases from the Department of Revenue, Department of Labor and Industries, and the Employment Security Department relative to this contract. Please provide a copy of each to our office when you receive them.

Please notify HLA once all contract closeout conditions have been met and the City of Yakima has released retainage to the Contractor. If you have questions or need any additional information, please contact our office.

Very truly yours,

Benjamin A. Annen, PE

BAA/rme

**Enclosures** 

Copy: McKay Permann, TTC Construction, Inc.

City of Yakima - Stormwater Division 202 West Pine Street Yakima, WA 98902

TO: TTC Construction, Inc. 12871 Summitview Road Yakima, WA 98908 ARLINGTON STREET STORM DRAIN LINE - 50TH AVE, TO 56TH AVE,

City Project No.: SW2522 HLA Project No.: 20120C

Progress Estimate No.: 2 AND FINAL

Date: May 17, 2021

Item No.	Description	Unit	Contract Quantity	Unit Price	Estimate 2 Quantity	Quantity to Date	Amount	Contract Quantity
1	Minor Change	FA	EST.	\$10,000.00	0.00	13,747.11	\$13,747.11	137%
2	Mobilization	LS	1	\$23,000.00	0%	100%	\$23,000.00	100%
3	Project Temporary Traffic Control	LS	1	\$6,000.00	0%	100%	\$6,000,00	100%
4	Unclassified Excavation Incl. Haul	assified Excavation Incl. Haul CY		\$35.00	0	145	\$5,075.00	100%
5	Crushed Surfacing Base Course	TON	500	\$41.00	0.00	401.77	\$16,472.57	80%
6	Crushed Surfacing Top Course	TON	10	\$104.00	0,00	10.00	\$1,040.00	100%
7	HMA Cl. 1/2-Inch PG 64S-28	TON	185	\$111.00	0.00	218.10	\$24,209.10	118%
8	Storm Sewer Pipe 18 In. Diam.	LF	2,048	\$57.50	0	2,077	\$119,427.50	101%
9	Storm Sewer Pipe 12 In. Diam.	LF	66	\$58.50	0	69	\$4,036.50	105%
10	Abandon Existing Structure	EA	1	\$1,560.00	0	1	\$1,560.00	100%
11	Doghouse Manhole 54 In. Diam.	EA	1	\$11,500.00	0	1	\$11,500.00	100%
12	Catch Basin Type 2 48 In. Diam.	EA	9	\$3,640.00	0	9	\$32,760,00	100%
13	Catch Basin Type 1	EA	2	\$1,700.00	0	2	\$3,400.00	100%
14	Shoring or Extra Excavation	LF	2,048	\$2,00	0	2,077	\$4,154.00	101%
15	Select Backfill, as Directed	CY	85	\$37.00	0	24	\$888.00	28%
16	Cement Conc. Traffic Curb and Gutter	LF	192	\$45.00	0	191	\$8,595.00	99%
17	Removing and Resetting Fencing	LF	440	\$58.00	0	476	\$27,608.00	108%
18	Cement Conc. Sidewalk 6-Inch Thick	SY	22	\$103.00	0	15	\$1,545.00	68%
19	Controlled Density Fill	CY	27	\$161,00	0	6	\$966.00	22%
			4			SUBTOTAL	\$305,983,78	

Item No.	Description	Unit	Contract Quantity	Unit Price	Estimate 2 Quantity	Quantity to Date	Amount	Contract Quantity
					SUBTOTAL, WO	RK TO DATE	\$305,983.78	
					PLUS MATERIA	LS ON HAND	\$0.00	
					SUBTOTA	AL AMOUNTS	\$305,983.78	
					LESS TOTAL	RETAINAGE	\$15,299.19	
-				LESS A	MOUNTS PREV	OUSLY PAID	\$290,684.59	
					AMOUN	T NOW DUE	\$0.00	

Progress Estimate No. 1 \$	\$290,684.59	Retainage \$ _	\$15,299.19
Progress Estimate No. 2 AND FINAL \$	\$0.00	Retainage \$ _	\$0.00

I hereby certify that the foregoing is a true and correct statement of the work performed under this Contract.

Benjamin A. Annen, PE

#### ACCEPTED:

I hereby accept the Final Progress Estimate and Final Contract Voucher Certification, in accordance with Section 1-09.9 of the WSDOT Standard Specifications.

TTC Construction, Inc.

Date:

#### NOTARIZED STATEMENT

#### TO THE

### City of Yakima

#### I hereby certify that

- All materials and labor used and performed in the construction of the ARLINGTON STREET STORM DRAIN LINE - 50TH AVE. TO 56TH AVE. - Project Number 20120C, for the City of Yakima, have been paid in full and there are no liens or other legal actions pending;
- b) TTC Construction, Inc., has complied with the provisions of Section 1-07.19 (Gratuities) of the Standard Specifications; and
- c) All industrial insurance premiums, as required under RCW 51.12.050 (Public Works) and RCW 51.12.070 (work done by contract) have been paid.

by Sharow Hadat
Name and Title (Please print or type)
TTC Construction, Inc. Contractor  William M. William M
COUNTY OF YOUR SS
SIGNED AND SWORN TO (OR AFFIRMED) BEFORE ME ON JUNE 18 , 20 21 ,
(Signature).
My Appointment Expires: Joly 17, 2024

(Please return completed CERTIFICATION form to HLA)



Item No. 6.C.

For Meeting of: August 2, 2021

ITEM TITLE: Project Completion and Contract Acceptance for the Wastewater

UV Slide Gate Replacement Project # WP2525

SUBMITTED BY: Scott Schafer, Director of Public Works

David Brown, Assistant Director of Public Works

Mike Price, Wastewater/Stormwater Manager (509) 249-6815

#### **SUMMARY EXPLANATION:**

City Project # WP2525 replaced the six gates and six automatic gate actuators that control flow through the wastewater treatment plant's ultraviolet (UV) disinfection system. The project also constructed a catwalk for safe access to the new effluent gates and actuators.

Final inspection for this project was made and the recommendation is that the project be accepted. Project completion is subject to issuance of Certificate of Payment by the Department of Revenue and authorizations from state agencies allowing final payment. A final payment of \$8,923.40 (5% retainage) is due from the City to TML Construction Inc for the completion of the work.

Project Manager: Marc Cawley Contractor: TML Construction Inc Contract Awarded: 1/12/2021 Contract Cost: \$ 193,280.84 Retainage Due: \$ 8,923.40

The total contract cost is for construction only and does not include engineering and other costs. City Council action is required to accept the project and approve the final construction costs.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Public Safety

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

# Accept Project

## ATTACHMENTS:

**Upload Date** Type Description

Project Completion Backup Material 7/20/2021



July 1, 2021

Mr. Marc Cawley Operations Superintendent Wastewater/Stormwater Yakima Regional Wastewater Treatment Plant 2220 East Viola Street Yakima, Washington 98901

RELEASE OF RETAINAGE ESTIMATE AND PROJECT SUBJECT:

> ACCEPTANCE, UV SLIDE GATE REPLACEMENT CITY OF YAKIMA, YAKIMA COUNTY, WASHINGTON

G&O #17042.05

Dear Mr. Cawley:

This letter provides the City with guidance regarding the release of retainage and accepting the project as complete.

#### 1. PROJECT COMPLETION ACCEPTANCE

The project has been completed in compliance with the Contract. We therefore recommend the City accept the project as complete. Attached for your use is the "Notice of Completion of Public Works Contract" form.

After the City has accepted the project as complete, the City needs to forward the "Notice of Completion of Public Works Contract" form to the Washington State Department of Revenue, the Washington State Department of Labor and Industries, and the Washington State Employment Security Department.

After the City has accepted the project, please sign the enclosed "Final Contract Voucher" and forward a copy to the contractor and Gray & Osborne, Inc.

#### 2. RELEASE OF RETAINAGE

We have also enclosed two copies of the release of retainage progress estimate for this project. One progress estimate is for the City files and the other copy should be forwarded to the contractor with the payment. The retainage should be released to the contractor contingent upon the following requirements being fulfilled:

Mr. Marc Cawley June 25, 2021 Page 2

- 1. Sixty days have elapsed since the date of project acceptance as indicated in the City meeting minutes.
- 2. The City receives the Washington State Department of Revenue "Certificate of Payment of State Excise Taxes by Public Works Contractor" (RCW 60.28).
- 3. The City receives the "Certificate of Payment of Contribution Penalties and Interest on Public Works Contract" from the Washington State Employment Security Department.
- 4. There are no claims or liens filed for labor and materials furnished on this Contract.
- 5. The City receives notification from the Washington State Department of Labor and Industries that the contractor and their subcontractors are current with payments of industrial insurance and medical aid premiums.

Please contact me if you have any questions or concerns regarding these matters.

Sincerely,

GRAY & OSBORNE, INC.

Nancy Werch, P.E.

NW/sc

Encl.

By email

cc: Mr. Russ Twardowski, TML Construction, Inc.



# **Notice of Completion of Public Works Contract**

Department Use Only					
Assigned to	Date Assigned				

Date	Form Version	F	Revision F	Reason						
Awarding Agency Info	ormation									
Company Name City of Yakima							UBI Number 397 005 272	2		
Address 2220 East Viola Ave	enue			(	City <b>Yakim</b> a	a	1.	State WA	Zip Cod 9890	
Contact Name		Phone Nu			Email Ad					
Marc Cawley	_	509-24	9-685	4	Marc.	Cawle	ey@yakimav	va.gov		
Prime Contractor Info	rmation									
Company Name TML Construction, I	lnc.						UBI Number 601-975-17	7		
Address P.O. Box 2970					City Hayde	n		State ID	Zip Cod 8383	
Contact Name Phone Number					Email Ac	dress			0000	
Russ Twardowski		(208) 7	762-36	11	russ@	2)tmlc	onst.com			
Project Information										
Project Name UV Slide Gate Repl	acement			Contra WF2	act Numbe 2525	er		Affidavit ID Nu 1028721	ımber	
Jobsite Address 2220 East Viola Str				Cit				State WA	Zip Co 989(	
Date Awarded	Date Work 0	Commence	d		te Work	Complete	ed	Date Work A		71
01/12/2021	04/07/20	21		06	3/10/20	)21				
Is this a Federally Funded	d Transportation Pi	roject?		Yes	×		f yes, attach the		d Staten	nent
Have Subcontractors bee	n used?		×	Yes		_	f yes, complete	Addendum A		
		ed?	Yes [	× No		Retair	nage Bond V	Vaived?	Yes [	☐ No
Detailed Description of W	-									
This project required the	e removal and re	placeme	nt of six	slide	gates th	nat isol	ate the ultravio	let (UV) disir	itection	system.
DOR Tax Information										
	lated Amount \$	142,100.0	00		L	iquida	ted Damages		usanir	
	Additions (+) \$3					Amou	unt Disbursed	\$184,357.44		
F	Reductions (-) (\$	2,330.00	))			Amo	ount Retained	\$8,923.40		
	Sub-Total \$	178,468.0	00				Other			
Sales	Tax Amount \$	14,812.84	4			Sa	ales Tax Rate			
		193,280.				-		\$193,280.84	DV7507.11	
	Both tota	als must to	be equa	ı - If	multiple	sales ta	x rates, attach a l	ist		
Apprentice Utilization	Information									
Was apprentice utilization	required?	Yes >	K No	,		Enginee	er's Estimate:			
Utilization %:	If utilization did	not meet	or excee	d 15%	, was a	Good Fa	aith Estimate app	proved?	Yes	☐ No
Comments										

The Disbursing Officer must submit this completed notice immediately after acceptance of the work done under this contract. **No payment shall be made from the retained funds** until receipt of all release certificates and affidavits.

Complete and submit for by email to all three agencies below







Addendum A: Please List all Subcontractors a	nd Sub-tiers Below	6
This addendum can be submitted in other formats.		
Provide known affidavits at this time. No L&I release will be gra	nted until all affidavits are listed.	
Subcontractor's Name:	UBI Number: (Required)	Affidavit ID*
MBI Construction Services, Inc.	603-190-297	1025956
Knobels Electric, Inc.	397-019-651	1027653
Miobeis Liectric, inc.	337-010-001	1027000
	1	1

For tax assistance or to request this document in an alternate format, please call 1-800-647-7706. Teletype (TTY) users may use the Washington Relay Service by calling 711.

# RELEASE OF RETAINAGE PROGRESS ESTIMATE 5 JUNE 24, 2021

CITY OF YAKIMA YAKIMA COUNTY WASHINGTON

PROJECT: CONTRACTOR:

CITY OF YAKIMA TML CONSTRUCTION, INC.

UV SLIDE GATE REPLACEMENT P.O. BOX 2970

G&O JOB #17042.05 HAYDEN, ID 83835

BID ITEMS			QUANTITIES		PROJECT COSTS			
NO.	DESCRIPTION	QUANTITY UNIT	UNIT PRICE	TOTAL THIS PERIOD	TOTAL TO DATE	AMOUNT THIS PERIOD	AMOUNT TO DATE	PERCENT OF CONTRACT QUANTITY
1 2	Mobilization and Demobilization Unexpected Site Changes	1 LS 1 LS	\$7,000.00 \$10,000.00	0.00% 0.00%	100.00% 76.70%	\$0.00 \$0.00	\$7,000.00 \$7,670.00	100% 77%
2	Grating Spalled Concrete	1 LS 1 LS 1 LS	\$618.00 \$243.00	0.00%	70.70%	\$0.00	\$7,070.00	7 7 76
	Electrical Spare Parts	1 LS 1 LS	\$5,222.00 \$1,587.00					
3	UV Slide Gate Replacement	1 LS	\$125,100.00	0.00%	100.00%	\$0.00	\$125,100.00	100%
CHAN CO1	NGE ORDERS: Item 1 - Supply and Install New Walkway and Handrail	1 LS	\$38,698.00	0.00%	100.00%	\$0.00	\$38,698.00	100%

# RELEASE OF RETAINAGE PROGRESS ESTIMATE 5 JUNE 24, 2021

CITY OF YAKIMA YAKIMA COUNTY WASHINGTON

PROJECT: CONTRACTOR:

CITY OF YAKIMA TML CONSTRUCTION, INC.

UV SLIDE GATE REPLACEMENT P.O. BOX 2970

G&O JOB #17042.05 HAYDEN, ID 83835

		PROJECT	
		AMOUNT THIS	AMOUNT TO
		PERIOD	DATE
SUBTOTAL EARNED TO DATE		\$0.00	\$178,468.00
SALES TAX	8.30%	\$0.00	\$14,812.84
MATERIALS ON HAND		\$0.00	\$0.00
TOTAL		\$0.00	\$193,280.84
LESS 5% RETAINED (BEFORE TAX)		(\$8,923.40)	\$0.00
TOTAL EARNED TO DATE LESS RETAINAGE			\$193,280.84
LESS AMOUNTS PREVIOUSLY PAID			44.400.00
PROGRESS ESTIMATE 1			\$4,132.00
PROGRESS ESTIMATE 2			\$18,362.71
PROGRESS ESTIMATE 3			\$160,223.36
PROGRESS ESTIMATE 4			\$1,639.37
TOTAL PAYMENT NOW	DUE:	\$8,923.40	\$8,923.40
ORIGINAL CONTRACT AMOUNT	\$142,100.00		
CONTRACT AMOUNT WITH CHANGE ORDER 1	\$180,798.00		
CONTRACT PERCENTAGE TO DATE	99%		

# RELEASE OF RETAINAGE PROGRESS ESTIMATE 5 JUNE 24, 2021

CITY OF YAKIMA YAKIMA COUNTY WASHINGTON

PROJECT:

CITY OF YAKIMA

UV SLIDE GATE REPLACEMENT

G&O JOB #17042.05

**CONTRACTOR:** 

TML CONSTRUCTION, INC.

P.O. BOX 2970

**HAYDEN, ID 83835** 

I HEREBY CERTIFY THE ABOVE ESTIMATE IS A TRUE AND CORRECT STATEMENT OF THE WORK PERFORMED UNDER THIS CONTRACT.

GRAY & OSBORNE, INC.

NANCY WETCH, P.E.

#### SUMMARY AND DISTRIBUTION OF PAYMENTS

PAY EST NO.	PROGRESS ESTIMATE PERIOD DATES	TOTAL EARNED PER PERIOD	SALES TAX RATE	SALES TAX AMOUNT	MATERIALS ON HAND	RETAINAGE (5%)	TOTAL PAYMENT
1	DECEMBER 1, 2020 TO DECEMBER 26, 2020	\$4,000.00	8.30%	\$332.00	\$0.00	\$200.00	\$4,132.00
2	DECEMBER 27, 2020 TO MARCH 16, 2021	\$1,309.50	8.30%	\$108.69	\$17,010.00	\$65.48	\$18,362.71
3	MARCH 17, 2021 TO MAY 14, 2021	\$171,571.50	8.30%	\$14,240.43	(\$17,010.00)	\$8,578.58	\$160,223.36
4	MAY 14, 2021 TO JUNE 10, 2021	\$1,587.00	8.30%	\$131.72	\$0.00	\$79.35	\$1,639.37
5	JUNE 24, 2021	\$0.00	8.30%	\$0.00	\$0.00	(\$8,923.40)	\$8,923.40
	TOTAL:	\$178,468.00		\$14,812.84	\$0.00	\$0.00	\$193,280.84

# Final Contract Voucher Certificate

Contractor				
TML Construction, Inc.				
Street Address				
P.O. Box 2970				6.
City	State	Zip	Date	004
Hayden	ID	83835	6/16/2	021
Project Number (Owner)				
WP2525				
Job Description (Title)				
UV Slide Gate Replacement				
Date Work Physically Completed	1 15 mm 1900	Amount (including Sa	les Tax)	
6/10/2021	\$1:	93,280.84		
Co.  I, The undersigned, having first been duly swor	ontractor's C		f H -	all the all in
connection with the work performed and to the has been extended to any employee of the City from any employee of the City of Yakima; I furt statement showing all the monies due me from this Contract; that I have carefully examined sa material, and other costs for this project; and the whatsoever nature which I may have, arising o estimate.	best of my known of Yakima now her certify that the City of Yakid final estimanat I hereby release.	owledge no loan, gra or have I rented or pu the attached final es ikima for work perfor te and understand the lease the City of Yak rmance of said contr	atuity or gift in an urchased any equ stimate is a true a med and materia ne same; have pa uima from any an	y form whatsoever uipment or materials and correct il furnished under aid all labor, d all claims of ot set forth in said
		X 20000	agree	
WHITNEY WARREN COMMISSION NO. 20182080 NOTARY PUBLIC STATE OF IDAHO	-	Type Signature Name	,	eyPetersen
Subscribed and sworn to before me this	23	day of	June	20 21
x Wyllan Notar	y Public in and	I for the State of 👍	1 1	
Residing at Haydu, ID				
City	of Yakima	Certification		
I, certify the attached final estimate to be base measurements, and to be true and correct.	ed upon actua	I Approved Date		
x namy G. Wetch		X Clty of Yakima	ja	

This Final Contract Voucher Certification is to be prepared by the Engineer and the original forwarded to the City of Yakima for acceptance and payment.

Contractors Claims, if any, must be included and the Contractors Certification must be labeled indicating a claim attached.



Item No. 6.D.

For Meeting of: August 2, 2021

ITEM TITLE: Resolution authorizing an Interagency Agreement with the

Washington Traffic Safety Commission for School

Zone Rectangular Rapid Flashing Signage at

Roosevelt Elementary and McKinley Elementary Schools

**SUBMITTED BY:** Scott Schafer, Director of Public Works

Bill Preston, City Engineer - (509) 575-6754

#### **SUMMARY EXPLANATION:**

Public safety is one of the strategic priorities of the Yakima City Council. The City of Yakima (City) is in the process of providing a safe route for children to walk to school, specifically arterial street crossings where standard crosswalk markings need to be supplemented with interactive signage, Rectangular Rapid Flashing (RRFB).

Roosevelt Elementary and McKinley Elementary Schools are within the Yakima School District and are located along high volume roadway corridors and both locations can benefit with the installation of RRFB to increase the safety of individuals crossing Summitview Avenue and Tieton Avenue respectively.

The City desires to enter into an Interagency Agreement with the Washington Traffic Safety Commission (WTSC) to provide funding from the Washington State School Zone Safety Account (RCW 46.61.440) for traffic safety grant project School Zone RRFB Signage Safety Improvements. The total funding from the WTSC is \$40,000 with \$5,000 match funding (Street Fund) required from the City for the installation of two RRFBs.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Public Safety

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Adopt Resolution

# ATTACHMENTS:

**Description** 

Interagency Agreement

□ Resolution RRFB

D

**Upload Date** 

7/22/2021 7/12/2021 Туре

Resolution Contract

# RESOLUTION NO. R-2021-\_\_\_

A RESOLUTION

authorizing an Agreement with the Washington Traffic Safety Commission for School Zone Rectangular Rapid Flashing Signage at Roosevelt Elementary and McKinley Elementary Schools.

**WHEREAS**, public safety is one of the strategic priorities of the Yakima City Council; and

**WHEREAS**, the City of Yakima (City) is in the process of providing a safe route for children to walk to school, specifically arterial street crossings where standard crosswalk markings need to be supplemented with interactive signage, Rectangular Rapid Flashing (RRFB); and

**WHEREAS**, Roosevelt Elementary and McKinley Elementary Schools are within the Yakima School District and are located along high-volume roadway corridors and both locations can benefit with the installation of RRFB to increase the safety of individuals crossing Summitview Avenue and Tieton Avenue respectively; and

WHEREAS, the City desires to enter into an Interagency Agreement with the Washington Traffic Safety Commission (WTSC) to provide funding from the Washington State School Zone Safety Account (RCW 46.61.440) for traffic safety grant project School Zone RRFB Signage Safety Improvements; and

**WHEREAS**, the total funding from the WTSC is \$40,000 with \$5,000 match funding required from the City for the installation of two RRFBs; and

**WHEREAS**, the City Council finds that it is in the best interests of the City and its residents to enter into this Interagency Agreement with the Washington Traffic Safety Commission; now, therefore,

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The City Manager is authorized and directed to sign the Interagency Agreement between the Washington Traffic Safety Commission and the City of Yakima, attached hereto and incorporated herein by reference.

**ADOPTED BY THE CITY COUNCIL** this 2<sup>nd</sup> day of August, 2021.

ATTEST:	Patricia Byers, Mayor
Sonya Claar Tee, City Clerk	



### INTERAGENCY AGREEMENT

### **BETWEEN THE**

# **Washington Traffic Safety Commission**

### **AND**

# City of Yakima

THIS AGREEMENT is made and entered into by and between the Washington Traffic Safety Commission, hereinafter referred to as "WTSC," and City of Yakima, hereinafter referred to as "SUB-RECIPIENT."

NOW THEREFORE, in consideration of the authority provided to WTSC in RCW 43.59 and RCW 39.34, terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties mutually agree as follows:

### 1. PURPOSE OF THE AGREEMENT:

The purpose of this Agreement is to provide funding for traffic safety grant project 2022-Sub-grants-4385-School Zone RRFB Signage Safety Improvements.

### 2. PERIOD OF PERFORMANCE

The period of performance of this Contract shall commence upon the date of execution by both Parties or August 01, 2021, whichever is later, and remain in effect until June 30, 2022, unless terminated sooner, as provided herein.

### 3. STATEMENT OF WORK

The SUB-RECIPIENT shall carry out the provisions of the traffic safety project described here as the Statement of Work (SOW). If the SUB-RECIPIENT is unable to fulfill the SOW in any manner on this project, the SUB-RECIPIENT must contact the WTSC Program Manager immediately and discuss a potential amendment. All State regulations will apply.

### 3.1 SCOPE OF WORK

### 3.1.1 Problem ID and/or Opportunity

Roosevelt Elementary School and McKinley Elementary School are two schools within the Yakima School District, within the City of Yakima, that are located along high-volume roadway corridors, Summitview Avenue and Tieton Drive, respectively. Both streets are functionally classified as arterials and serve as major corridors for vehicular volumes. Typically, within cities, arterial streets have the

highest number of collisions as they have the highest traffic volume. When school walking routes cross arterials, the potential for collisions increases as driver's attention to the road and other vehicles has competing interests with pedestrians and walking children.

Infrastructure investments in these locations will dramatically improve safety and reach all populations, and income levels, especially the low to median income levels.

Pedestrian traffic extends beyond the normal school hours as the underserved families within these demographic areas and within the vicinity of the schools utilize the playgrounds and ballfields after hours and on weekends. These extenuating uses create a safety concern, year-round, rather than just during school hours within the school calendar year.

With a significant number of students walking to both schools in these low- to median-income demographic areas, and in consideration of the high volume arterial crossings, the City is proposing to improve the safety of the crosswalks by installing RRFBs at both locations. Informational brochures will be provided to both schools to distribute to school children, to help children, parents, and guardians understand the safety measures provided by RRFB equipment. These brochures will be double-sided, one English, and one Spanish, to reach all populations.

### 3.1.2 Project Goal

Increase pedestrian safety and protect against any future pedestrian/vehicular collisions at non-signalized crossings on high traffic streets adjacent to schools, through increased driver awareness of pedestrian/student crossings, and increased pedestrian usage of the crosswalks.

### 3.1.3 Project Strategies, Objectives, and Measures

Strategy 1 – Install two Rectangular Rapid Flashing Beacons (RRFB) at Roosevelt Elementary and McKinley Elementary School walking routes.

Objective 1.1 – Purchase the RRFB equipment using a competitive solicitation process that follows the city's procurement process.

Objective 1.2 – Supervise construction and certify completion.

Process Measure - Measure pedestrian counts after RRFB installation and compare to the counts taken prior to installation. The goal is to increase pedestrian counts at these locations.

### 3.2. MILESTONES, DELIVERABLES, AND PERFORMANCE MEASURES

Description	Completed Date
Measure pedestrian counts before RRFB installation.	09/03/2021
Order RRFB equipment (Expected delivery time is 8 weeks).	09/27/2021
RRFB installation.	11/29/2021
RRFB informational brochures to schools.	12/06/2021
Measure pedestrian counts after RRFB installation. Compare to counts prior to installation.	04/06/2022

### 3.3. COMPENSATION

- 3.3.1. The cost of accomplishing the work described in the SOW will not exceed \$40,000.00. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount in a written Amendment to this Agreement executed by both parties.
- 3.3.2. If the SUB-RECIPIENT intends to charge indirect costs, an Indirect Cost Rate must be established in accordance with WTSC policies, and a federally-approved cost allocation plan may be required to be submitted to the WTSC before any performance is conducted under this Agreement.
- 3.3.3 The SUB-RECIPIENT must submit a travel authorization form (A-40) to request approval for any travel not defined in the scope of work and for all travel outside of the continental United States. State travel policies (SAAM Chapter 10) would apply.
- 3.3.4. If WTSC makes travel arrangements on behalf of the SUB-RECIPIENT, state travel policies must be followed. See Washington State Administrative & Accounting Manual (SAAM) Chapter 10, which can be obtained at this website: https://www.ofm.wa.gov/sites/default/files/public/legacy/policy/10.htm. If for any reason, this information is not available at this website, contact the WTSC office at 360-725-9860.
- 3.3.5. WTSC will reimburse travel related expenses consistent with the written travel policies of the SUB-RECIPIENT. If no written policy exists, state travel policies (SAAM Chapter 10) apply.
- 3.3.6. WTSC will only reimburse the SUB-RECIPIENT for travel related expenses for travel defined in the scope of work and budget or for which approval was expressly granted. The SUB-RECIPIENT must provide appropriate documentation (receipts) to support reimbursement requests, including the A-40 Travel Authorization form if required.

### 3.4. SUMMARY OF PROJECT COSTS

SUMMARY OF COSTS	AMOUNT
Employee salaries and benefits	\$6,600.00
Travel	\$0.00
Contract Services	\$0.00
Equipment (listed in the table below)	\$31,000.00
Goods or other expenses	\$2,400.00
Indirect Costs	\$0.00
TOTAL	\$40,000.00

Employee Salaries and Benefits = \$11,600

- -Foundation preparation = \$1,500
- -Foundation installation = \$5,600
- -RRFB installation = \$4,500

Goods or Other Expenses (Examples: office/printing supplies, postage, software, conference registration fees) = \$2,400

- -Backhoe for foundation preparation = \$300
- -1 bucket truck for foundation installation = \$1,700
- -Concrete foundation = \$200
- -Rebar and concrete forms (steel and 2 sonotubes) = \$200

Total WTSC Funding = \$40,000

Match = \$5,000 (from City Street Fund), to pay for City salaries including costs such as installation, pedestrian counts, brochure preparation, and project reporting.

Total Project Cost (Total Request + Match) = \$45,000

Equipment Description	Quantity	Unit Cost	Amount
Rectangular Rapid Flashing Beacons, pair	2	\$15,500.00	\$31,000.00

APPLICABLE STATE TERMS AND CONDITIONS:

### 4. ACTIVITY REPORTS

The SUB-RECIPIENT will submit progress reports on the activity of this project in the form provided by the WTSC using the WTSC Enterprise Management System (WEMS) Progress Reporting process or other alternate means pre-approved by WTSC. The SUB-RECIPIENT will include copies of publications, training reports, and any statistical data generated in project execution in the reports. The final report will be submitted to WTSC within 30 days of termination of this Agreement. WTSC reserves the right to delay the processing of invoices until activity reports are received and approved.

### 5. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Agreement shall be made by the WTSC.

# 6. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties in the form of a written Amendment to this Agreement. Such amendments shall only be binding if they are in writing and signed by personnel authorized to bind each of the parties.

### 7. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

### 8. ASSIGNMENT

The SUB-RECIPIENT may not assign the work to be provided under this Agreement, in whole or in part, without the express prior written consent of the WTSC, which consent shall not be unreasonably withheld. The SUB-RECIPIENT shall provide the WTSC a copy of all third-party contracts and agreements entered into for purposes of fulfilling the SOW. Such third-party contracts and agreements must follow applicable federal, state, and local law, including but not limited to procurement law, rules, and procedures.

### 9. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce the Agreement terms, each party agrees to bear its own attorney fees and

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costs.

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### 10. BILLING PROCEDURE

The SUB-RECIPIENT shall submit monthly invoices for reimbursement to WTSC with supporting documentation as WTSC shall require. All invoices for reimbursement shall be submitted through the WEMS invoicing process, or via alternate method if approved by WTSC. Payment to the SUB-RECIPIENT for approved and completed work will be made by warrant or account transfer by WTSC within 30 days of receipt of such properly documented invoices acceptable to WTSC. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 45 days after the expiration date of this Agreement. All invoices for goods received or services performed on or prior to June 30, must be received by WTSC no later than August 10 of the same calendar year. All invoices for goods received or services performed between July 1 and September 30, must be received by WTSC no later than November 15 of the same calendar year. WTSC reserves the right to delay the processing of invoices until activity reports required by Section 4 of this agreement, are received and approved.

### 11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The SUB-RECIPIENT shall not use or disclose any information concerning the WTSC, or information which may be classified as confidential, for any purpose not directly connected with the administration of this Agreement, except with prior written consent of the WTSC, or as may be required by law.

### 12. COST PRINCIPLES

Reserved. This space left intentionally blank.

### 13. COVENANT AGAINST CONTINGENT FEES

The SUB-RECIPIENT warrants that it has not paid, and agrees not to pay, any bonus, commission, brokerage, or contingent fee to solicit or secure this Agreement or to obtain approval of any application for federal financial assistance for this Agreement. The WTSC shall have the right, in the event of breach of this section by the SUB-RECIPIENT, to annul this Agreement without liability.

### 14. DISPUTES

- 14.1. Disputes arising in the performance of this Agreement, which are not resolved by agreement of the parties, shall be decided in writing by the WTSC Deputy Director or designee. This decision shall be final and conclusive, unless within 10 days from the date of the SUB-RECIPIENT's receipt of WTSC's written decision, the SUB-RECIPIENT furnishes a written appeal to the WTSC Director. The SUB-RECIPIENT's appeal shall be decided in writing by the Director or designee within 30 days of receipt of the appeal by the Director. The decision shall be binding upon the SUB-RECIPIENT and the SUB-RECIPIENT shall abide by the decision.
- 14.2. Performance During Dispute. Unless otherwise directed by WTSC, the SUB-RECIPIENT shall continue performance under this Agreement while matters in dispute are being resolved.
- 14.3. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in the superior court situated in Thurston County, Washington.

### 15. GOVERNANCE

- 15.1. This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.
- 15.2. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

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- 15.2.1. Applicable federal and state statutes and rules
- 15.2.2. Terms and Conditions of this Agreement
- 15.2.3. Any Amendment executed under this Agreement
- 15.2.4. Any SOW executed under this Agreement
- 15.2.5. Any other provisions of the Agreement, including materials incorporated by reference

### 16. INCOME

Any income earned by the SUB-RECIPIENT from the conduct of the SOW (e.g., sale of publications, registration fees, or service charges) must be accounted for, reported to WTSC, and that income must be applied to project purposes or used to reduce project costs.

### 17. INDEMNIFICATION

17.1. To the fullest extent permitted by law, the SUB-RECIPIENT shall indemnify and hold harmless the WTSC, its officers, employees, and agents, and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs of whatsoever kind ("claims") brought against WTSC arising out of or in connection with this Agreement and/or the SUB-RECIPIENT's performance or failure to perform any aspect of the Agreement. This indemnity provision applies to all claims against WTSC, its officers, employees, and agents arising out of, in connection with, or incident to the acts or omissions of the SUB-RECIPIENT, its officers, employees, agents, contractors, and subcontractors. Provided, however, that nothing herein shall require the SUB-RECIPIENT to indemnify and hold harmless or defend the WTSC, its agents, employees, or officers to the extent that claims are caused by the negligent acts or omissions of the WTSC, its officers, employees or agents; and provided further that if such claims result from the concurrent negligence of (a) the SUB-RECIPIENT, its officers, employees, agents, contractors, or subcontractors, and (b) the WTSC, its officers, employees, or agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the SUB-RECIPIENT, its officers, employees, agents, contractors, or subcontractors.

17.2. The SUB-RECIPIENT agrees that its obligations under this Section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents in the performance of this agreement. For this purpose, the SUB-RECIPIENT, **by mutual negotiation**, hereby waives with respect to WTSC only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.

17.3. The indemnification and hold harmless provision shall survive termination of this Agreement.

### 18. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

### 19. INSURANCE COVERAGE

19.1. The SUB-RECIPIENT shall comply with the provisions of Title 51 RCW, Industrial Insurance, if required by law.

19.2. If the SUB-RECIPIENT is not required to maintain insurance in accordance with Title 51 RCW, prior to the start of any performance of work under this Agreement, the SUB-RECIPIENT shall provide WTSC with proof of insurance coverage (e.g., vehicle liability insurance, private property liability insurance, or commercial property liability insurance), as determined appropriate by WTSC, which protects the SUB-RECIPIENT and WTSC from risks associated with executing the SOW associated with this Agreement.

### 20. LICENSING, ACCREDITATION, AND REGISTRATION

The SUB-RECIPIENT shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of this Agreement. The SUB-RECIPIENT shall complete registration with the Washington State Department of Revenue, if required, and be responsible for payment of all taxes due on payments made under this Agreement.

### 21. RECORDS MAINTENANCE

- 21.1. During the term of this Agreement and for six years thereafter, the SUB-RECIPIENT shall maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended in the performance of the services described herein. These records shall be subject to inspection, review, or audit by authorized personnel of the WTSC, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration. The Office of the State Auditor, federal auditors, the WTSC, and any duly authorized representatives shall have full access and the right to examine any of these materials during this period.
- 21.2. Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving them a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

### 22. RIGHT OF INSPECTION

The SUB-RECIPIENT shall provide right of access to its facilities to the WTSC or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement. The SUB-RECIPIENT shall make available information necessary for WTSC to comply with the right to access, amend, and receive an accounting of disclosures of their Personal Information according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The SUB-RECIPIENT shall upon request make available to the WTSC and the United States Secretary of the Department of Health and Human Services all internal policies and procedures, books, and records relating to the safeguarding, use, and disclosure of Personal Information obtained or used as a result of this Agreement.

### 23. RIGHTS IN DATA

- 23.1. WTSC and SUB-RECIPIENT agree that all data and work products (collectively called "Work Product") pursuant to this Agreement shall be considered works made for hire under the U.S. Copyright Act, 17 USC §101 et seq., and shall be owned by the state of Washington. Work Product includes, but is not limited to, reports, documents, pamphlets, advertisement, books, magazines, surveys, studies, computer programs, films, tapes, sound reproductions, designs, plans, diagrams, drawings, software, and/or databases to the extent provided by law. Ownership includes the right to copyright, register the copyright, distribute, prepare derivative works, publicly perform, publicly display, and the ability to otherwise use and transfer these rights.
- 23.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, the SUB-RECIPIENT assigns and transfers to WTSC the entire right, title, and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 23.3. The SUB-RECIPIENT may publish, at its own expense, the results of project activities without prior review by the WTSC, provided that any publications (written, visual, or sound) contain acknowledgment of the support provided by WTSC. Any discovery or invention derived from work performed under this project shall be referred to the WTSC, who will determine whether patent

protections will be sought, how any rights will be administered, and other actions required to protect the public interest.

24. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to completion of the SOW under this Agreement, the WTSC may terminate the Agreement under the "TERMINATION FOR CONVENIENCE" clause, without the 30 day notice requirement. The Agreement is subject to renegotiation at the WTSC's discretion under any new funding limitations or conditions.

### 25. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

#### 26. SITE SECURITY

While on WTSC premises, the SUB-RECIPIENT, its agents, employees, or sub-contractors shall conform in all respects with all WTSC physical, fire, or other security policies and applicable regulations.

### **27. TAXES**

All payments of payroll taxes, unemployment contributions, any other taxes, insurance, or other such expenses for the SUB-RECIPIENT or its staff shall be the sole responsibility of the SUB-RECIPIENT.

### 28. TERMINATION FOR CAUSE

If the SUB-RECIPIENT does not fulfill in a timely and proper manner its obligations under this Agreement or violates any of these terms and conditions, the WTSC will give the SUB-RECIPIENT written notice of such failure or violation, and may terminate this Agreement immediately. At the WTSC's discretion, the SUB-RECIPIENT may be given 15 days to correct the violation or failure. In the event that the SUB-RECIPIENT is given the opportunity to correct the violation and the violation is not corrected within the 15-day period, this Agreement may be terminated at the end of that period by written notice of the WTSC.

### 29. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Agreement, either party may terminate this Agreement, without cause or reason, with 30 days written notice to the other party. If this Agreement is so terminated, the WTSC shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

### **30. TREATMENT OF ASSETS**

30.1. Title to all property furnished by the WTSC shall remain property of the WTSC. Title to all property furnished by the SUB-RECIPIENT for the cost of which the SUB-RECIPIENT is entitled to be reimbursed as a direct item of cost under this Agreement shall pass to and vest in the WTSC upon delivery of such property by the SUB-RECIPIENT. Title to other property, the cost of which is reimbursable to the SUB-RECIPIENT under this Agreement, shall pass to and vest in the WTSC upon (i) issuance for use of such property in the performance of this Agreement, or (ii) commencement of use of such property in the performance of this Agreement, or (iii) reimbursement of the cost thereof by the WTSC in whole or in part, whichever first occurs.

30.2. Any property of the WTSC furnished to the SUB-RECIPIENT shall, unless otherwise provided herein or approved by the WTSC, be used only for the performance of this Agreement.

30.3. The SUB-RECIPIENT shall be responsible for any loss or damage to property of the WTSC which results from the negligence

of the SUB-RECIPIENT or which results from the failure on the part of the SUB-RECIPIENT to maintain and administer that property in accordance with sound management practices.

- 30.4. If any WTSC property is lost, destroyed, or damaged, the SUB-RECIPIENT shall immediately notify the WTSC and shall take all reasonable steps to protect the property from further damage.
- 30.5. The SUB-RECIPIENT shall surrender to the WTSC all property of the WTSC upon completion, termination, or cancellation of this Agreement.
- 30.6. All reference to the SUB-RECIPIENT under this clause shall also include SUB-RECIPIENT's employees, agents, or sub-contractors.

#### 31. WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement.

### 32. DESIGNATED CONTACTS

The following named individuals will serve as designated contacts for each of the parties for all communications, notices, and reimbursements regarding this Agreement:

The Contact for the SUB-RECIPIENT is:	The Contact for WTSC is:
Bill Preston Bill.Preston@yakimawa.gov 509-576-6754	Debi Besser dbesser@wtsc.wa.gov 360-725-9890 ext.

#### 33. AUTHORITY TO SIGN

The undersigned acknowledge that they are authorized to execute this Agreement and bind their respective agencies or entities to the obligations set forth herein.

**IN WITNESS WHEREOF**, the parties have executed this Agreement.

City of Yakima		
Signature		
Printed Name	 	

Title	
 Date	
WASHINGTON TRAFFIC SAFETY COMMISS	ION
Signature	
Drinted News	
Printed Name	
Title	
Date	
Date	

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# BUSINESS OF THE CITY COUNCIL YAKIMA, WASHINGTON AGENDA STATEMENT

Item No. 6.E.

For Meeting of: August 2, 2021

**ITEM TITLE:** Resolution ratifying the declaration of an emergency and authorizing

execution of all applicable contracts for the labor and materials to replace 340 linear feet of failed sanitary sewer collection pipe

SUBMITTED BY: Scott Schafer, Director of Public Works

David Brown, Assistant Director of Public Works

Mike Price, Wastewater/Stormwater Division Manager, 249-6815

### SUMMARY EXPLANATION:

The City of Yakima (City) maintains over 350 miles of sanitary sewer collection pipelines. A 320 linear foot segment of concrete sanitary sewer pipe in the vicinity of Nob Hill Boulevard and 20th Ave. and a 20 linear foot segment along 20th Ave. were found to be inaccessible and unmaintainable in their existing condition. The pipe segments required immediate replacement to ensure effective wastewater conveyance.

Wastewater Division staff followed the City's Emergency Purchasing Policy in contracting with TTC Construction, Inc. for emergency replacement of the pipe segments. The project includes excavation, replacement of the failed concrete pipe with pvc pipe, and surface restoration.

The final cost of the project is estimated at \$130,000, resulting in the need to seek ratification by the City Council via Resolution, in accordance with the City of Yakima Administrative Code ADM 3-500 City/County Procurement Manual which requires approval by the City Council for emergency costs exceeding \$50,000. The approved Emergency Purchase Order Justification Form is attached for City Council review. Te emergency pipe replacement is funded through Wastewater Capital Fund 476.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Public Safety

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Adopt Resolution

# ATTACHMENTS:

# **Description**

- Resolution Emergency Repair 20th Ave Sewer
- Emergency PO Justification

# **Upload Date**

7/21/2021 7/21/2021

# Туре

Resolution

Backup Material

# RESOLUTION NO. R-2021-\_\_\_\_

### A RESOLUTION

ratifying the declaration of an emergency and authorizing execution of all applicable contracts for the labor and materials to replace 340 linear feet of failed wastewater collection pipe.

**WHEREAS**, Article VI, section 6 of the City of Yakima Charter and the Yakima Municipal Code Chapter 1.80 provide that the City Council may declare an emergency and waive the bidding requirement for supplies, material, equipment or services costing more than \$50,000; and

**WHEREAS**, RCW 39.04.280 provides for emergency public works projects to move forward without complying with bidding requirements; and

**WHEREAS**, a 320 linear foot segment of sanitary sewer collection pipe along 20<sup>th</sup> Avenue and Nob Hill Boulevard and a 20 linear foot segment along 20<sup>th</sup> Avenue were found to be inaccessible and unmaintainable in their current condition; and

**WHEREAS**, these segments of sanitary sewer pipes required immediate replacement to ensure reliable conveyance of wastewater to the treatment plant; and

**WHEREAS**, the Wastewater Division did not have the expertise or tools to replace the pipe itself and the repairs were required immediately, so a third party was necessary to complete the emergency repairs; and

**WHEREAS**, an emergency was declared by the City Manager on July 20, 2021, allowing the Wastewater Division to secure the services of TTC Construction, Inc. to replace the pipe; and

**WHEREAS**, the sanitary sewer pipe replacement cost is estimated at \$130,000, resulting in the need to seek ratification by City Council via resolution, in accordance with City of Yakima Administrative Code ADM 3-500 City/County Procurement Manual which requires approval by City Council for emergency costs exceeding \$50,000; and

**WHEREAS**, the City Council deems it to be in the best interest of the City and its residents to ratify the City Manager's declaration of an emergency, and authorize the execution of all necessary documents for contracts for the labor and materials for the replacement of the sanitary sewer pipe, now, therefore,

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The emergency, as declared on July 20, 2021 by the City Manager is hereby ratified, the City Council resolves that there was an emergency, and the City Manager's execution of all appropriate documents for the labor and materials for the replacement of the sanitary sewer pipe without calling for bids, is hereby ratified and approved.

**ADOPTED BY THE CITY COUNCIL** this 2<sup>nd</sup> day of August, 2021.

 Patricia Byers, Mayor

ATTEST:	
Sonya Claar Tee, City Clerk	_



# **City of Yakima**

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# **Emergency Purchase Order Justification**

Reques	tor Name:	Your Department/Division:	
Requestor Phone:  Requested Vendor:  Vendor's Address:		Requisition (PR) Number:	
		Cost Estimate (incl. TAX):	
		Vendor E-Mail :	
Vendor	Contact Name:	Vendor Phone:	
1.	What is the emergency situation? Describe are/may be a result of this emergency. (Atta	damages or loss of property or essential services that ch extra sheet if necessary.)	
2.	What labor and/or materials are required? A	ttach a copy of your quote or estimate.	
3.	Did vendor quote prevailing wages, if applica	ble (e.g. repairs, construction, maintenance)?	
	Yes No		
4.	Was vendor informed of the Intent and Affida	avit filing requirements with L&I?	
	Yes No		
5.	Does vendor have a current certificate of ins <a href="http://cityice/purchasing/contractor-list/">http://cityice/purchasing/contractor-list/</a>		
	Yes No		
<ol><li>Are federal funds being used? If federal funds are being used, a cost price an must be done at earliest opportunity and a copy sent to Purchasing.</li></ol>		·	
	Yes No		
	STATEMENT OF NEED:  My division's recommendation for an emergency pur upon an objective review of the emergency situation a	chase order and waiver of the quote or bid requirements is based appears to be in the best interest of the City.	
		or if any change orders to this purchase increase the amount to epare necessary information (Resolution) to advise City Council that ediate action.	
	Signature of Division Manager	 Date	
	2.		
	2. Signature of Department Head	Date	
	Recommendation of Approval by Purchasing Man		
	4Approval by City Manager	Date	



# BUSINESS OF THE CITY COUNCIL YAKIMA, WASHINGTON AGENDA STATEMENT

Item No. 6.F.

For Meeting of: August 2, 2021

**ITEM TITLE:** Resolution ratifying the declaration of an emergency and authorizing

the rental of a biosolids dewatering centrifuge for the Wastewater

**Treatment Plant** 

SUBMITTED BY: Scott Schafer, Director of Public Works

David Brown, Assistant Director of Public Works

Mike Price, Wastewater/Stormwater Division Manager, 249-6815

### **SUMMARY EXPLANATION:**

Mechanical issues temporarily prevented the City's Wastewater Treatment Plant's (WWTP) biosolids dewatering centrifuges from providing the biosolids dewatering capacity required to maintain economical biosolids transport for beneficial use. The Wastewater Division followed the City's Emergency Policy in securing a rental centrifuge from Aspen Rentals to restore the WWTP's required biosolids dewatering capacity.

The cost of the centrifuge rental is estimated at approximately \$100,000 for a six-month period if needed, resulting in the need to seek ratification by the City Council via Resolution, in accordance with City of Yakima Administrative Code ADM 3-500 City/County Procurement Manual which requires approval by the City Council for emergency costs exceeding \$50,000. The approved Emergency Purchase Order Justification Form and Aspen Rental Agreement are attached for City Council review. The centrifuge rental is funded through Wastewater Operating Fund 473.

ITEM BUDGETED:	Yes

STRATEGIC PRIORITY: Public Safety

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

**RECOMMENDATION:** 

Adopt Resolution

ATTACHMENTS:

Description Upload Date Type

	Resolution Emergency Centrifuge Rental	7/21/2021	Resolution
D	Emergency PO Justification	7/20/2021	Backup Material
D	Rental Agreement	7/20/2021	Contract

# RESOLUTION NO. R-2021-

### **A RESOLUTION**

ratifying the declaration of an emergency and authorizing the rental of a biosolids dewatering centrifuge for the City's Wastewater Treatment Plant.

**WHEREAS**, Article VI, section 6 of the City of Yakima Charter and the Yakima Municipal Code Chapter 1.80 provide that the City Council may declare an emergency dispensing with the necessity for bidding for services, material, and equipment and supplies costing more than \$50,000; and

**WHEREAS**, unexpected and unforeseen mechanical issues that were not a result of failure to maintain the centrifuges, prevented the Wastewater Treatment Plant (WWTP) centrifuges from providing the required biosolids dewatering capacity; and

**WHEREAS**, the WWTP required additional biosolids dewatering capacity to maintain economical transport of dewatered biosolids for beneficial use; and

**WHEREAS**, an emergency was declared by the City Manager on July 9, 2021 in order to expeditiously restore required biosolids dewatering capacity; and

**WHEREAS**, the Wastewater Division secured the rental of a biosolids dewatering centrifuge from Aspen Rentals, Inc. to restore biosolids dewatering capacity; and

**WHEREAS**, the City Council deems it to be in the best interest of the City and its residents to ratify the City Manager's declaration of an emergency, and authorize the execution of all necessary documents for contracts for the labor and materials for the rental of a biosolids dewatering centrifuge, now, therefore,

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The emergency, as declared on July 9, 2021 by the City Manager is hereby ratified, the City Council resolves that there is an emergency and adopts the foregoing recitals as findings, and the City Manager's execution of all appropriate documents for the rental of a biosolids dewatering centrifuge without calling for bids, is hereby ratified and approved.

**ADOPTED BY THE CITY COUNCIL** this 2<sup>nd</sup> day of August, 2021.

ATTEST:	Patricia Byers, Mayor
Sonya Claar Tee, City Clerk	



# City of Yakima

# 2108E

# **Emergency Purchase Order Justification**

Requesto	r Name: Mike Price	Your Department/D	ivision:
Requesto	r Phone: 5092496815	Requisition (PR) Nu	
Requeste	d Vendor: Aspen Rentals	Cost Estimate (incl	. <b>TAX):</b> 100,000
	ghway 288, Angleton, TX 77515	Vendor E-Mail :	lwortham@aspen-rentals.com
	ontact Name: Lance Wortham	Vendor Phone:	(979) 236-2464
a W	What is the emergency situation? Desire/may be a result of this emergency WTP biosolids de-watering centrifuges are auling of liquid biosolids.	. (Attach extra sheet if neces	ssary )
2. W	Vhat labor and/or materials are requir	ed? Attach a copy of your gu	uote or estimate
	ental of a biosolids dewatering centrifuge.		esta di delimato.
	id vendor quote prevailing wages, if a	applicable (e.g. repairs, const	truction, maintenance)?
	Yes	No ×	,,
4. W	as vendor informed of the Intent and		with L&I?
	Yes	No x	
5. Do <u>ht</u>	oes vendor have a current certificate ttp://cityice/purchasing/contractor-list/	of insurance on file with the	City? Check ICE:
	Yes	No 🗌	
6. Ar	re federal funds being used? If feder ust be done at earliest opportunity a	ral funds are being used, a c nd a copy sent to Purchasing	ost price analysis J.
	Yes	No ×	
	TATEMENT OF NEED:		
up	y division's recommendation for an emerger on an objective review of the emergency situ	ncy purchase order and waiver of ation and appears to be in the best	the quote or bid requirements is based interest of the City.
φo	understand that if this purchase is over \$50,000 or over, that our division must initiate a ere has been an emergency situation requiring	and prepare necessary information g immediate action.	this purchase increase the amount to (Resolution) to advise City Council that
1.	Date:	ally signed by Michael A. Price 2021.07.02 11:51:08 -07'00'	7/2/21
	Signature of Division Manager		Date 7/2 /2 /
2.	Signature of Department Head		Date
3.	Maria Marhue		7/7/21
	Recommendation of Approval by Purchasin	ng Manager	Date
4.	Approval by City Manager		Date

Please complete entire form and forward to Purchasing.

Purchasing will forward to the City Manager for final approval.



# **EQUIPMENT RENTAL AGREEMENT**

# Section 1 - PARTIES OF THIS AGREEMENT

This Equipment Rental Agreement is between Aspen Rentals, Inc., a Texas Corporation, located at 23603 N. Hwy. 288 in Angleton, Texas 77515 ("Lessor") and City of Yakima, WA. ("Lessee").

# Section 2 - NOTICES

Any notice, payment or document required or permitted to be delivered there under, except for the notice of payment required pursuant to the terms hereof, shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Certified Mail, addressed to the parties hereto at:

addressed to the parties hereto	at:
LESSOR:	
Aspen Rentals, Inc	
23603 N Highway 288	
Angleton, Tx 77515	
LESSEE:	
Bill to Address:	Ship to Address:
129 N. 2 <sup>nd</sup> Street	2220 East Viola Ave
Yakima, WA 98901	Yakima Washington 98901
AP Contact: Mike Price	Phone: 509.728.8104
Email: mike.price@yakimawa	a.gov





AW Initial here

# Section 3 - RENTAL EQUIPMENT:

Subject to the terms and conditions hereinafter set forth, Lessor hereby leases to Lessee, and the Lessee hereby rents from Lessor a GEA Westfalia Model #CA-450-00-02 Decanter Centrifuge, more specifically described and pictured as follows:



- GEA- Westfalia, Model# CA-450-00-02, Decanter Centrifuge
- 40 Hp main drive and a 15 Hp back drive, pulling 3,200rpms.
- · Large, air-conditioned, control room.
- Centrifuge bowl is approximately 18.5" wide by 56" long, 10-degree pitch.
- Electronic controls for bowl, conveyor, pumps, and polymer. (Conveyor is fully hardened.)
- 4" Sludge Feed Pump
- Flow meter for measuring the flow rate.
- Aspen Rentals polymer emulsion blending system and emulsion feed pump.
- Dewatered solids screw conveyor system.
- Control system with VFD, panel view operator interface and scroll drive controller.

This centrifuge is a two-phase unit and will require a 480 three phase, 100-amp breaker power supply.

Note: Pursuant to Section 10, Operation, Maintenance, and Repair, parts will be shipped overnight if possible; installation of parts and maintenance of the centrifuge are the responsibility of the Lessee. Technicians are available for onsite repairs if needed, see Section 4 for rates.





# Additional Unit Specifications:

This unit is 8'6" wide by 48' long and 38,000lbs.

VIN#: 1KKVE5121XL116410

License Plate: 055B5008

Initial here



### Section 4 - TERMS

- 1. Unless terminated pursuant to the provisions of Section 15, this Agreement shall commence on a month-to-month basis the day the unit leaves the Aspen Rental facility in Angleton, Texas subject to Lessor approval. This date is expected to be on or approximately 7/6/2021, (the "Commencement Date") and shall expire on or approximately 08/07/2021 (the "Expiration Date"). It is agreed and understood that the prices quoted in this agreement are for 1 month's rental and payment is due within net 30 days. The LESSEE may verbally request a renewal or extension at least ten (10) days prior to the Expiration Date of this contract. Once the terms of this agreement have been satisfied, the rental rates may be extended daily or weekly on a prorated basis. Prorated rental rates are calculated by taking the monthly rate and dividing it by 30.
  - Initial here to accept prorated daily rate and extended terms.
- 2. In the event of a renewal or extension of this Agreement, LESSEE agrees to pay the sums specified herein and to abide by the same terms and conditions specified in this Agreement, and hereby acknowledges, confirms, and ratifies that all terms and conditions of this Agreement other than the increased sums in Section 4, if any, shall remain in full force and effect.

### Section 5 - DELIVERY AND INSTALLATION

Lessee has opted to have the Equipment transported by Lessor, pursuant to Section 6 below.

### Section 6 - RENTAL RATES, LATE CHARGES AND COSTS:

1. Lessee agrees to pay to Lessor rent for the unit and all ancillary Equipment selected in this section, paragraph 6, herein referred to as "Equipment." Rental rates are for 30-day periods of usage unless otherwise stated. Rent payments are due <u>net 30</u> from date of invoice. Rental shall commence when unit leaves Aspen facilities and shall expire when unit or units arrive back at Aspen's facility and pass all inspections. The first month's rent will be billed when the unit is shipped. A deposit of <u>\$ 0.00</u> is required prior to shipment. The deposit is refunded after the rental unit is returned and inspected for damages by Lessor. Deposit funds are subject to be utilized as payment for damages to the unit.

Initial here to accept terms of deposit funds.





# Section 6 - RENTAL RATES, LATE CHARGES AND COSTS continued:

- All payments from Lessee shall be made to Lessor by certified funds or electronic payment.
   (Preferred method of payment is ACH)
- 3. Late Charges and Fees
  - a. The execution of this agreement (1) authorizes Lessor to charge interest on outstanding balances past payment terms at an annual percentage rate of 18% or to the extent permitted by law, whichever is less, (2) authorizes Lessor to charge a late fee of five percent (5%) on outstanding balances past payment terms (3) authorizes the Lessee's bank and trade references to release any requested information to Lessor for use in the evaluation of this request for credit extension, and (4) acknowledges that Customer has read Lessor terms and conditions and agrees to be bound by their terms.
  - b. It is agreed that monies owed to Lessor past net 30 days as per the invoice date, must be paid prior to pickup of the press for return. Rental charges will continue to accrue until past due monies are paid to Lessor and the unit is returned to the Lessor's facility in Angleton, Texas.
  - c. It is expressly understood that all payment due dates are net 30 days from the invoice date.
  - d. It is further understood and agreed that Lessor has full rights to legally access the project sites to which their Equipment is being utilized for the sole purpose to safely shut down all use of Lessor's Equipment for late or non-payments by Lessee.
- Lessee further agrees that any Technician whom Lessee intends to operate the Equipment shall be fully trained in the operation of the Equipment and has been thoroughly trained in the safe operation of the unit.
- 5. If Lessee contends that it is not obligated to pay sales tax on this transaction, Lessee must attach a copy of a sales tax exemption certificate from Lessee or Lessee's contracted client. If none is attached, Lessee will be responsible for all State and Local Sales Tax associated with this Agreement.
- See Equipment pricing options and make your selection:

<u>PwH</u> Initial here





\*\* All rental rates are based on a 3-month minimum. Prices are per month, per unit\*\*

Pricing for Rental Unit Centrifuge: CF 2003 – Westfalia CA-450-00-02	<u>Select</u> ⊠	Daily Hours 24-Hrs	<u>Price</u> \$12,500
Pricing for Optional Ancillary Equipment	Select	Daily Hrs.	Price Per Month/ Per
4" Skid Mounted Filtrate Pump w/ VFD		24-Hrs	Piece \$1,850
6" Skid Mounted Filtrate Pump w/ VFD		24-Hrs	\$2,520
4" Positive Displacement Pump		24-Hrs	\$3,360
Submersible Electric Pump		24-Hrs	\$2,220
40' Belt Conveyor w/ Stand and Electrical Controls		24-Hrs	\$2,300
Automated Emulsion Polymer Make-Down System		24-Hrs	\$1,800
Polymer Tank and Mixer Make-Down System		24-Hrs	\$1,800
15 GPM Polymer Dosing Pump w/ VFD and Stand		24-Hrs	\$1,560
50 GPM Polymer Dosing Pump w/ VFD and Stand		24-Hrs	\$1,800
4" In line Grinder w/ VFD Skid		24-Hrs	\$2,760
4" Camlock, 25' Long Hose		24-Hrs	\$120
2" Camlock, 25' Long Hose		24-Hrs	\$120
3/4" Camlock, 25' Long Rubber Polymer Hose		24-Hrs	\$120

full Initial here to acknowledge all selected equipment pricing





# 7. Optional--Technician

Aspen Rentals charges a **minimum daily rate of \$1,200.00** for up to 12 hours of work per technician, if necessary. It is not anticipated that any technician time will be necessary as part of this agreement. However, if technician time is necessary via telephone, the technician will charge the hourly rate of \$135.00 per hour.

- · At least 1 technician will be needed per 12-hour shift
- This rate includes all fees such as hours on-site, standby, driving, hotel and per diem.
- This rate does NOT include airline travel when necessary.
  - o Flights are billed at cost.
- Each additional hour over 12 hours is billed at \$135.00 PER HOUR.
- The daily rate charges begin accruing once your technician departs from Aspen
  Rentals until the time he arrives back to the Aspen Rentals facility. Estimated days of
  travel will be provided if needed.
  - Technician rate will be adjusted for prevailing wages.

# 8. Optional - Transportation

- a. Mobilization shipping is quoted in this section by utilizing Aspen Rentals transport services or by third party at a rate of cost plus a 20% markup. Lessee may use any transporter they choose to save the additional 20%. Lessee must give a 10-day advance for a demobilization date, or Lessee may have additional rental days due to transportation delays or holidays. Mobilization charges are billed net 30 from day equipment leaves LESSOR facility. Demobilization charges are billed net 30 from the day the Equipment arrives back at LESSOR facilities.
- \*\* If Lessee has opted to demobilize press at their own expense. Lessee will be responsible for all incidentals including but not limited to, tires, permits, DOT Violations, tickets, and demurrage time. Lessee will be responsible for crane fees (if needed) even upon Lessee arranged transport\*\*





# Initial here to accept responsibility for LESSEE arranged transport option ONLY.

b. Our transportation fees are as follows:

Transportation Type	<b>Departing From</b>	Arriving To	Total Mileage	Price Each Way
Standard Load	Angleton, TX	Yakima, Wa.	1,800	\$10,140.00
Standard Load	Yakima, Wa.	Angleton, TX	1,800	TBD – see Demobilization above

2wH Initial here to acknowledge transport and or crane fees

# Section 7 – TITLE TO EQUIPMENT:

- The Equipment shall at all times be and remain the sole and exclusive property of Lessor, and Lessee shall have no rights, titles, or interests to the Equipment other than the right to use the Equipment under this Agreement and pursuant to the terms and conditions herein contained.
- By signing this agreement, Lessee agrees that Lessor has full rights, titles and interests to the Equipment and waiving and releasing any lien rights or other interests in and to the Equipment.
- Lessor and Lessee agree Lessor has the requisite authority and right to rent the Equipment to Lessee on the terms and conditions specified herein.

# Section 8 - REMOVAL, INSPECTION AND RETURN

The Equipment shall not be removed from the place of its initial installation without the prior
written consent of Lessor. Lessee shall, at all times, allow Lessor or its agents or
representatives access to the project location and all rental Equipment to examine and inspect
the Equipment.

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- 2. Lessor may shutdown the use of Equipment or can remove the Equipment from Lessee's premises if, after ten (10) days after the Expiration Date or any extension thereof, or upon default of this contract, such Equipment that has not been returned to Lessor. In the event Lessor is forced to retrieve the Equipment from Lessee's premises, Lessor shall be entitled to all removal, storage, transportation and other costs and expenses associated with the
  - retrieval of the Equipment, as well as any late charges and per diem rent accruing after the Expiration Date or any extension thereof. While the Equipment is in Lessee's possession, Lessee agrees to keep the Equipment in good condition and in a safe manner pending such removal.
- 3. Lessee shall be responsible for decontaminating the Equipment and shall deliver the Equipment to Lessor in a clean and acceptable condition to Lessor. It is understood and agreed that decontamination and cleaning are of extreme importance and must comply with US DOT and EPA rules and regulations regarding vehicle/trailer cleanliness and waste transport. Lessee shall give Lessor a written inventory of the condition of the Equipment before its removal.
- 4. Prior to returning the Equipment, Lessor shall have the right to inspect the Equipment for proper decontamination, cleaning, and damage. If damage other than routine wear is found, Lessee shall immediately be financially liable to Lessor for all parts and labor necessary to restore the Equipment to its pre-rent condition.
  - a. The existence and extent of damage and the necessity of repair and/or replacement of the Equipment shall be at Lessor's sole discretion.
  - b. Lessee shall be notified within ten (10) days of return if any damage is alleged, and provided evidence of such damage and an opportunity to dispute such damage within ten (10) days of notification.

# Section 9 - INDEMNITY AND LIMITATION OF LIABILITY

 Lessee agrees to defend, hold harmless and indemnify Lessor for any liability, claim, loss, damage, injury (including personal injury) or expense of any kind or nature caused directly or indirectly by Lessee's property and services at the project site, unless caused by gross negligence by Lessor.





Initial here

- 2. Lessor agrees to defend, hold harmless and indemnify Lessee, its elected and appointed officials, officers, employees, agents and volunteers for any personal liability, claim, loss, damage, personal injury) or expense of any kind or nature caused directly or indirectly by Lessor's property and services at the project site, unless caused by gross negligence by Lessee.
- 3. Notwithstanding the foregoing, under no circumstances shall either party be liable to the other party for any incidental, consequential, special, punitive, or other damages other than actual direct damages to Lessor's Equipment. Any protection against liability for losses or damages afforded any individual or entity by these terms shall apply whether the action in
  - which recovery of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability of any protected individual or entity), indemnity, statute or otherwise except for damages to Lessor's Equipment. To the extent permitted by law, any statutory remedies which are inconsistent with these terms are waived.
- 4. To the extent that a skid mounted belt press or any other Equipment is maintained and operated on site on the trailer that the press or Equipment is delivered on, the Lessee will have the responsibility of ensuring that all OSHA and MSHA regulations are conformed with, pertaining to the safety requirements of all operators on the unit. This includes, but is not limited to, safety rails, enclosures, tie-offs, fall prevention and access points, electrical connections, etc.

### Section 10 - OPERATION, MAINTENANCE AND REPAIR

- Lessee shall comply with and conform to all Municipal, State and Federal laws, including
  without limitation all environmental laws, relating to the maintenance, operation, and repair
  of the Equipment. Lessee shall maintain the Equipment in good condition and running order
  at all times during term of this Agreement and any extensions thereof but shall not be
  responsible for normal wear and tear, save and except filter belts and damage caused by
  Lessee's operations, for which Lessee shall be responsible.
- Maintenance of the unit is the sole responsibility of the Lessee. Replacement parts (non-wear
  items only) for the Equipment will be sent, at Lessor's expense, to the project site upon
  notification from Lessee's representative, unless damage was caused by Lessee. Repairs at





the project site to the Equipment, utilizing the parts sent by Lessor, will be by Lessee's representative.

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- 3. The Equipment will be delivered to Lessee in good working condition, and monetary credit will not be issued for time the Equipment is not in use during the contractual term unless written exception is given by Lessor. Specifically, Lessor's rental Equipment downtime due to; maintenance necessary by Lessee's fault, acts of God, operational and or contractual issues associated with the Lessee's project will not in any way affect the monies owed by the Lessee to the Lessor.
- 4. All additions, attachments, accessories, and repair parts at any time placed in or on the Equipment shall be purchased by Lessee from Lessor and shipped next day to Lessee's location for immediate repair to facilitate limited downtime to repairs. Lessor shall have no responsibility for the maintenance of the Equipment from the time it is picked-up by Lessee until it is returned to Lessor, except as herein provided.
- Lessee agrees and understands that the Equipment shall only be used on non-hazardous sludge. Lessee further acknowledges and confirms that Lessee is responsible for damages to the filters or rollers if damaged by overloading.

# Section 11 - RISK OF LOSS AND INSURANCE

- All risk or loss or damage of the Equipment shall be borne by Lessee from and including the arrival date of this Equipment on Lessee's property through and including the exiting Lessee's property.
- 2. In the event that the Lessee arranges, contracts and/or provides transportation for above listed Equipment, it will be the Lessee's responsibility to ensure that suitable insurance, as defined by attached rider specifications, is in place from the date the Equipment leaves Lessor's property to the time that it is returned to Lessor's property at the end of the term of this contract.
- 3. At all such times, Lessee shall have and maintain insurance with respect to the Equipment against risks of casualty, fire (including so-called extended coverage), theft and all other





insurable risks, in the amounts specified on Exhibit "A," attached hereto and incorporated herein by reference. All such policies shall name the Lessor as an additional insured as

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respects liability arising from work or operations performed by or on behalf of Lessee (excluding Workers' Compensation/Employer's Liability coverage), but only to the extent losses are caused by: (1) operations performed by or on behalf of the named insured, and (2) Lessee's negligence or willful act or omission. Lessee shall deliver to Lessor, a certificate of insurance, the policies themselves, or other evidence of insurance satisfactory to Lessor on

or before the Commencement Date. Lessee covenants and warrants not permitting such insurance to lapse and, should such a lapse occur, to promptly notify Lessor and reinstate such insurance coverage.

# Section 12 - DAMAGE, DESTRUCTION OR THEFT

Notwithstanding damage caused by something other than normal wear and tear to the Equipment, Lessee agrees to continue to pay the amounts set forth in Section 4. Lessee shall have the responsibility for the repair of the damaged Equipment, and Lessee shall repair or cause the Equipment to be repaired after the damage to the satisfaction of the Lessor and at Lessee's sole cost and expense. In every such instance, Lessor will reimburse Lessee for the cost of repair to the extent Lessor recovers any insurance proceeds covering such damage. In the event the Equipment is destroyed, stolen or damaged beyond repair, Lessee shall forthwith pay to Lessor the agreed-upon replacement value set forth below for the Equipment less (a) the salvage value, if any, of the Equipment, and (b) any insurance proceeds actually received by Lessor because of such destruction, theft, or damage. The parties hereto agree that the replacement value of the Equipment during the term of this Agreement and any extension or renewal period that is specified on page 13 of this contract in Section 18, Article 2. Property Equipment Coverage for the Centrifuge and trailer.

# Section 13 - ASSIGNMENT AND SUBRENT BY LESSEE

Lessee may not assign this Agreement or sub rent the Equipment without the prior written consent of Lessor. In the event Lessor consents to any such assignment or subletting, such assignment or subletting shall not relieve Lessee of its obligations under this Agreement unless otherwise agreed to by Lessor in writing.





# Section 14 - ASSIGNMENT BY LESSOR; RIGHTS OF ASSIGNEE

The Lessor shall have the right to sell or assign this Rent Agreement, including its rights, title

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and interest to the Equipment and the rent and other charges reserved herein, without notice to or the consent of Lessee. In the event of any such assignment by the Lessor, the Lessee acknowledges that the assignee shall thereupon acquire all of the rights and remedies possessed by or available to the Lessor. Upon receiving written notice of any such assignment, the Lessee shall thereafter make rental payments as therein directed.

### Section 15 - EVENTS OF DEFAULT AND REMEDIES

- 1. The following events shall be deemed to be events of default by the Lessee under this Agreement:
  - a) Lessee shall fail to pay any installment of the rent or any of the other amounts owing under Section 4 when due and payable, and such failure shall continue for a period of thirty (30) days.
  - b) Lessee fails to comply with any other term, provision or covenant of this Rent Agreement and does not cure such failure within thirty (30) days after receipt of written notice thereof by the Lessor.
  - c) A change of control within Lessee occurs. For purposes hereof, the term "Change in Control" shall be deemed to occur if (1) there shall be any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the assets of the Lessee, or (2) the directors or partners of any entity of the Lessee shall approve any plan or proposal for liquidation or dissolution of the Lessee, or (3) any person shall become the beneficial owner of 51% or more of the outstanding interests of any entity of the Lessee other than those persons who are, as of the date of this Agreement, beneficial owners of any entity of the Lessee.





- d) Lessee becomes insolvent or unable to meet its obligations as they mature, make a general assignment for the benefit of creditors, or consent to the appointment of a trustee or a receiver, or admit in writing its inability to pay its debts as they mature.
- e) The appointment of a trustee or receiver for the Lessee or for a substantial part of the properties of the Lessee without the consent of the Lessee.

f) The commencement of bankruptcy, reorganization, arrangement, insolvency, or liquidation proceedings by or against the Lessee and, if instituted against it, the same being consented to by the Lessee or remaining undismissed for a period of ninety (90) days.

2. Upon the occurrence of any event(s) of default, the Lessor shall have the right to declare the balance of the rental and other charges payable hereunder to be immediately due and payable and shall have the immediate right to retake and retain the Equipment. Lessor shall further have any and all other rights afforded to it by law or at equity. Lessee and each surety, endorser, and guarantor, if any, waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law. In the event a lawsuit is necessary to enforce and protect Lessor's rights and interest under this Agreement, Lessee agrees to pay Lessor's attorneys' fees and legal costs.

### Section 16 – TERMS AND CONDITIONS

The terms, provisions, covenants, and conditions contained in this Rent Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, representatives, successors, and permitted assigns except as otherwise expressly provided.

# Section 17 - CHOICE OF LAW AND JURISDICTION

In the event of a dispute regarding the terms, provisions, construction or enforcement of this Agreement, the parties agree that law shall apply, and Lessee hereby submits itself to the sole jurisdiction of courts sitting in Yakima County, Washington, for purposes of resolving such a dispute.





# Section 18 - ENTIRE AGREEMENT

This instrument including Addendum A contains the entire Agreement between the parties. This Agreement may not be amended, altered, or changed except by an instrument in writing signed by both parties hereto.

AWH Initial here

# Section 19 - ASPEN RENTALS INSURANCE REQUIREMENTS FOR LESSEE

# 1. Comprehensive General Liability

a. With limits not less than:

Bodily injury:

- \$1,000,000 any one occurrence
- \$1,000,000 aggregate

Property damage:

- \$1,000,000 aggregate
- b. Including the following:
- Contractual liability applying to the liability assumed by the Lessee under this contract.
  - Projects/Completed Operations Coverage
  - · Lessee's Protective Liability, insuring work sub-let.
  - Personal Injury.
  - Lessor shall be included as an additional insured.

# 2. Property Equipment Coverage for the unit and conveyor

- Coverage for the rental "Equipment" of \$250,000.00 (per unit) for primary Equipment.
- Coverage for the rental "Equipment" of \$25,000.00 (per unit) for portable pumps.
- Coverage for the rental "Equipment" of \$25,000.00 (per unit) for polymer systems.
- Coverage for the rental "Equipment" of \$23,000.00 (per unit) for stacking conveyor.

### 3. Workers Compensation

a. Statutory requirement for State in which work is performed.

Employer's liability with \$100,000 limits.



ANH Initial here to acknowledge insurance requirements.



# Section 20 - EXECUTION OF CONTRACT AGREEMENT

LESSEE: City of Yakima, Washington
Please sign: Black
Please print: Robert Harrison
Title: City Manager
Date: July 9, 2021
LESSOR: ASPEN RENTALS, INC
Please sign:
Please print: <u>Lance Wortham</u>
Title: Controller
Date: 7/2/202/

Thank you for your business.

Proof of Insurance

Tax Certificate (if applicable)

Please submit the following items with the executed contract:



#### Addendum A

- Rental cost for three (1) month period. The proposal should state when the rental period begins and ends.
  - a. Begins on the day, the equipment ships. From port hole to port hole.
  - b. Ends on the day the equipment is received by Aspen.
- 2) Cost for additional time if the equipment needed for longer than three (1) months.
  - a. (Assumes that the equipment is available for longer than three (1) months.)
  - b. Rental will continue at the rate of \$12,500 per month. Minimum of 1 month.
- Deduct if rental equipment is needed for less than (1) three months (one month minimum)
  - a. Rental will be pro-rated at an amount of \$416.67 per day
    - i. Rent continues until the day the machine is returned to Aspen Rentals.
- Cost for supervision to install, train and/or remove equipment
- 5) Cost for labor to operate equipment 24/7 during the rental period. N/A. Lessor agrees that Lessee's personnel have adequate training and ability to operate this equipment.
- 6) Transportation of equipment to and from City of Yakima, Wa.
  - a. \$10,140.00
- Cost to train City of Yakima personnel to operate centrifuge with periodic supervision by equipment supplier.
  - a. A technician will be provided to train City of Yakima employees to run the centrifuge if necessary. Training can take anywhere from 3 to 10 day depending on the experience level of the trainees.
- 8) Confirmation in proposal that the equipment checked/ inspected by equipment supplier PRIOR to shipment confirming that all equipment is in good working order – ready to run
  - a. Aspen Rentals will verify that the equipment is fully operational upon shipping.
    - Credit for damaged equipment not caused by shipping will be at \$416.67 per day
    - Damage could occur during shipping, which is the responsibility of Lessor since Lessee is paying for Lessor to ship the Equipment.
- If there is a major equipment breakdown (i.e., repairs take 5 days or longer), the credit to be received by City of Yakima
  - a. For repairs taking more than 5 business days a credit in the amount of \$416.67 per day will be granted.
    - Business day is determined as Monday Friday





- 10) Who is responsible for the cost of repairs?
  - a. Aspen Rentals will be responsible for all repairs with the following exception
    - i. Wearable items such as:
      - 1. Sludge seals
      - Damage caused by processing solid fore Rocks, Wood knots or other large foreign objects entering the centrifuge.
      - 3. Damage caused by electrical spikes or low voltage to the equipment.
      - 4. Any damage to the scroll or bowl.
- 11) Who is "acceptable" to accomplish the repairs?
  - a. Aspen Rentals is responsible for seeing that all repairs are completed in a timely manner by Aspen technicians or other approved personnel.
- 12) proposed payment terms
  - a. Payment for shipping will be due at the time of shipping.
  - b. Rent will be due Net 30
- 13) How long after a Po is issued will the equipment be ready to ship? (i.e., 1 wks.)
  - a. Once a PO is issued and the unit can typically be mobilized in 72 hours and on site within 5-7 days. Keep in mind the Monday 07/05/2021 is a holiday.



# BUSINESS OF THE CITY COUNCIL YAKIMA, WASHINGTON AGENDA STATEMENT

Item No. 6.G.

For Meeting of: August 2, 2021

ITEM TITLE: Resolution authorizing an Agreement with Infrastructure

Management Services for the Pavement Condition Index (PCI) of

the City's streets

SUBMITTED BY: Scott Schafer, Director of Public Works

Bill Preston, City Engineer - (509) 575-6754

#### SUMMARY EXPLANATION:

Pavement Condition Index (PCI) ratings are utilized in pavement asset management to assist in prioritizing the City of Yakima's (City's) road maintenance projects. It is also used to determine the cost of Developer's Excavation Permits and is required to be listed in some grant applications. Typically, PCI's are performed every two years. The City last completed its PCI ratings in 2016. This project will rate the condition of approximately 450 centerline miles of City streets.

The City utilized the State bidding process to advertise for bids for a pavement condition assessment of its City streets. Infrastructure Management Services (IMS) was selected as the lowest bidder with a bid of \$79,980. IMS has been determined to be qualified to perform the required work. A Professional Services Agreement with IMS has been attached for City Council review in the amount not to exceed \$79,980 and will be funded utilizing REET 2 funds.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Public Safety

#### APPROVED FOR SUBMITTAL BY THE CITY MANAGER

#### RECOMMENDATION:

Adopt Resolution

#### ATTACHMENTS:

	Description	Upload Date	Type
3	Resolution PCI	7/22/2021	Resolution
3	Agreement for PCI	7/27/2021	Contract

# RESOLUTION NO. R-2021-\_\_\_\_

A RESOLUTION

authorizing a Professional Services Agreement with Infrastructure Management Services to provide a Pavement Condition Index (PCI) rating for the streets within the City of Yakima.

**WHEREAS**, the City of Yakima (City) is required to establish Pavement Condition Index (PCI) ratings for its streets; utilized in pavement asset management to assist in prioritizing road maintenance projects, to determine the cost of Developer's Excavation Permits and is required by some grant applications; and

**WHEREAS**, this project will rate the condition of approximately 450 centerline miles of City streets; and

**WHEREAS**, the City no longer has the staff to perform such work or has the expertise to perform these ratings; and

**WHEREAS**, the City utilized the State bidding process to advertise for bids for a pavement condition assessment of its City streets; selecting Infrastructure Management Services as the lowest bidder with a bid of \$79,980; and

**WHEREAS**, the City desires to enter into a Professional Services Agreement with IMS to perform the PCI ratings as they have been determined to be qualified to do the work; and

WHEREAS, this project will be funded utilizing REET 2 funds; and

**WHEREAS**, the City Council finds that it is in the best interests of the City and its residents to enter into this Agreement with IMS to perform the PCI ratings; now, therefore,

#### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The City Manager is hereby authorized to enter into an Agreement with Infrastructure Management Services, attached hereto and incorporated herein by this reference, not to exceed Seventy-Nine Thousand, Nine Hundred and Eighty Dollars (\$79,980) to provide the Professional Services as described in the Agreement.

**ADOPTED BY THE CITY COUNCIL** this 2<sup>nd</sup> day of August, 2021.

ATTEST:	Patricia Byers, Mayor
Sonya Claar Tee, City Clerk	

For City of Yakima Use Only:
Contract No Project No.
Resolution No SOQ No
SUQ NO

# AGREEMENT BETWEEN CITY OF YAKIMA, WASHINGTON AND INFRASTRUCTURE MANAGEMENT SERVICES, LLC

#### FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on this _	day of	, 2021, by and between the
City of Yakima, Washington, a Washington municipal	corporation with its	s principal office at 129 North Second
Street, Yakima, WA 98901, hereinafter referred to as	s "CITY," and Infra	structure Management Services, LLC
(IMS), with its principal office at 8380 S Kyrene Ro	d., #101, Tempe, A	AZ 85284, hereinafter referred to as
"ENGINEER"; said consultant will provide engineering	services under this	AGREEMENT for the 2021 Pavement
Condition Assessment project on behalf of the City o	f Yakima, herein ref	ferred to as the "PROJECT."

# WITNESSETH: RECITALS

WHEREAS, CITY desires to retain the ENGINEER to provide engineering services and staff support for developing the PROJECT, as described in this AGREEMENT and subsequent Amendments thereto; and

WHEREAS, ENGINEER represents that it has available and offers to provide personnel with knowledge and experience necessary to satisfactorily accomplish the work within the required time and that it has no conflicts of interest prohibited by law from entering into this AGREEMENT;

NOW, THEREFORE, CITY and ENGINEER agree as follows:

#### SECTION 1 INCORPORATION OF RECITALS

1.1 The above recitals are incorporated into these operative provisions of the AGREEMENT.

#### SECTION 2 SCOPE OF SERVICES

- 2.0.1 ENGINEER agrees to perform those services described hereafter. Unless modified in writing by both parties, duties of ENGINEER shall not be construed to exceed those services specifically set forth herein.
- 2.0.2 ENGINEER shall use its best efforts to maintain continuity in personnel and shall assign, , Sadaf Khosravifar, PhD, PE, as Principal-in-Charge throughout the term of this AGREEMENT unless other personnel are approved by the CITY.
- 2.1 <u>Basic Services</u>: ENGINEER agrees to perform those tasks described in EXHIBIT A PROJECT SCOPE OF SERVICES (PROJECT) which is attached hereto and made a part of this AGREEMENT as if fully set forth herein.
- 2.2 Additional Services: CITY and ENGINEER agree that not all WORK to be performed by ENGINEER can be defined in detail at the time this AGREEMENT is executed, and that additional WORK related to the PROJECT and not covered in Exhibits A and B may be needed during performance of this AGREEMENT. CITY may, at any time, by written order, direct the ENGINEER to revise portions of the PROJECT WORK previously completed in a satisfactory manner, delete portions of the PROJECT, or request that the ENGINEER perform additional WORK beyond the scope of the PROJECT WORK. Such changes hereinafter shall be referred to as "Additional Services."
  - 2.2.1 If such Additional Services cause an increase or decrease in the ENGINEER'S cost of, or time required for, performance of any services under this AGREEMENT, a contract price and/or

- completion time adjustment pursuant to this AGREEMENT shall be made and modified in writing and accepted by the parties hereto.
- 2.2.2 Compensation for each such request for Additional Services shall be negotiated by the CITY and the ENGINEER according to the provisions set forth in EXHIBIT A PROJECT SCOPE OF SERVICES, attached hereto and incorporated herein by this reference, and if so authorized, shall be considered part of the PROJECT WORK. The ENGINEER shall not perform any Additional Services until so authorized by CITY and agreed to by the ENGINEER in writing.
- 2.3 The ENGINEER must assert any claim for adjustment in writing within thirty (30) days from the date of the ENGINEER's receipt of the written notification of change.

# SECTION 3 CITY'S RESPONSIBILITIES

- 3.1 CITY-FURNISHED DATA: The CITY will provide to the ENGINEER all technical data in the CITY'S possession relating to the ENGINEER'S services on the PROJECT including information on any pre-existing conditions known to the CITY that constitute hazardous waste contamination on the PROJECT site as determined by an authorized regulatory agency.
- 3.2 ACCESS TO FACILITIES AND PROPERTY: The CITY will make its facilities reasonably accessible to ENGINEER as required for ENGINEER'S performance of its services and will provide labor and safety equipment as reasonably required by ENGINEER for such access.
- 3.3 TIMELY REVIEW: The CITY will examine the ENGINEER'S studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CITY deems appropriate; and render in writing decisions required of CITY in a timely manner. Such examinations and decisions, however, shall not relieve the ENGINEER of any contractual obligations nor of its duty to render professional services meeting the standards of care to its profession.
- 3.4 CITY shall appoint a CITY'S Representative with respect to WORK to be performed under this AGREEMENT. CITY'S Representative shall have complete authority to transmit instructions and receive information. ENGINEER shall be entitled to reasonably rely on such instructions made by the CITY'S Representative unless otherwise directed in writing by the CITY, but ENGINEER shall be responsible for bringing to the attention of the CITY'S Representative any instructions which the ENGINEER believes are inadequate, incomplete, or inaccurate based upon the ENGINEER'S knowledge.
- 3.5 Any documents, services, and reports provided by the CITY to the ENGINEER are available solely as additional information to the ENGINEER and will not relieve the ENGINEER of its duties and obligations under this AGREEMENT or by law. The ENGINEER shall be entitled to reasonably rely upon the accuracy and the completeness of such documents, services and reports, but shall be responsible for exercising customary professional care in using and reviewing such documents, services, and reports and drawing conclusions therefrom.

#### SECTION 4 AUTHORIZATION, PROGRESS, AND COMPLETION

4.1 In signing this AGREEMENT, CITY and ENGINEER agree that at such time as the CITY provides ENGINEER specific written authorization to proceed with one or more of the tasks described in EXHIBITS A and B, ENGINEER shall begin work. The time for completion of each task shall be as mutually agreed.

#### SECTION 5 COMPENSATION

5.1 COMPENSATION ON A LUMP SUM BASIS: For the services described in Exhibit A (Tasks 1, 4, 8, and 9), compensation shall be paid per lump sum fee, according to those tasks and amounts identified in Exhibit B - <u>Schedule of Fees</u>, attached hereto and incorporated herein by this reference, on a percent completion basis. -The total maximum amount of compensation to the ENGINEER for identified lump sum tasks shall not exceed \$18,230.00 without the written agreement of the CITY and the ENGINEER.

COMPENSATION ON A UNIT BASIS AT SPECIFIC RATES: For the services described in Exhibit A (Tasks 2, 3, 5, 6, and 7), compensation shall be according to Exhibit B - Schedule of Fees, attached hereto and incorporated herein by this reference, on a unit basis for each specifically identified task. The

total maximum amount of compensation to the ENGINEER for identified unit basis tasks shall not exceed \$61,750.00 without the written agreement of the CITY and the ENGINEER.

- 5.2 Unless specifically authorized in writing by the CITY, the total budgetary amount for this PROJECT shall not exceed the amount set forth in Section 5.1 above. The ENGINEER shall make all reasonable efforts to complete each task within the budget established for that task, and will keep CITY informed of progress toward that end so that the budget can be adjusted if found necessary. The ENGINEER is not obligated to incur costs beyond the indicated budget, as may be adjusted, nor is the CITY obligated to pay the ENGINEER beyond these limits. When any budget has been increased, the ENGINEER's excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase, and provided that the CITY was informed in writing and approved of the additional costs prior to the time such costs were incurred.
- The ENGINEER shall submit to the City's Representative an invoice bi-monthly for payment for PROJECT services completed through the accounting cut-off day of the previous invoice. Such invoices shall be for PROJECT services and WORK performed and costs incurred prior to the date of the invoice and not covered by previously submitted invoices. The ENGINEER shall submit with each invoice identification of the work performed, a summary of tasks performed, percentage complete of lump sum tasks, and work performed on unit-based tasks, on the PROJECT for the current billing period, and any other supporting materials determined by the CITY necessary to substantiate the costs incurred. CITY will use its best efforts to pay such invoices within thirty (30) days of receipt and upon approval of the WORK done and amount billed. CITY will notify the ENGINEER promptly if any problems are noted with the invoice. CITY may question any item in an invoice, noting to ENGINEER the questionable item(s) and withholding payment for such item(s). The ENGINEER may resubmit such item(s) in a subsequent invoice together with additional supporting information requested.
- If payment is not made within sixty (60) days following receipt of approved invoices, interest on the unpaid balance shall accrue beginning with the sixty-first (61) day at the rate of 1.0% per month or the maximum interest rate permitted by law, whichever is less; provided, however, that no interest shall accrue pursuant to Chapter 39.76 RCW when before the date of timely payment a notice of dispute is issued in good faith by the CITY to the ENGINEER pursuant to the terms of RCW 39.76.020(4).
- 5.5 Final payment of any balance due the ENGINEER for PROJECT services will be made within forty-five (45) days after satisfactory completion of the services required by this AGREEMENT as evidenced by written acceptance by CITY and after such audit or verification as CITY may deem necessary, together with ENGINEER's execution and delivery of a release of all known payment claims against CITY arising under or by virtue of this AGREEMENT, other than such payment claims, if any, as may be specifically exempted by the ENGINEER from the operation of the release in stated amounts to be set forth therein.
- Payment for any PROJECT services and WORK shall not constitute a waiver or release by CITY of any claims, right, or remedy it may have against the ENGINEER under this AGREEMENT or by law, nor shall such payment constitute a waiver, remission, or discharge by CITY of any failure or fault of the ENGINEER to satisfactorily perform the PROJECT WORK as required under this AGREEMENT.

#### SECTION 6 RESPONSIBILITY OF ENGINEER

- The ENGINEER shall be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all plans, reports, and other services furnished by the ENGINEER under this AGREEMENT. The ENGINEER shall, without additional compensation, correct or review any errors, omissions, or other deficiencies in its plans, reports, and other services. The ENGINEER shall perform its WORK according to generally accepted civil engineering standards of care and consistent with achieving the PROJECT WORK within budget, on time, and in compliance with applicable laws, regulations, and permits.
- 6.2 CITY'S review or approval of, or payment for, any plans, reports, and incidental WORK or services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy, completeness, or accuracy of its WORK and the PROJECT WORK. CITY'S review, approval, or payment for any of the services shall not be construed to operate as a waiver of any rights under this AGREEMENT or at law or any cause of action arising out of the performance of this AGREEMENT.

In performing WORK and services hereunder, the ENGINEER and its subcontractors, subconsultants, employees, agents, and representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of CITY in any manner whatsoever. The ENGINEER shall not hold itself out as, nor claim to be, an officer or employee of CITY by reason hereof and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of CITY. The ENGINEER shall be solely responsible for any claims for wages or compensation by ENGINEER's employees, agents, and representatives, including subconsultants and subcontractors, and shall save and hold CITY harmless therefrom.

#### 6.4 INDEMNIFICATION:

- (a) ENGINEER agrees to defend, indemnify, and hold harmless the CITY, its elected and appointed officials, agents, officers, employees, and volunteers (hereinafter "parties protected") from (1) claims, demands, liens, lawsuits, administrative and other proceedings, (including reasonable costs and attorneys' fees) and (2) judgments, awards, losses, liabilities, damages, penalties, fines, costs and expenses of any kind claimed by third parties arising out of, or related to any death, injury, damage or destruction to any person or any property to the extent caused by any negligent act, action, default, error or omission or willful misconduct arising out of the ENGINEER's performance under this AGREEMENT. In the event that any lien is placed upon the City's property or any of the City's officers, employees or agents as a result of the negligence or willful misconduct of the ENGINEER, the ENGINEER shall at once cause the same to be dissolved and discharged by giving bond or other necessary satisfaction.
- (b) CITY agrees to indemnify and hold the ENGINEER harmless from loss, cost, or expense of any kind claimed by third parties, including without limitation such loss, cost, or expense resulting from injuries to persons or damages to property, caused solely by the negligence or willful misconduct of the CITY, its employees, or agents in connection with the PROJECT.
- (c) If the negligence or willful misconduct of both the ENGINEER and the CITY (or a person identified above for whom each is liable) is a cause of such third party claim, the loss, cost, or expense shall be shared between the ENGINEER and the CITY in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity will apply for such proportion.
- (d) Nothing contained in this Section or this AGREEMENT shall be construed to create a liability or a right of indemnification in any third party.
- In any and all claims by an employee of the ENGINEER, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligations under this AGREEMENT shall not be limited in any way by any limitation on the amount or types of damages, compensation, or benefits payable by or for the ENGINEER or a subcontractor under workers' or workmens' compensation acts, disability benefit acts, or other employee benefit acts. The ENGINEER specifically and expressly waives its immunity under the Industrial Insurance Act, Title 51, RCW. Such waiver has been mutually negotiated by the ENGINEER and the CITY.
- It is understood that any resident engineering or inspection provided by ENGINEER is for the purpose of determining compliance with the technical provisions of PROJECT specifications and does not constitute any form of guarantee or insurance with respect to the performance of a contractor. ENGINEER does not assume responsibility for methods or appliances used by a contractor, for a contractor's safety programs or methods, or for compliance by contractors with laws and regulations. CITY shall use its best efforts to ensure that the construction contract requires that the contractor(s) indemnify and name CITY, the CITY'S and the ENGINEER'S officers, principals, employees, agents, representatives, and engineers as additional insureds on contractor's insurance policies covering PROJECT, exclusive of insurance for ENGINEER professional liability.

#### SECTION 7 PROJECT SCHEDULE AND BUDGET

7.1 The PROJECT schedule and performance dates for the individual tasks shall be mutually agreed to by the CITY and the ENGINEER. The performance dates and budgets for tasks may be modified only upon written agreement of the parties hereto. The performance date for tasks shall not be extended, nor the

- budget increased because of any unwarranted delays attributable to the ENGINEER, but may be extended or increased by the CITY in the event of a delay caused by special services requested by the CITY or because of unavoidable delay caused by any governmental action or other conditions beyond the control of the ENGINEER which could not be reasonably anticipated.
- 7.2 Not later than the tenth (10) day of each calendar month during the performance of the PROJECT, the ENGINEER shall submit to the CITY's Representative a copy of the current schedule and a written narrative description of the WORK accomplished by the ENGINEER and subconsultants on each task, indicating a good faith estimate of the percentage completion thereof on the last day of the previous month. Additional oral or written reports shall be prepared at the request of the CITY for presentation to other governmental agencies and/or to the public.

#### SECTION 8 REUSE OF DOCUMENTS

- 8.1 All internal WORK products of the ENGINEER are instruments or service of this PROJECT. There shall be no reuse, change, or alteration by the CITY or others acting through or on behalf of the CITY without written permission of the ENGINEER, which shall not be unreasonably withheld and will be at the CITY's sole risk. The CITY agrees to indemnify the ENGINEER and its officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs including, but not limited to, litigation expenses and attorney's fees arising out of or related to such unauthorized reuse, change, or alteration; provided, however, that the ENGINEER will not be indemnified for such claims, damages, losses, and costs including, without limitation, litigation expenses and attorney fees if they were caused by the ENGINEER's own negligent acts or omissions.
- 8.2 The ENGINEER agrees that ownership of any plans, drawings, computer programs, technical reports, operating manuals, calculations, notes, and other WORK submitted or which are specified to be delivered under this AGREEMENT or which are developed or produced and paid for under this AGREEMENT, whether or not complete, shall be vested in the CITY.
- 8.3 All rights to patents, trademarks, copyrights, and trade secrets owned by ENGINEER (hereinafter "Intellectual Property") as well as any modifications, updates or enhancements to said Intellectual Property during the performance of the WORK remain the property of ENGINEER, and ENGINEER does not grant CITY any right or license to such Intellectual Property.

#### SECTION 9 AUDIT AND ACCESS TO RECORDS

- 9.1 The ENGINEER, including its subconsultants, shall maintain books, records, documents and other evidence directly pertinent to performance of the WORK under this AGREEMENT in accordance with generally accepted accounting principles, the Public Records Act, and practices consistently applied. The ENGINEER shall promptly furnish the CITY with such records which are related to the WORK of this AGREEMENT as may be requested by the CITY. The CITY, or the CITY'S duly authorized representative, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying for a period of six (6) years after completion of the PROJECT, or for a longer period if required by law or by the Washington State Secretary of State's records retention schedule. The CITY shall also have access to such books, records, and documents during the performance of the PROJECT WORK, if deemed necessary by the CITY.
- 9.2 Audits conducted pursuant to this section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or auditing agency.
- 9.3 The ENGINEER agrees to the disclosure of all information and reports resulting from access to records pursuant to this section provided that the ENGINEER is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include ENGINEER's written comments, if any.
- 9.4 The ENGINEER shall ensure that the foregoing paragraphs are included in each subcontract for WORK on the PROJECT.
- 9.5 Any charges of the ENGINEER paid by the CITY which are found by an audit to be inadequately substantiated shall be reimbursed to the CITY.

- 9.6 During the performance of the tasks assigned under this Agreement ENGINEER shall at all times maintain strict confidentiality with respect to all documents, materials, plans, and any other information belonging to the CITY that ENGINEER may have access to or observe while performing the tasks presented in this Agreement; further, ENGINEER shall not disclose any confidential CITY information that ENGINNER may have access to or come into contact with to any third parties whatsoever, at any time during the term of this Agreement; such prohibition shall be a continuing obligation that shall remain effective after the termination of this Agreement.
- 9.7 All records relating to ENGINEER'S work under this Agreement must be made available to the CITY, and the records relating to the WORK are City of Yakima records. They must be produced to third parties, if required pursuant to the Washington State Public Records Act, Chapter 42.56 RCW, or by law. All records relating to ENGINEER's services and WORK under this Agreement must be retained by the ENGINEER for the minimum period of time required pursuant to the Washington Secretary of State's records retention schedule.
- 9.8 The terms of Section 9 shall survive any expiration or termination of this Agreement.

#### SECTION 10 INSURANCE

- At all times during performance of WORK, ENGINEER shall secure and maintain in effect insurance to protect the CITY and the ENGINEER from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of this AGREEMENT. ENGINEER shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The CITY reserves the rights to require higher limits should it deem it necessary in the best interest of the public. If ENGINEER carries higher coverage limits than the limits stated below, such higher limits shall be shown on the Certificate of Insurance and Endorsements and ENGINEER shall be named as an additional insured for such higher limits.
  - 10.1.1 **Commercial General Liability Insurance.** Before this AGREEMENT is fully executed by the parties, ENGINEER shall provide the CITY with a certificate of insurance as proof of commercial liability insurance and commercial umbrella liability insurance with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this AGREEMENT. The policy shall name the City, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the CITY thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

Subcontractors: If subcontractors will be used, the same terms and limits of coverage will apply, and a certificate will be required per the instructions above.

#### 10.1.2. Commercial Automobile Liability Insurance.

- a. If ENGINEER owns any vehicles, before this AGREEMENT is fully executed by the parties, ENGINEER shall provide the CITY with a certificate of insurance as proof of commercial automobile liability insurance and commercial umbrella liability insurance with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage. Automobile liability will apply to "Any Auto" and be shown on the certificate.
- b. If ENGINEER does not own any vehicles, only "Non-owned and Hired Automobile Liability" will be required and may be added to the commercial liability coverage at the same limits as required in that section of this AGREEMENT, which is Section 10.1.1 entitled "Commercial General Liability Insurance".

- c. Under either situation described above in Section 10.1.2.a. and Section 10.1.2.b., the required certificate of insurance shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this AGREEMENT. The policy shall name the CITY, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the CITY thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.
- 10.1.3. Statutory workers' compensation and employer's liability insurance as required by state law.
- 10.1.4. **Professional Liability Coverage.** Before this AGREEMENT is fully executed by the parties, ENGINEER shall provide the CITY with a certificate of insurance as proof of professional liability coverage with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000.00) per claim, and Two Million Dollars (\$2,000,000.00) aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this AGREEMENT. The insured shall not cancel or change the insurance without first giving the CITY thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide. If the policy is written on a claims made basis the coverage will continue in force for an additional two years after the completion of this AGREEMENT.

Failure of either or all of the additional insureds to report a claim under such insurance shall not prejudice the rights of the CITY, its officers, employees, agents, and representatives there under. The CITY and the CITY'S elected and appointed officials, officers, principals, employees, representatives, volunteers and agents shall have no obligation for payment of premiums because of being named as additional insureds under such insurance. None of the policies issued pursuant to the requirements contained herein shall be canceled, allowed to expire, or changed in any manner that affects the rights of the CITY until thirty (30) days after written notice to the CITY of such intended cancellation, expiration or change.

#### **SECTION 11 SUBCONTRACTS**

- 11.1 ENGINEER shall be entitled, to the extent determined appropriate by ENGINEER, to subcontract any portion of the WORK to be performed under this AGREEMENT.
- 11.2 Any subconsultants or subcontractors to the ENGINEER utilized on this PROJECT, including any substitutions thereof, will be subject to prior approval by CITY, which approval shall not be unreasonably withheld. Each subcontract shall be subject to review by the CITY'S Representative, if requested, prior to the subconsultant or subcontractor proceeding with the WORK. Such review shall not constitute an approval as to the legal form or content of such subcontract. The ENGINEER shall be responsible for the architectural and engineering performance, acts, and omissions of all persons and firms performing subcontract WORK.
- 11.3 CITY does not anticipate ENGINEER will subcontract with additional persons or firms for the purpose of completing this AGREEMENT.
- 11.4 The ENGINEER shall submit, along with its monthly invoices, a description of all WORK completed by subconsultants and subcontractors during the preceding month and copies of all invoices thereto.

#### SECTION 12 ASSIGNMENT

12.1 This AGREEMENT is binding on the heirs, successors and assigns of the parties hereto. This AGREEMENT may not be assigned by CITY or ENGINEER without prior written consent of the other, which consent will not be unreasonably withheld. It is expressly intended and agreed that no third-party beneficiaries are created by this AGREEMENT, and that the rights and remedies provided herein shall inure only to the benefit of the parties to this AGREEMENT.

#### **SECTION 13 INTEGRATION**

13.1 This AGREEMENT represents the entire understanding of CITY and ENGINEER as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This AGREEMENT may not be modified or altered except in writing signed by both parties.

#### SECTION 14 JURISDICTION AND VENUE

14.1 This AGREEMENT shall be administered and interpreted under the laws of the State of Washington. Jurisdiction of litigation arising from this AGREEMENT shall be in Washington State. If any part of this AGREEMENT is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it conflicts with said laws, but the remainder of this AGREEMENT shall be in full force and effect. Venue of all disputes arising under this AGREEMENT shall be Yakima County, State of Washington.

#### SECTION 15 EQUAL EMPLOYMENT and NONDISCRIMINATION

During the performance of this AGREEMENT, ENGINEER and ENGINEER's subconsultants and subcontractors shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of age, sex, race, creed, religion, color, national origin, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, or any other classification protected under federal, state, or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this AGREEMENT. ENGINEER agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity and Nondiscrimination statutes and regulations.

#### SECTION 16 SUSPENSION OF WORK

16.1 CITY may suspend, in writing by certified mail, all or a portion of the WORK under this AGREEMENT if unforeseen circumstances beyond CITY'S control are interfering with normal progress of the WORK. ENGINEER may suspend, in writing by certified mail, all or a portion of the WORK under this AGREEMENT if unforeseen circumstances beyond ENGINEER's control are interfering with normal progress of the WORK. ENGINEER may suspend WORK on PROJECT in the event CITY does not pay invoices when due, except where otherwise provided by this AGREEMENT. The time for completion of the WORK shall be extended by the number of days WORK is suspended. If the period of suspension exceeds ninety (90) days, the terms of this AGREEMENT are subject to renegotiation, and both parties are granted the option to terminate WORK on the suspended portion of PROJECT in accordance with SECTION 17.

#### SECTION 17 TERMINATION OF WORK

- 17.1 Either party may terminate this AGREEMENT, in whole or in part, if the other party materially breaches its obligations under this AGREEMENT and is in default through no fault of the terminating party. However, no such termination may be effected unless the other party is given: (1) not less than fifteen (15) calendar days written notice delivered by certified mail, return receipt requested, of intent to terminate; and (2) an opportunity for consultation and for cure with the terminating party before termination. Notice shall be considered issued within seventy-two (72) hours of mailing by certified mail to the place of business of either party as set forth in this AGREEMENT.
- 17.2 In addition to termination under subsection 17.1 of this Section, CITY may terminate this AGREEMENT for its convenience, in whole or in part, provided the ENGINEER is given: (1) not less than fifteen (15) calendar days written notice delivered by certified mail, return receipt requested, of intent to terminate; and (2) an opportunity for consultation with CITY before the effective termination date.
- 17.3 If CITY terminates for default on the part of the ENGINEER, an adjustment in the contract price pursuant to the AGREEMENT shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other WORK, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to the extent of any additional costs or damages CITY has incurred, or is likely to incur, because of the ENGINEER'S breach. In such event, CITY shall consider the amount of WORK originally required which was satisfactorily completed to date of termination, whether that WORK

is in a form or of a type which is usable and suitable to CITY at the date of termination and the cost to CITY of completing the WORK itself or of employing another firm to complete it. Under no circumstances shall payments made under this provision exceed the contract price. In the event of default, the ENGINEER agrees to pay CITY for any and all damages, costs, and expenses whether directly, indirectly, or consequentially caused by said default. This provision shall not preclude CITY from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by contract retainage or other withheld payments.

- 17.4 If the ENGINEER terminates for default on the part of CITY or if CITY terminates for convenience, the adjustment pursuant to the AGREEMENT shall include payment for services satisfactorily performed to the date of termination, in addition to termination settlement costs the ENGINEER reasonably incurs relating to commitments which had become firm before the termination, unless CITY determines to assume said commitments.
- 17.5 Upon receipt of a termination notice under subsections 17.1 or 17.2 above, the ENGINEER shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to CITY all originals of data, drawings, specifications, calculations, reports, estimates, summaries, and such other information, documents, and materials as the ENGINEER or its subconsultants may have accumulated or prepared in performing this AGREEMENT, whether completed or in progress, with the ENGINEER retaining copies of the same.
- 17.6 Upon termination under any subparagraph above, CITY reserves the right to prosecute the WORK to completion utilizing other qualified firms or individuals; provided, the ENGINEER shall have no responsibility to prosecute further WORK thereon.
- 17.7 If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER has not so failed, the termination shall be deemed to have been effected for the convenience of CITY. In such event, the adjustment pursuant to the AGREEMENT shall be determined as set forth in subparagraph 17.4 of this Section.
- 17.8 If, because of death, unavailability or any other occurrence, it becomes impossible for any key personnel employed by the ENGINEER in PROJECT WORK or for any corporate officer of the ENGINEER to render his services to the PROJECT, the ENGINEER shall not be relieved of its obligations to complete performance under this AGREEMENT without the concurrence and written approval of CITY. If CITY agrees to termination of this AGREEMENT under this provision, payment shall be made as set forth in subparagraph 17.3 of this Section.

#### **SECTION 18 DISPUTE RESOLUTION**

In the event that any dispute shall arise as to the interpretation or performance of this AGREEMENT, or in the event of a notice of default as to whether such default does constitute a breach of the AGREEMENT, and if the parties hereto cannot mutually settle such differences, then the parties shall first pursue mediation as a means to resolve the dispute. If neither of the afore mentioned methods are successful then any dispute relating to this AGREEMENT shall be decided in the courts of Yakima County, in accordance with SECTION 14. If both parties consent in writing, other available means of dispute resolution may be implemented.

#### **SECTION 19 NOTICE**

19.1 Any notice required to be given under the terms of this AGREEMENT shall be directed to the party at the address set forth below. Notice shall be considered issued and effective upon receipt thereof by the addressee-party, or seventy-two (72) hours after mailing by certified mail to the place of business set forth below, whichever is earlier.

CITY: City of Yakima

Attn: Mr. Bill Preston, City Engineer

129 N. 2<sup>nd</sup> Street Yakima, WA 98901 ENGINEER: IMS Infrastructure Management Services, LLC

Attn: Derek Turner, Firm Principal

8308 S Kyrene Rd., #101,

Tempe, AZ 95284

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective authorized officers or representatives as of the day and year first above written.

CITY OF YAKIMA	INFRASTRUCTURE MANAGEMENT SERVICES, LLC		
Signature	Signature		
Printed Name: Robert Harrison	Printed Name:		
Title: City Manager	Title: President		
Date:	Date:		
Attest City Clerk			

STATE OF WASHINGTON	)
COUNTY OF YAKIMA	) SS. )
and said person acknowledged that he signed th	te that <u>Robert Harrison</u> is the person who appeared before me, his instrument, on oath stated that he was authorized to execute MANAGER of the CITY OF YAKIMA, to be the free and voluntary tioned in the instrument.
Dated:	-
Seal or Stamp	
	(Signature)
	Title
	Printed Name
	My commission expires:

STATE OF	)
COUNTY OF	) ss. )
authorized to execute the instrument, and ack	ce that is the person who appeared he/she signed this instrument, on oath stated that he/she was nowledged it as the President of <u>Infrastructure Management</u> t of such party for the uses and purposes mentioned in the
Dated:	
Seal or Stamp	
	(Signature)
	Title
	Printed Name
	My commission expires:

#### **EXHIBIT A**

#### **PROJECT SCOPE OF SERVICES**

#### CITY OF YAKIMA

#### **DETAILED PROJECT SCOPE:**

# Task Description Activities

#### **Deliverables**

deliverables.

#### Base Service Items and Activities - Project Initiation

- 1. Project Initiation
- Conduct kick off meting confirming scope, extent and content of surveys, set milestones and deliverables.
- Confirm key contacts, roles and responsibilities and project documentation.
- Identify location of key data elements such as traffic data, GIS, existing roadway inventories, historical data, and pavement management data.
- · Identify deficient data and the means to obtain it.
- Provide data QA plan to the City.
- · Confirm phases of the work and invoicing methodology.
- Network Referencing, Update & GIS Linkage
- Include street number & block order in referencing.
- Obtain roadway attributes from GIS for functional class, traffic, width, length, pavement type, curb type, etc.
- Confirm length & width via aerial photography.
- Create survey maps for use by the LCMS-2 and monitor production.

Survey maps and inventory for use on the project. Inventory spreadsheet containing all assigned GIS ID's

Technical memo detailing scope of work, budget and

- Network Inventory
   Checks & Survey Map
   Development
- Using the City's new GIS centerline topology, develop a network roadway inventory suitable for use in the Easy Street Analysis (ESA) Pavement Management system.
- · Link each segment to its parent GIS section.
- Obtain roadway attributes from GIS for functional class, traffic, width, length, pavement type, curb type, etc.
- Develop exceptions report for lengths that don't match GIS.
   Complete a review of the aerial photography of the City to confirm segment street names widths, lengths, and average slab dimensions.

Programmed survey maps and inventory for use on the project.

#### Base Service Items and Activities – Field Surveys

- 4. LCMS-2 Mobilization/ Calibration
- Mobilize surface distress, roughness, and rutting testing equipment to project
- · Crew to review the survey maps with the City.
- Demonstrate the equipment to the City.
- · Calibrate equipment.
- LCMS-2 Field Data
   Collection w/Lasers
   (Pavement Condition)
- Collect ASTM D-6433 distresses and attributes at 100-foot intervals on a delivered in block-to-block segmentation basis. IMS will survey approximately 400 centerline miles, 2-pass testing of Major roads and 1-pass of local roadways for a survey total of an estimated 475 test miles.
- Expansion of distresses to include longitudinal, transverse, alligator, and block cracking, raveling, bleeding, patches/potholes, rutting, roughness, and distortions.
- Laser Crack Measurement System,v2 (LCMS-2) will incorporate the use of lasers and rate gyroscopes, digital images, touch screen event board, and GPS acquisition.
- Dual wheel path testing collecting International Roughness Index (IRI) data at no additional charge.
- Collect and Deliver Digital Images (15' Intervals)
- Process 1-view (center front) of RST video into 15' intervals.
- Link images to the City's existing GIS centerline.
- · Provide viewing tool for a virtual drive experience.

Equipment calibration results

Complete two passes of major roadways; singlepass on local network. Approximately 475 test miles.

1-view of front imagery at15' intervals. Deliverw/GPS coordinate data.

# <u>Task</u> <u>Description</u> Activities <u>Deliverables</u>

# Base Service Items and Activities - Data Management

7.	Pavement Condition
	Data QA/QC,
	Processing &

Formatting

- For each data stream (surface distress, roughness, GPS, Excel spreadsheet of the deflection), aggregate and process the data at 100-foot intervals.
   100 foot, sectional data, and
- Develop individual index scores for surface distress and index values containing all roughness as appropriate.
   assigned GIS ID's.
- Develop structural index for each roadway segment.
- Develop a pavement condition score for each section.
- · Process the same data to the segment level.
- Develop exceptions report: lengths not matching GIS.
- Complete QA of data.

100 foot, sectional data, and index values containing all assigned GIS ID's.
Shapefiles of the condition data at the 100 foot and segment levels.

- 8. Easy Street Pavement Analysis, Budget Development & Report
- The spreadsheet has the ability to prioritize and optimize the multiyear plan.
- It will be programmed to develop a multi-year maintenance and rehabilitation plan using "cost of deferral".
- It will also have referenced deterioration curves for each functional classification, pavement type, and even pavement strength rating.
- The parameters of the analysis (Priority Weighting Factors) can also be modified and reprioritized on the fly.
- · Shapefiles & KML file of the processed data.
- Cost Benefit Analysis & Spreadsheet Training
- Ongoing Easy Street Analysis Spreadsheet Annual Maintenance Fee

"Easy Street" Analysis spreadsheet with "Hot" cells (highlighted in yellow) that City can use to generate differing budget scenarios.
Shapefiles & KML file of the processed data along with Cost Benefit Analysis & Spreadsheet Training.
Delivery of draft analysis and report as outlined.

and report as outlined.
Final report and shape files

 both hard copies (3) and in native, electronic format.
 Status reports and

invoices.

- 9. Project Management
- Provide client with periodic e-mail updates and reports.
- Meetings to be completed virtually and by conference calls.
- Complete project administration and invoicing.

Thank you for considering IMS as a viable solution to your pavement management needs and we will strive to remain an asset and extension of the City of Yakima's staff and team. If any questions arise please do not hesitate to contact me at (480) 462-4030 or itourek@imsanalysis.com.

IMS Infrastructure Management Services, LLC

Jim Tourek

Regards,

West Region Client Services

Jun

# **EXHIBIT B**

# **SCHEDULE OF FEES**

# City of Yakima, WA: 2021-22 Base Scope of Services

Task	Activity	Quant	Units	Unit Rate	Total
	Project Initiation				
1 2 3	Project Initiation & Set-up Network Referencing & GIS Linkage Network Inventory Checks & Survey Map Development	1 475 475	LS T-Mi T-Mi	\$3,000.00 \$5.00 \$3.00	\$3,000.00 \$2,375.00 \$1,425.00
	Field Surveys				
4 5 6	Mobilization & Calibration LCMS-2 Field Data Collection (2-pass Arterials; Collectors & Locals 1-pass) Collection of Digital Images at 15' Intervals (Deliver 1-Forward View)	1 475 475	LS T-Mi T-Mi	\$3,000.00 \$100.00 \$10.00	\$3,000.00 \$47,500.00 \$4,750.00
	Data Management				
7 8	Data QA/QC, Processing, & Formatting Pavement "Easy Street" Analysis, Budget Development & Report a. "ESA" - Easy Street Analysis Pavement Management Spreadsheet Software b. Customizable Prioritization & Cost-Benefit Analysis c. Online ESA Spreadsheet Training d. "Easy Street" Spreadsheet - License & Ongoiong Maintenance Fee Project Management	475 1 1 1	In	\$12.00 7,500.00 actuded in Base Activities actuded in Base Activities actuded in Base Activities \$0.00 \$4,730.00	\$5,700.00 \$7,500.00 \$0.00 \$4,730.00
				Project Total:	\$79,980.00



# BUSINESS OF THE CITY COUNCIL YAKIMA, WASHINGTON AGENDA STATEMENT

Item No. 6.H.

For Meeting of: August 2, 2021

ITEM TITLE: Resolution extending the existing Operations and Maintenance

Agreement with the Yakima Area Arboretum

SUBMITTED BY: Scott Schafer, Public Works Director - (509) 576-6411

#### **SUMMARY EXPLANATION:**

The City contracts with the Yakima Area Arboretum for that organization to operate and maintain the Cit arboretum property. The original agreement expired in May, and the Council granted an extension who staff continued negotiations with the Yakima Area Arboretum on terms and conditions of a new long-te operations and maintenance agreement. Negotiations are continuing on a few final details, and addition time is needed to finalize the agreement. Since the first extension granted by the Council expires August 3, 2021, a new extension needs to be entered into. The proposed extension would extend original agreement until October 6, 2021.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Partnership Development

#### APPROVED FOR SUBMITTAL BY THE CITY MANAGER

#### RECOMMENDATION:

Adopt Resolution

# **ATTACHMENTS:**

	Description	Upload Date	Type
D	Resolution Arboretum Extension	7/28/2021	Resolution
D	Arboretum Extension Agreement	7/28/2021	Contract

#### RESOLUTION NO. R-2021-

A RESOLUTION

extending the existing Operations and Maintenance Agreement with the Yakima Area Arboretum

**WHEREAS**, the City of Yakima (City) owns an arboretum property which the Yakima Area Arboretum (Arboretum) currently maintains and operates, and desires that the Jewett Interpretive Center and surrounding property continue to be managed, operated, and maintained as a public park to the general public; and

**WHEREAS,** the City and the, referred to as the "Parties," entered into an Agreement on or about May 14, 1991 (hereinafter referred to as the "Original Agreement"), which outlined the terms and conditions for the operation of the City's arboretum property by the Yakima Area Arboretum, a non-profit corporation which has a term ending on May 24, 2021; and

**WHEREAS**, the Parties amended the Agreement to extend the term through August 3, 2021 to continue negotiations for a new operation and maintenance agreement; and

**WHEREAS**, the Parties are currently working together on a long-term operation and maintenance agreement for the arboretum property, but are unable to complete negotiation by the end of the extended agreement term; and

**WHEREAS**, the Parties agreed to extend the Original Agreement's term to October 6, 2021, or until a new operations and maintenance agreement has been signed, whichever comes first, with all other provisions remaining the same; and

**WHEREAS**, the Parties agreed that if a new agreement regarding the operation and maintenance of the arboretum property is not signed by October 6, 2021, and the Parties have not otherwise agreed to an extension, the Original Agreement shall terminate; and

**WHEREAS**, all other terms, covenants and conditions of the Original Agreement shall continue in full force and effect throughout the extended term; and

**WHEREAS**, the Parties hereby agree to extend the term of the Original Agreement in accordance with the terms of the Original Agreement as well as the terms provided herein to accommodate the continued discussions on a new operation and maintenance agreement for the Yakima Area Arboretum to maintain and operate the City's arboretum property; and

**WHEREAS**, the Parties are long-standing partners in the operation and maintenance of the arboretum property and have been and are working together to formalize the continued operations and maintenance of the arboretum property, and

**WHEREAS,** the extension merely extends the Original Agreement to allow for negotiations to continue and the resulting operations and maintenance agreement will be placed in front of City Council for review and decision prior to the new termination date; and

**WHEREAS**, the City Council of the City of Yakima finds that it is in the best interests of the City and its residents to extend the term of the Original Agreement to allow the Parties additional time to negotiate the terms of a new operations and maintenance agreement for the arboretum property and ratify the contract signed by the City Manager; now, therefore,

# BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The City Manager is hereby authorized to execute the Yakima Area Arboretum Agreement Extension with the Yakima Area Arboretum to provide for the operation and maintenance of the City's arboretum property until a new agreement is entered into or October 6, 2021, whichever occurs first.

ADOPTED BY THE CITY COUNCIL this 2	<sup>2nd</sup> day of August, 2021.
ATTEST:	Patricia Byers, Mayor
Sonya Claar Tee, City Clerk	

# Yakima Area Arboretum Agreement Extension

This EXTENSION AGREEMENT is between the City of Yakima, located at 129 North Second Street, Yakima, WA 98901 and the Yakima Area Arboretum, located at 1401 Arboretum Drive, Yakima, Washington, 98901 and collectively, referred to as the "Parties" for and in consideration of the mutual covenants therein and herein contained.

WHEREAS, the Parties entered into an Agreement on or about May 14, 1991 (hereinafter referred to as the "Original Agreement"), which outlined the terms and conditions for the operation of the City's arboretum property by the Yakima Area Arboretum, a non-profit corporation which has a term ending on May 24, 2021; and

WHEREAS, the Parties entered into an extension of that Agreement which extended the terms and conditions thereof until August 3, 2021; and

WHEREAS, the Parties are currently working together on a long-term operation and maintenance agreement for the arboretum property and need more time finalize such long-term agreement; and

WHEREAS the Parties hereby agree to extend the term of the Original Agreement in accordance with the terms of the Original Agreement and amendment thereof, as well as the terms provided herein to accommodate the continued discussions on a new operation and maintenance agreement for the Yakima Area Arboretum to maintain and operate the City's arboretum property; now, therefore,

The Parties agree as follows:

CITY OF VAKIMA

- The Parties agree to extend the Original Agreement's term to October 6, 2021, or until a new operations and maintenance agreement has been signed, whichever comes first.
- The Parties agree that if a new agreement regarding the operation and maintenance of the arboretum property is not signed by October 6, 2021, and the Parties have not otherwise agreed to an extension, the Original Agreement shall terminate.
- All other terms, covenants and conditions of the Original Agreement shall continue in full force and effect throughout the extended term.

VAKIMA ADEA ADDODETIIM

CITT OF TAKIMA	TARIMA AREA ARBORETUM	
Robert Harrison, City Manager	Colleen Adams- Schuppe, Executive Director	
Date:	Date:	

STATE OF WASHINGTON		
County of Yakima	SS.	
On this day of evidence that Colleen Adams-Schu and acknowledged that they are aut of the Yakima Area Arboretum and and acknowledged it on behalf of Y in the instrument.	e is the Executive Director of the rized to execute the foregoing is aid person acknowledged that	ne Yakima Area Arboretum, nstrument for and on behalf they signed this instrument
	NOTARY PUBLIC in and Washington, residing at: My commission expires:	
STATE OF WASHINGTON	SS.	
County of Yakima		
On this day of evidence that Robert Harrison, is the they are authorized to execute the and said person acknowledged that the City of Yakima for the uses and	egoing instrument for and on be ey signed this instrument and a	ima and acknowledged that behalf of the City of Yakima cknowledged it on behalf of
	NOTARY PUBLIC in and Washington, residing at: My commission expires:	



# BUSINESS OF THE CITY COUNCIL YAKIMA, WASHINGTON AGENDA STATEMENT

Item No. 8.

For Meeting of: August 2, 2021

ITEM TITLE: Public Hearing and Ordinance on the Shoreline Master Program

Periodic Update

SUBMITTED BY: Joseph Calhoun, Planning Manager, 509-575-6042

Joan Davenport, AICP, Community Development Director

#### **SUMMARY EXPLANATION:**

The City of Yakima is required to review and update its Shoreline Master Program (SMP) through a periodic process (RCW 90.58, WAC 173-26 and WAC 173-27). To assist in this update process, the city received a grant from the Department of Ecology and hired Shannon & Wilson Inc. as consultant.

The SMP update went through a public review process including Planning Commission study sessions, public open house, SEPA Environmental Review, Joint City/Department of Ecology public notice, and Planning Commission public hearing on May 26, 2021. All project documents were then forwarded to the Department of Ecology and their formal written statement of initial concurrence was issued on June 22, 2021. More information on the SMP Periodic update can be found here:

https://www.yakimawa.gov/services/planning/smp/ Council, please bring the packet delivered in the July 20, 2021 Council packet.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Neighborhood and Community Building

#### APPROVED FOR SUBMITTAL BY THE CITY MANAGER

# RECOMMENDATION:

Pass Ordinance

ATTACHMENTS:

Description Upload Date Type

□ Ordinance 7/16/2021 Ordinance

# **ORDINANCE NO. 2021-\_\_\_\_**

**AN ORDINANCE** amending the City of Yakima Shoreline Master Program, YMC Title 17

**WHEREAS,** RCW 90.58, WAC 173-26 and WAC 173-27 requires periodic update of the Shoreline Master Program; and

WHEREAS, notice of all amendments to YMC Title 17, the Shoreline Master Program (SMP), hereinafter "Amendments," to fulfill the requirements of RCW 36.70A.130 was sent to the Washington State Department of Commerce and received by the same on May 10, 2021, that date being at least sixty days before the amendments were adopted by City Council; and

**WHEREAS,** the City of Yakima conducted a State Environmental Policy Act Review (SEPA) process for the proposed amendments and a Determination or Nonsignificance was issued on May 6, 2021; and

**WHEREAS,** the Yakima Planning Commission held a public hearing on May 26, 2021, heard the staff presentation regarding the proposed SMP Periodic Update, considered public testimony in both written and verbal forms from Laine Young and Eric Bartrand, and unanimously recommended approval; and

**WHEREAS**, the City conducted a joint notification review process with the Department of Ecology, which ended on June 7, 2021; and

**WHEREAS**, a complete record of the SMP, including responses to comments received, draft changes, notice documents, and the periodic review checklist was forwarded to the Department of Ecology for review on June 10, 2021; and

**WHEREAS,** on June 22, 2021 the Department of Ecology issued its formal written statement of initial concurrence of the proposed SMP amendments as required by WAC 173-26-104(3)(b); and,

**WHEREAS**, the Yakima City Council held a public hearing on August 2, 2021 to receive public comments on the Planning Commission's recommended findings and proposed revisions to the Amendments; and

**WHEREAS,** based upon its review of the requirements of Chapter 90.58 RCW, the analysis and proposed revisions prepared by planning staff and consultants, the recommended findings and proposed revisions forwarded by the Planning Commission, and public comments received, the Yakima City Council finds and declares that the review and needed revisions have been prepared in conformance with applicable law; and

**WHEREAS**, the City Council of the City of Yakima, having considered the record herein and the recommendation from the Planning Commission, hereby finds and determines that approval of the Amendments is in the best interests of residents of the City of Yakima and will promote the general health, safety and welfare; now, therefore

#### BE IT ORDAINED BY THE CITY OF YAKIMA:

<u>Section 1.</u> <u>Findings, Analysis and Conclusions.</u> After reviewing the record and considering the evidence and testimony in the record and at public meetings, the Yakima City Council adopts the findings of the Planning Commission and the recitals above, as its own findings herein.

<u>Section 2.</u> <u>Amendments to Replace and Supersede.</u> The proposed amendments to YMC Title 17, as contained in Exhibit "A", attached hereto and fully incorporated herein, are amended by these changes and all such changes are intended to replace and supersede previous versions of the referenced documents.

<u>Section 3.</u> <u>Severability/Validity.</u> If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

**Section 4.** Ratification. Any act consistent with the authority, and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 5.** Effective Date. This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this 2<sup>nd</sup> day of August, 2021.

ATTEST:	Patricia Byers, Mayor
Sonya Claar Tee, City Clerk	
Publication Date:	
Effective Date:	

# Exhibit "A" SMP Title 17

# Title 17

# SHORELINE MASTER PROGRAM REGULATIONS

C	ha	pte	rs

17.01	Purpose and General Provisions
17.03	Shoreline Environment Designations
17.05	General Regulations
17.07	<b>Use-Specific and Modification Regulations</b>
17.09	Critical Areas in Shoreline Jurisdiction
17.11	Existing Uses, Structures and Lots
17.13	Administration and Enforcement

Appendix A: Designated Type 2 Stream Corridors

#### Chapter 17.01

#### **PURPOSE AND GENERAL PROVISIONS**

Sections:	
17.01.010	Authority.
17.01.020	Applicability.
17.01.030	Findings.
17.01.040	Purpose.
17.01.050	Relationship to other codes, ordinances and plans
17.01.060	Liberal construction.
17.01.070	Severability.
17.01.080	Effective date.
17.01.090	Definitions.
17.01.100	Shoreline jurisdiction.

#### 17.01.010 Authority.

A. Title 17 of the Yakima Municipal Code is established pursuant to Chapter 90.58 RCW (Shoreline Management Act), Chapter 173-26 WAC (State master program approval/amendment procedures and master program guidelines), and Chapter 173-27 WAC (Shoreline management permit and enforcement procedures). This title shall be known as the "shoreline master program regulations."

B. The shoreline master program regulations shall, for the purposes of RCW 36.70A.480 (GMA and Shorelines of the State), be considered a set of use regulations applying only to shoreline areas as specified in Chapter 90.58 RCW (SMA) and Chapter 173-26 WAC (State master program approval/amendment procedures and master program guidelines). These regulations are intended to be substantive legal rules and procedures used to implement the goals and policies of the master program (these goals and policies are contained in the City of Yakima Comprehensive Plan, Chapter 10, Section 3—General Shoreline Planning Sub-element). These regulations shall be applied and interpreted in a manner consistent with the remainder of the master program or the Act..

#### 17.01.020 Applicability.

- A. The provisions of this title shall apply to any new development, construction or use within the incorporated portion of the City of Yakima. However, this title does not apply to the situations below:
  - 1. Interior building improvements that do not change the use or occupancy are not subject to this title;
  - 2. Exterior structure maintenance activities, including painting and roofing, as long as such activities do not expand the existing footprint of the structure or impervious area;
  - 3. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding;
  - 4. Maintenance of the following existing facilities that do not expand the affected area: septic tanks (routine cleaning), wells, and individual utility service connections;
  - 5. Changing agricultural crops within an existing farming operation is not considered new development, construction or use. SMP regulations do apply to the following: (a) new agricultural activities on land not meeting the definition of agricultural land, (b) conversion of agricultural lands to other uses, and (c) other development on agricultural land that does not meet the definition of agricultural activities (e.g., processing plants); and
  - 6. Minor, temporary or transient activities, including those of a recreational nature, that do not alter the environment or require a dedicated staging area, use area, or route are not subject to this title, and including temporary signs (election, sale, rent, etc.).
- B. The following subsections guide the determination of applicability of SMP regulations on federal lands:
  - 1. Federal development on federally owned land is not subject to this SMP nor required to obtain a shoreline permit unless otherwise required by federal law:
  - 2. Federal development on a federally owned lease is not subject to this SMP nor required to obtain a shoreline permit unless otherwise required by federal law, as long as the development is consistent with the purpose of the lease;

- 3. Area and uses in those areas under exclusive federal jurisdiction as established through federal or state statues are not subject to the jurisdiction of Chapter 90.58 RCW.
- 4. Development on federally owned land under a federal lease or easement for a nonfederal activity is subject to this SMP and must obtain a shoreline permit; for example, the SMP applies to private activities on federal land such as leases where the private citizen owns the structure but the federal government owns the land;
- 5. Nonfederal development or use on federally owned land is subject to this SMP and must obtain a shoreline permit; and
- 6. Development on nonfederal land is subject to this SMP and must obtain a shoreline permit, even if it is leased, rented, etc. to the federal government, or it is within the boundaries of federal ownership unless the state by statute has ceded all regulatory authority over the federal ownership.
- C. Unless specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act and this master program whether or not a permit is required.
- D. Developments not required to obtain shoreline permits or local reviews. Requirements to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:
  - 1. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.
  - 2. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.
  - 3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other local review.
  - 4. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.
  - 5. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

#### 17.01.030 Findings.

- A. The Yakima River Greenway consists of extensive trails along the Yakima River and Naches River providing regional shoreline public access that draws significant numbers of persons.
- B. All jurisdictional lakes, or predesignated lakes associated with mining, are manmade, highly altered, and separated by levees and highways from the river courses.
- C. Willow Lake and Lake Aspen are owned by homeowners' associations, and Lake Aspen's residential community is governed by covenants, conditions, and restrictions.
- D. There is relatively limited development potential on lands in the City limits due to the historic urban developed character, and limited development potential in the City and UGA where there are channel migration zones, floodways, and concentrations of critical areas.
- E. There are several essential public facilities in shoreline jurisdiction such as highways of statewide significance and the City's wastewater treatment plant. Another significant public use includes a state park providing active and passive recreation.
- F. The CMZ and floodway areas are largely in public ownership and are managed for flood hazard protection, water processes, and habitat value.

- G. SMP environments and regulations recognize the current and future preferred uses, altered and natural character, and shoreline ecological functions.
- H. The current shoreline conditions, anticipated development, and proposed SMP use and environmental regulations are demonstrated in the CIA Addendum to result in no net loss of shoreline ecological function.

#### 17.01.040 Purpose.

The purpose of this title is to establish a single, uniform system of procedures and standards to be applied to development within shoreline jurisdiction of the City of Yakima. The SMP regulations are intended to carry out the responsibilities imposed on the City of Yakima by the Shoreline Management Act (Chapter 90.58 RCW) and its Administrative Rules (Chapters 173-18, 173-20, 173-22, 173-26 and 173-27 WAC) insofar as regulations can, and the adoption of these regulations does not remove other responsibilities imposed by the Act. The purposes of the shoreline master program regulations are to:

- A. Promote reasonable and appropriate use of the shorelines that will protect the public and private interest;
- B. Protect against adverse effects to the public health, the land, its vegetation and wildlife and the waters and their aquatic life within the City of Yakima;
- C. Protect public rights of navigation;
- D. Recognize and protect private property rights consistent with public interest;
- E. Promote a high quality of environment along the shorelines;
- F. Preserve and protect fragile natural resources and culturally significant features;
- G. Increase public access to publicly owned areas of the shorelines where increased use levels are desirable;
- H. Protect public and private properties from adverse effects of improper development in hazardous shorelines areas;
- I. Recognize and protect the statewide interest;
- J. Give preference to uses that result in long-term over short-term benefits;
- K. Provide for no net loss of ecological functions cumulatively from both individual permitted development and individual exempt development; and
- L. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

#### 17.01.050 Relationship to other codes, ordinances and plans.

- A. All applicable federal, state, and local laws shall apply to properties in the shoreline jurisdiction. At the time of application or initial inquiry, the shoreline administrator shall inform the applicant/proponent of other local laws and rules that may be applicable to the project. The responsibility for determining applicable federal, state or special district statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the activity, use, or development in question.
- B. This SMP includes critical areas regulations applicable only in the shoreline jurisdiction, and shall control within shoreline jurisdiction over other City critical area regulations adopted pursuant to the Growth Management Act.
- C. While the flood hazard areas regulations in Part Four of Chapter 15.27 YMC apply within shoreline jurisdiction, the regulations, themselves, are not incorporated as part of this Shoreline Master Program.
- D. Other rules and regulations, including but not limited to the City of Yakima development regulations addressing subdivision, zoning, building and construction shall remain in full force and effect as they apply to a designated shoreline.
- E. Wherever the requirements of this title conflict with the requirements of City rules or regulations, the most restrictive standards shall govern.

#### 17.01.060 Liberal construction.

As provided for in RCW 90.58.900, the Act is exempted from the rule of strict construction; the Act and this SMP shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which they were enacted.

#### 17.01.070 Severability.

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

#### 17.01.080 Effective date.

This SMP and all amendments thereto shall become effective fourteen days from the date of the Washington Department of Ecology's written notice of final approval.

#### 17.01.090 Definitions.

Whenever the words and terms set forth in this section appear in this title, they shall be given the meaning attributed to them by this section. Definitions established by RCW 90.58.030 and WAC Title 173 have been incorporated herein and should these definitions in the RCW or WAC be amended, the most current RCW or WAC definition shall apply. Except where specifically defined in this section, the RCW or the WAC, all words used in this shoreline master program shall carry their customary meanings.

When not inconsistent with the context, words used in the present tense include the future; the singular includes the plural; and the plural, the singular.

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

"Accessory" means any use or development incidental to and subordinate to a primary use of a shoreline use or development. See also "Appurtenance, residential."

"Act" means the Washington State Shoreline Management Act, Chapter 90.58 RCW.

"Adjacent" means to be nearby and not necessarily abutting.

"Adoption by rule" means an official action by the Department of Ecology to make a local government shoreline master program effective through rule consistent with the requirements of the Administrative Procedure Act, Chapter 34.05 RCW, thereby incorporating the adopted shoreline master program or amendment into the state master program.

"Advanced mitigation" is a form of permittee-responsible mitigation constructed in advance of a permitted impact. An advance mitigation site needs to be planned, designed, and constructed before a project can use any mitigation credit. Advance mitigation can be proposed by any applicant, but the advance compensatory mitigation credits generated by a mitigation effort in advance of impacts can only be used by that same applicant.

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

"Agricultural equipment" and "agricultural facilities" includes, but is not limited to:

- A. The following used in agricultural operations: equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities, including but not limited to pumps, pipes, tapes, canals, ditches, and drains;
- B. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;

- C. Farm residences and associated equipment, lands, and facilities; and
- D. Roadside stands and on-farm markets for marketing fruit or vegetables.

"Agricultural land" means those specific land areas on which agriculture activities are conducted as of the date of adoption of a local master program as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program.

"Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products, including but not limited to meat, upland finfish, poultry and poultry products, and dairy products.

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

"Amendment" means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

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

"Approval" means an official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the Department of Ecology for review and official action pursuant to this chapter; or an official action by the Department of Ecology to make a local government shoreline master program effective, thereby incorporating the approved shoreline master program or amendment into the state master program.

"Appurtenance, residential" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.

"Aquaculture" means the culture and/or farming of fish, shellfish, or other aquatic plants and animals. When dependent on the use of the water area and when consistent with control of pollution and prevention of damage to the environment, aquaculture is a preferred use of the water area. Commercial aquaculture is conducted to produce products for market with the objective of earning a profit. Noncommercial aquaculture is conducted for the benefit of native fish recovery, education and interpretation, or other public benefit or use.

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

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

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

"Barb" is a structure used primarily in streams. It is a low relief projection from a bank, angled upstream, to redirect flow away from the bank towards the center of the channel. As opposed to groins or jetties, barbs are not barrier types of structures; they function by redirecting flows that pass over the top of the structure.

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

"Bedrock" means in-place solid rock.

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

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

"Bioengineering" means project designs or construction methods which use live woody vegetation or a combination of live woody vegetation and specially developed natural or synthetic materials to establish a complex root grid within the existing bank which is resistant to erosion, provides bank stability, and maintains a healthy riparian environment with habitat features important to aquatic and terrestrial wildlife. Bioengineered or biotechnical bank protection designs may incorporate limited use of armored toes and wood structural elements.

"Boating facilities" means developments and uses that support access to shoreline waters for purposes of boating, including marinas, community docks serving more than four single-family residences or multifamily units, public piers, and community or public boat launch facilities. Docks serving four or fewer single-family residences are not boating facilities.

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

"Buffer averaging" means the regulatory alteration of the dimensions of a buffer that allows for increases and decreases in the buffer in discrete areas; provided, that the net area of buffer remains the same.

"Building official" means the manager of the offices of code administration or designee.

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

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

"Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

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

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

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

"Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the Department of Ecology's Shoreline Master Program Guidelines effective January 17, 2004, as now or hereafter amended.

"Concentrated animal feeding operation" means a structure or pens for the concentrated feeding or holding of animals or poultry, including, but not limited to, horses, cattle, sheep or swine. This definition includes dairy confinement areas, slaughterhouses, shipping terminal holding pens, poultry and/or egg production facilities and fur farms, but does not include animal husbandry.

"Conditional use" means a use, development, or substantial development which is classified as a conditional use or is not classified within the applicable master program.

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

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

"Critical areas" as defined under Chapter 36.70A RCW includes the following areas and ecosystems:

- A. Wetlands:
- B. Areas with a critical recharging effect on aquifers used for potable waters;
- C. Fish and wildlife habitat conservation areas:
- D. Frequently flooded areas; and
- E. Geologically hazardous areas.

"Department" means the City of Yakima community development department.

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

"Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. See also "Substantial development." Development does not include the following activities:

- A. Interior building improvements that do not change the use or occupancy;
- B. Exterior structure maintenance activities, including painting and roofing as long as it does not expand the existing footprint of the structure:
- C. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding; and
- D. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; and individual utility service connections.
- E. Dismantling or removing structures if there is no other associated development or re-development.

"Development regulations" means the controls placed on development or land uses by a county or City, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under Chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

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

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

"Document of record" means the most current shoreline master program officially approved or adopted by rule by the department for a given local government jurisdiction, including any changes resulting from appeals filed pursuant to RCW 90.58.190.

"Dredging" means removal of earth from the bed of a stream, lake, or pond for the purpose of flood control; navigation; utility installation (excluding on-site utility features serving a primary use, which are "accessory utilities" and shall be considered a part of the primary use); the construction or modification of essential public facilities and regional transportation facilities; restoration (of which the primary restoration element is sediment/soil removal rather than being incidental to the primary restoration purpose); and/or obtaining minerals, construction aggregate, or landfill materials. This definition does not include excavation for mining within a pond created by a mining operation approved under this title or under a local zoning ordinance, or a mining operation in existence before zoning, shorelines, or critical areas permits were required for such operations. Dredging, as regulated in this SMP under YMC 17.07.050, is not intended to cover other excavations waterward of the ordinary high water mark that are incidental to construction of an otherwise authorized use or modification (e.g., bulkhead replacements, large woody debris installations, boat launch ramp installation, pile placement).

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

"Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

"Ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

"Enhance" means to strengthen any of the basic functional properties listed in Chapter 17.09 YMC that exist but do not perform at optimum efficiency. "Optimum" refers to the most favorable or best performance of each function achievable for a specific segment of stream or lake corridor.

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

"Erosion" means the wearing away of the earth's surface as a result of the movement of wind, water, or ice.

"Events and temporary uses" means a social or community occasion or activity lasting for a limited time. Events and temporary uses within permitted facilities or legally nonconforming facilities that are designed for such uses are not included in this definition, as long as they do not materially interfere with the normal public use of the water or shorelines of the state.

"Excavation" means the mechanical removal of earth material.

"Exempt" developments are those set forth in WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515 which are not required to obtain a shoreline substantial development permit, but which must otherwise comply with applicable provisions of the Act and the local master program.

"Fair market value" of a development is the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

"Feasible" means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

- A. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- B. The action provides a reasonable likelihood of achieving its intended purpose; and
- C. The action does not physically preclude achieving the project's primary intended legal use.

In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the City may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

"Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land. The physical structure of a bank stabilization structure shall not be considered fill. However, fill placed behind the structure is considered fill. Stream bed manipulation for irrigation diversions or restoration shall not be considered fill.

"Fish and wildlife habitat conservation" means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability.

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

"Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas from the unusual and rapid accumulation of runoff of surface waters from any source.

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

"Flood insurance rate map (FIRM)" means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood insurance study" means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

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

"Flood-proofing" for purposes of administering this title means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damages to lands, water and sanitary facilities, structures and contents of buildings.

"Floodplain" is synonymous with the one-hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act.

"Floodway" means the area, as identified in a master program, that either:

- A. Has been established in Federal Emergency Management Agency Flood Insurance Rate Maps or floodway maps; or
- B. Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which floodwaters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually.

Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from floodwaters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

"Floodway fringe" for purposes of administering this title means that portion of a floodplain which is inundated by floodwaters, but is not within a defined floodway. Floodway fringes serve as temporary storage for floodwaters.

"Forest land" means land primarily devoted to forest practices activities.

"Forest practices" means activities conducted under federal forest practices approval or under a forest practices permit reviewed and approved by the Washington Department of Natural Resources pertaining to the management of forest land, including growing, managing, harvesting, and interim storage of merchantable timber for commercial value, as well as incidental activities reviewed under federal or state approval, such as road construction and maintenance (including bridges) and mining activities.

"Geotechnical report" or "geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations

regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

"Grade" means the vertical location of the ground surface. "Natural grade" is the grade as it exists or may have existed in its original undisturbed condition. "Existing grade" is the current grade in either its undisturbed, natural condition or as disturbed by some previous modification. "Rough grade" is a stage where grade conforms approximately to an approved plan. "Finish grade" is the final grade of the site which conforms to an approved plan. "Average grade level" is the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

"Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

"Groin" means a barrier type of structure that extends from the stream bank into a waterbody for the purpose of the protection of a shoreline and adjacent uplands by influencing the movement of water or deposition of materials. Groins may serve a variety of functions, including bank protection, pool formation, and increased roughness, and may include rock structures, debris jams, or pilings that collect wood debris. See also "Barb" and "Weir."

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

"Guidelines" means those standards adopted by the Department of Ecology into the Washington Administrative Code (WAC) to implement the policy of Chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards also provide criteria for local governments and the Department of Ecology in developing and amending master programs.

"Habitats of local importance" are designated as fish and wildlife habitat conservation areas based on a finding by the City that they are locally important.

"Hard structural shoreline stabilization" means shoreline erosion control practices using hardened structures that armor and stabilize the shoreline from further erosion. Hard structural shoreline stabilization typically uses concrete, boulders, dimensional lumber or other materials to construct linear, vertical or near-vertical faces. These include bulkheads, riprap, and similar structures.

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

"Height" is measured from average grade level to the highest point of a structure; provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the SMP specifically requires that such appurtenances be included; provided further, that temporary construction equipment is excluded in this calculation.

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

"Historic structure" means any structure that is:

1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for

individual listing on the National Register;

- 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- 3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

"Hydraulic dredging" is a minimally invasive dredging technique that utilizes suction to vacuum up sediments and other lake or riverbed material.

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

"In-water structures" are structures placed by humans within a stream, river or lake waterward of the OHWM that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-water structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, recreation, or other purpose. Barbs, jetties, groins and weirs are all examples of in-water structures.

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

"Lake or pond" means an inland body of standing water.

"Limited master program amendment" means a master program amendment that addresses specific procedural and/or substantive topics and which is not intended to meet the complete requirements of a comprehensive master program update.

"Maintenance, normal" means those usual acts to prevent a decline, lapse, or cessation from a legally established condition. See "Repair, normal."

"Manufactured home" means a structure fabricated on a permanent chassis that is transportable in one or more sections; is designed to be used with or without a permanent foundation when connected to the required facilities; has sleeping, cooking, and plumbing facilities or any combination thereof; and is intended for human occupancy or is being used for residential purposes.

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale pursuant to YMC Title 15.

"Manufactured home park or subdivision, existing" means a manufactured home park or subdivision that was completed before December 15, 1981, the effective date of the floodplain management regulations.

"May" means the action is acceptable, provided it conforms to the provisions of this chapter.

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

"Mining" means the removal of naturally occurring minerals and materials from the earth for commercial value. Mining includes processing and batching. Mining does not include large excavations for structures, foundations, parking areas, etc.

"Must" means a mandate; the action is required.

"Native" means indigenous to or originating naturally within Yakima County.

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

"Natural or existing topography" means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

"Nonwater-oriented uses" means those uses that are not water-dependent, water-related, or water-enjoyment.

"Ordinary high water mark" (OHWM) means that mark on lakes and streams which will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the City or Washington Department of Ecology. The following criteria clarify this mark on lakes and streams:

- A. Lakes. Where the ordinary high water mark cannot be found, it shall be the line of mean high water;
- B. Streams. Where the ordinary high water mark cannot be found, it shall be the line of mean high water. For braided streams, the ordinary high water mark is found on the banks forming the outer limits of the depression within which the braiding occurs.

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

"Permit" means any substantial development, variance, conditional use permit, or revision authorized under Chapter 90.58 RCW.

"Priority habitat" means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: Comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife. A priority habitat may also be described by a successional stage. Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife.

"Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below:

- A. State-Listed or State Proposed Species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the Department of Fish and Wildlife (POL-M- 6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.
- B. Vulnerable Aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate.
- C. Species of Recreational, Commercial, and/or Tribal Importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.
- D. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.

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

"Provisions" means policies, regulations, standards, guideline criteria or environment designations.

"Public access" means the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

"Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.

"Public trust doctrine" is a legal principle derived from English Common Law. The essence of the doctrine is that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation,

conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land. The public trust doctrine does not allow the public to trespass over privately owned uplands to access the water. It does, however, protect public use of navigable water bodies below the ordinary high water mark.

"Qualified professional" shall meet the following criteria:

- A. A qualified professional for wetlands must have a bachelor's degree or higher in biology, ecology, soil science, botany, or a closely related field, and a minimum of five years of professional experience in wetland identification and assessment in the Pacific Northwest.
- B. A qualified professional for stream corridors must have a bachelor's degree or higher in wildlife biology, ecology, fisheries, or closely related field, and a minimum of five years' professional experience related to the subject species/habitat type.
- C. A qualified professional for geologically hazardous areas and preparation of geotechnical reports must be a professional engineering geologist or civil engineer, licensed in the state of Washington.
- D. A qualified professional for critical aquifer recharge areas must be a professional hydrogeologist, or environmental engineer licensed in the state of Washington.
- E. A qualified professional for channel migration zone reports must be a professional engineering geologist, civil engineer or geologist licensed in the state of Washington, with a minimum of five years of professional experience in geomorphology.
- F. A qualified professional for flood studies must be a professional engineering geologist or civil engineer licensed in the state of Washington.
- G. A qualified professional for economic studies must have a bachelor's degree or higher in economics or business administration with five years of professional experience. The five year standard shall be waived for professionals with a PhD degree.
- H. A qualified professional for habitat assessments and habitat management plans must have a bachelor's degree or higher in biology and professional experience related to the subject species or habitat.
- I. Or other person/persons with experience, training, expertise and related work experience appropriate for the relevant critical area subjects determined acceptable to the shoreline administrator.

"Recreation, high intensity" means use areas with major structures and improvements, such as an urban park with extensive paved surfaces or substantially altered vegetation. RV park/camping with units remaining year-round is included in this category.

"Recreation, low intensity" means unimproved use areas, such as hiking or nature trails, primitive camping areas, swimming beaches, etc. An unimproved personal camping and recreation site is included in this category.

"Recreation, moderate intensity" means use areas with minor structures and improvements, such as campgrounds, picnic facilities, paved trails, swimming beaches, fishing sites, or nature/history interpretive centers. RV park/camping with units not remaining year-round is included in this category.

"Recreation vehicle" means a vehicle which is:

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

"Recreational development" means public or commercial activities or facilities that allow for the refreshment of mind and body. Examples include, but are not limited to, parks, viewpoints, trails, public access facilities, and other low-intensity use outdoor recreation areas. Recreational uses that do not require a shoreline location, nor are related to

the water, nor provide significant public access, are considered nonwater-oriented. For example, a recreation use solely offering indoor activities would be considered nonwater-oriented.

"Repair, normal" means to restore a development or structure to a state comparable to its original, legally established condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resources or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development, including but not limited to its size, shape, configuration, location and external appearance, and the replacement does not cause substantial adverse effects to shoreline resources or environment. See also "Maintenance, normal."

"Residential development" means construction or alteration, earth modification, subdivision and use of land primarily for human residence; including, but not limited to, single-family residences and multifamily dwellings, accessory uses, and structures normally associated with residential uses and structures. Residential development includes land divisions, including short plats, of residentially zoned land. It also includes all modifications to land and vegetation associated with construction, preparation, or maintenance of residential structures or accessory structures.

"Restore," "restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions, such as those listed in YMC 17.09.030(E) that have been lost or destroyed through natural events or human activity. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the site to aboriginal or pre-European settlement conditions.

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

"Riparian vegetation" means the terrestrial vegetation that grows beside rivers, streams, and other freshwater bodies and that depends on these water sources for soil moisture greater than would otherwise be available from local precipitation.

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

"Scour" means the removal of underwater material by waves and currents, especially at the base or toe of a bank stabilization or other in-water structure.

"Shall" means a mandate; the action must be done.

"Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams and lakes which are subject to the provisions of this chapter; the same to be designated as to location by the Department of Ecology.

"Shoreline administrator" means the duly appointed City of Yakima director of community development, whichever is appropriate, or their designee.

"Shoreline areas" and "shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

"Shoreline environment designations" are a classification of shorelines established by local shoreline master programs in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas.

"Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

"Shoreline stabilization" means structural or nonstructural modifications to the existing shoreline intended to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, wind, or wave action. They are generally located parallel to the shoreline at or near the OHWM.

"Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (A) shorelines of statewide significance; (B) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (C) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

"Shorelines hearings board" means a six-member quasi-judicial body, created by the SMA, which hears appeals by any aggrieved party on the issuance of a shoreline permit, enforcement penalty and appeals by the City on Department of Ecology approval of rules, regulations, guidelines or designations under the SMA.

"Shorelines of statewide significance" means the following shorelines of the state:

- A. Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;
- B. Those natural rivers or segments east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer; and
- C. Those shorelands associated with subsections A and B of this definition.

"Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state.

"Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

"Significant" means a reasonable likelihood of more than a moderate adverse impact on environmental quality. Significance involves context and intensity and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact. The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

"Significant ecological impact" means an effect or consequence of an action if any of the following apply:

- A. The action measurably or noticeably reduces or harms an ecological function or ecosystem-wide process.
- B. Scientific evidence or objective analysis indicates the action could cause measurable or noticeable reduction or harm to those ecological functions or ecosystem-wide processes under foreseeable conditions.
- C. Scientific evidence indicates the action could contribute to a measurable or noticeable reduction or harm to ecological functions or ecosystem-wide processes as part of cumulative impacts, due to similar actions that are occurring or are likely to occur. Any project may have one or more significant ecological impacts, which can be either short-term or long-term. Projects with short-term significant ecological impacts may still be considered beneficial if the project improved ecological function over the long term, either due to mitigation or because of short-term impacts, may be construction-related only.

"Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

"Single improved recreational vehicle site" means a site on which a recreational vehicle may be parked with minimal services (such as electricity, well and septic system), without a garage or carport, and without large accessory buildings (small detached storage sheds or accessory structures totaling one hundred twenty square feet or less may be allowed). Recreational vehicle sites not meeting these criteria are considered single-family residences.

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

"Soft structural shoreline stabilization" means shoreline erosion control and restoration practices that contribute to restoration, protection or enhancement of shoreline ecological functions. Soft structural shoreline stabilization typically includes a mix of gravels, cobbles, boulders, logs and native vegetation placed to provide shore stability in a

nonlinear, generally sloping arrangement. Linear, vertical faces are an indicator of hard structural shoreline stabilization (see above definition).

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

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

"Species of local importance" are those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species.

"State master program" is the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by Ecology.

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

"Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

"Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this definition must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. See WAC 173-27-040 for a list of developments that are not considered substantial.

"Substantially degrade" means to cause significant ecological impact.

"Unreasonable and disproportionate" means that locations outside of the floodway or CMZ would add more than twenty percent to the total project cost. Other methods to determine unreasonable and disproportionate cost may be used on a case-by-case basis with approval of the shoreline administrator.

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

"Variance" is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the applicable master program and not a means to vary a use of a shoreline.

"Vegetative buffer" or "buffer" means an area extending landward from the ordinary high water mark of a lake or stream and/or from the edge of a wetland which is maintained or otherwise allowed to provide, under optimal conditions, adequate soil conditions and native vegetation for the performance of the basic functional properties of a fish and wildlife habitat conservation area and wetland as set forth in YMC 17.09.030(E) (Functional Properties) and YMC 17.09.040(D) (Wetland Functions and Rating). It is understood that optimal conditions do not always exist due to degradation of the vegetative buffer before establishment of this title, or due to colonization by nonnative species. Such conditions still provide functional properties, though at a lower level, depending on the difference from natural conditions.

"Vessel" includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.

"Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

"Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that foster shoreline enjoyment.

"Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

"Water quality" means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

"Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- A. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- B. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

"Waters of the state" are all lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

"Weir" means a structure generally built across a stream channel for the purpose of diverting water or trapping sediment or other moving objects transported by water.

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

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

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

## 17.01.100 Shoreline jurisdiction.

Pursuant to the authority of RCW 90.58.030(2)(f) and WAC 173-22-040(2)—(3), the jurisdictional limits of the shoreline master program within the City of Yakima for areas that are subject to these regulations are listed below. The City of Yakima has developed maps to generally depict the extent of shoreline jurisdictional boundaries for all shorelines within the county. These maps are for informational and illustrative purposes only and are not regulatory in nature. Where such maps are not available or do not correspond with physical features on the ground, jurisdictional boundaries shall be controlled by the criteria listed below, Chapter 173-22 WAC, and the Act itself. It is understood when the maps and the actual physical features do not correspond, the physical features will dictate the extent of the jurisdictional boundaries. It is understood that the actual physical features may change. The physical features will dictate the extent of the shoreline jurisdictional boundaries. Shoreline jurisdictional area shall include:

A. The following waterbodies in the City and, upon annexation, in the UGA:

- 1. Yakima River;
- 2. Naches River:
- 3. Cowiche Creek;
- 4. Willow Lake;
- 5. Lake Aspen; and
- Rotary Lake.
- B. Buchanan Lake shall be regulated under this SMP when the Washington Department of Natural Resources Surface Mine Reclamation Permit lapses or is terminated, or when the City receives a permit application for new development on or uses of Buchanan Lake. The original Shoreline Substantial Development and Conditional Use Permit (SH 84-3) issued by Yakima County for Buchanan Lake still governs.
- C. Subject to subsection H of this section, wherever the "floodway" has been established by a flood insurance study prepared by the Federal Emergency Management Agency (FEMA), shoreline jurisdiction shall be the floodway plus two hundred feet, measured on a horizontal plane, or the one-hundred-year floodplain, whichever is lesser.
- D. Subject to subsection H of this section, whenever the one-hundred-year floodplain has been identified by a flood insurance study prepared by the Federal Emergency Management Agency but where no "floodway" has been identified, shoreline jurisdiction shall be the one-hundred-year floodplain boundary or two hundred feet, measured in a horizontal plane, from the ordinary high water mark, whichever is greater.
- E. Whenever there are no detailed floodplain or floodway studies, shoreline jurisdiction shall be two hundred feet, measured on a horizontal plane, from the ordinary high water mark.
- F. Where a channel migration zone (CMZ) has been identified, and extends beyond the jurisdiction established by subsection C of this section, jurisdiction shall extend to the extent of the CMZ, but not beyond the limits of subsection D of this section.
- G. Those wetlands and river deltas which are in proximity to and either influence or are influenced by the shorelines. This influence includes, but is not limited to, one or more of the following: periodic inundation, location within a floodplain, or hydraulic continuity.
- H. Under no circumstances shall shoreline jurisdiction be less than two hundred feet, measured on a horizontal plane, from the ordinary high water mark of the shoreline waterbody, except that those portions of Buchanan Lake within two hundred feet of the Yakima River are excluded from shoreline jurisdiction until Buchanan Lake is regulated as a shoreline waterbody.

#### Chapter 17.03

#### SHORELINE ENVIRONMENT DESIGNATIONS

Sections:	
17.03.005	Intent of provisions.
17.03.010	Floodway/channel migration zone (CMZ).
17.03.020	Urban conservancy.
17.03.030	High intensity.
17.03.040	Essential public facilities.
17.03.050	Shoreline residential.
17.03.060	Aquatic.
17.03.070	Shoreline use and modification matrix.
17.03.080	Development standards.
17.03.090	Official shoreline maps and unmapped or undesignated shorelines.
17.03.100	Predesignation.

# 17.03.005 Intent of provisions.

This SMP is intended to meet the requirements in WAC 173-26-211. It states that:

Master programs shall contain a system to classify shoreline areas into specific environment designations. This classification system shall be based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans as well as the criteria in this section. Each master program's classification system shall be consistent with that described in WAC 173-26-211(4) and (5) unless the alternative proposed provides equal or better implementation of the act.

This SMP is consistent with these requirements, deviating from WAC 173-26-211(4) and (5) with respect only to some environment designation names, or the addition of new environment designations where such provides the City with opportunity to provide further, but complementary, designations consistent with existing land management plans. Each environment designation contains a purpose statement, designation criteria, and management policies components.

## 17.03.010 Floodway/channel migration zone (CMZ).

A. Purpose. The "floodway/CMZ" environment is intended to protect the water areas, islands, associated overflow channels, and channel migration areas. This environment provides for the movement of the river within its floodplain, and emphasizes preservation of the natural hydraulic, geologic and biological functions of the City's shorelines that are constrained by biophysical limitations.

- B. Designation Criteria. The floodway/CMZ designation is assigned to shoreline areas that are within a mapped channel migration zone and/or within a designated FEMA floodway. The extent of the floodway/CMZ designation should never extend beyond the limitations of the shoreline CMZ found in WAC 173-26-221(3)(b). Areas separated from the active river channel by existing legal artificial channel constraints should not be considered as part of the CMZ. In addition, areas that are separated from the active channel by legally existing artificial structure(s) including transportation facilities, built above or constructed to remain intact through the one-hundred-year flood, should also not be considered part of the CMZ.
- C. Management Policies.
  - 1. Commercial, industrial, mining, nonwater-oriented recreation, roads, utilities, parking areas, and residences should generally not be located in the floodway/CMZ environment. Other uses (recreation, resource, etc.) should be carefully limited to protect shoreline functions.
  - 2. Activities that may degrade the value of the floodway/CMZ environment should be limited, and development in hazardous areas should be restricted.
  - 3. Modifications that harden or fix stream banks and channels should be discouraged.

# 17.03.020 Urban conservancy.

A. Purpose. The "urban conservancy" environment is intended to protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

- B. Designation Criteria. Specific criteria for designation of the urban conservancy environment include areas or properties that:
  - 1. Lie in the City limits and urban growth areas;
  - 2. Are planned for development that is compatible with the principles of maintaining or restoring the ecological functions of the area:
  - 3. Are suitable for water-enjoyment uses;
  - 4. Are open space or floodplains; or
  - 5. Are areas that retain important ecological functions which should not be more intensively developed.
- C. Management Policies.
  - 1. Allowed uses for the urban conservancy environment generally include uses which preserve the natural character of the area, and promote the preservation of open space, floodplains or sensitive lands.
  - 2. Uses allowed under this designation should focus on recreation.
  - 3. Commercial, industrial and residential uses should be limited, and when allowed, result in restoration of ecological functions.
  - 4. Public access and recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

# 17.03.030 High intensity.

- A. Purpose. The purpose of the "high intensity" environment is to provide for high intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.
- B. Designation Criteria. Specific criteria for designation of the high intensity environment include areas or properties that:
  - 1. Presently support high intensity land uses including commercial, industrial, urban recreational, transportation, or high intensity water-oriented uses.
  - 2. Are planned to accommodate urban expansion of uses listed in subsection (B)(1) of this section.
- C. Management Policies.
  - 1. Water-oriented commercial, industrial, and recreation uses should be given high priority in the high intensity environment. First priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed-use developments. Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline. Public benefits such as ecological restoration or public access may be required in association with nonwater-oriented development.
  - 2. When considering shoreline environment designation amendment proposals, full utilization of existing high intensity areas should be achieved before further expansion of intensive development is allowed.
  - 3. New development in the high intensity designation should assure no net loss of shoreline ecological functions. Where applicable, new development should include environmental cleanup and restoration of the shoreline to comply with any relevant state and federal law.
  - 4. Where feasible, visual and physical public access should be required as part of development in the high intensity designation unless it already exists to serve the development or other safety, security, or fragile environmental conditions apply.
  - 5. Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative separation.

## 17.03.040 Essential public facilities.

- A. Purpose. The "essential public facilities" environment is intended to support planning and maintenance of existing essential public facilities.
- B. Designation Criteria. The essential public facilities designation is assigned to lands containing those facilities that are typically difficult to site or relocate, such as state or regional transportation facilities and wastewater handling facilities.
- C. Management Policies.
  - 1. Essential public facilities and their accessory or supporting uses are allowed in the essential public facilities environment.
  - 2. Allowed new development in the essential public facilities designation should assure no net loss of shoreline ecological functions.
  - 3. Where applicable, new and expanded development should include environmental cleanup and restoration of the shoreline to comply with any relevant state and federal law.
  - 4. Expansion and improvement of existing facilities should be allowed, with mitigation sequencing applied to avoid and then minimize adverse impacts to the extent consistent with the specific facility and public needs, with mitigation required for any remaining adverse impacts.

## 17.03.050 Shoreline residential.

- A. Purpose. The purpose of the "shoreline residential" environment is to accommodate residential development and appurtenant structures that are consistent with the SMP. An additional purpose is to provide appropriate public access and recreational uses.
- B. Designation Criteria. Assign a shoreline residential environment designation to areas that are predominantly single-family or multifamily residential development or are planned and platted for residential development.
- C. Management Policies.
  - 1. Development standards addressing the development envelope, water quality, and vegetation should assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.
  - 2. Multifamily and multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities.
  - 3. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.
  - 4. Commercial development should be limited to water-oriented uses and allowed only when the underlying zoning permits such uses.

# 17.03.060 Aquatic.

- A. Purpose. The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark of shoreline lakes.
- B. Designation Criteria. The aquatic designation applies to lands and waters waterward of the ordinary high water mark of shoreline lakes.
- C. Management Policies.
  - 1. Allow new over-water structures only for water-dependent uses, public access, or ecological restoration. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
  - 2. In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

- 3. Uses that could adversely impact the ecological functions of critical freshwater habitats should not be allowed except where necessary to achieve the objectives of the Shoreline Management Act, and then only when their impacts are mitigated according to mitigation sequencing as necessary to assure no net loss of ecological functions.
- 4. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.
- 5. When considering development or activities in the aquatic environment, the City should favor development and activities associated with preferred uses of the Shoreline Management Act and apply development standards that consider water quality, navigation, presence of aquatic vegetation, existing critical habitats, aesthetics, public access, and views.

#### 17.03.070 Shoreline use and modification matrix.

Table 03.070-1 lists the uses and activities for each shoreline environment designation that are allowed by substantial development permit and/or conditional use permit, or are prohibited. Such uses shall be processed in accordance with Chapter 17.13 YMC (Administration and Enforcement). This table does not change those situations of when this title does not apply to a development (YMC 17.01.020, Applicability), or when a use or activity listed as needing a shoreline substantial development permit may qualify for an exemption instead (YMC 17.13.050, Exemptions from shoreline substantial development permits). Definitions for some uses are provided in YMC 17.01.090. The provisions in Table 03.070-1 apply to specific common uses and types of development only to the extent they occur within shoreline jurisdiction.

Table 03.070-1. Shoreline Use and Modification Matrix

Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Prohibited N/A = Not Applicable	High Intensit y	Essenti al Public Facilitie s	Shoreline Residenti al	Urban Conservanc y	Floodway/Chann el Migration Zone (CMZ)	Aquatic - Lakes
Agriculture						
Agricultural Activities	S	Х	S	S	S	N/A
Agricultural Market, Agricultural Stand	S	Х	Х	S	Х	N/A
Winery and Brewery	S	Х	Х	S	Х	N/A
Agriculture-Industrial						
Agricultural Chemical Sales/Storage	S	Х	Х	Х	х	N/A
Agricultural Related Industries and Storage	S	Х	Х	С	х	N/A
Concentrated Feeding Operation	х	Х	Х	Х	Х	N/A
Aquaculture						
Rearing						

Shoreline Use or Modification  Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Prohibited N/A = Not Applicable  Commercial  Noncommercial  Processing	High Intensit y	Essenti al Public Facilitie s	Shoreline Residenti al	Urban Conservanc y	Floodway/Chann el Migration Zone (CMZ)  X  C	Aquatic - Lakes
Packing and Storage	^	^		ry/Manufacturir		_ ^
Boating and Private Moorage Facili	ties		occ maasu	Ty/Mariaractarii	ig/Otorage	
Boat Launches						
Private	S	X	С	×	Х	See upland designatio n
Public/Community/Commer cial	S	S	S	S	S	S
Pier/Dock						
Single-Family Residence Facility to Access Watercraft	N/A	х	S	х	Х	S
Water-Dependent Commercial, Industrial, Aquaculture, Recreational, or Community Residential Use; or Public Access	S	х	S	Х	Х	S
Commercial and Service Developm	ent					
Retail, Trade, and Service						
Water-Oriented	S	Х	Х	S	Х	С
Nonwater-Oriented						
General	С	Х	Х	С	Х	Х
General + Public Benefit <sup>1</sup>	S	х	Х	С	Х	Х
Separated from Shoreline	S	Х	Х	S	Х	Х
Mixed-Use <sup>4</sup> Project That Includes a Water- Dependent Commercial, Industrial, Aquaculture, or Recreational Use	S	х	Х	S	х	С

	T	<u> </u>		T	T	T
Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Prohibited N/A = Not Applicable	High Intensit y	Essenti al Public Facilitie s	Shoreline Residenti al	Urban Conservanc Y	Floodway/Chann el Migration Zone (CMZ)	Aquatic - Lakes
Outdoor Manufacturing, Processing and Storage	S	х	х	Х	х	х
Community Services and Institutional Uses						
Water-Oriented	S	S	Х	S	Х	С
Nonwater-Oriented						
General	С	С	Х	С	Х	Х
Separated from Shoreline	S	S	Х	S	Х	N/A
Mixed-Use <sup>4</sup> Project That Includes a Water- Dependent Commercial, Industrial, Aquaculture, or Recreational Use	S	S	x	S	х	С
Health and Social Service Facility	S	S	Х	Х	X	х
Mixed-Use Building <sup>5</sup>	S	Х	Х	Х	×	Х
Dredging and Dredge Material Disp	osal					
Dredging for Water-Dependent Use and Public Access	N/A	С	N/A	N/A	С	С
Dredging for Existing Navigation Uses	N/A	X	N/A	N/A	x	С
Dredging for Habitat Restoration	N/A	S	N/A	N/A	S	S
Dredging, Other	N/A	X	N/A	N/A	×	Х
Disposal of Dredged Material, General	S	S	Х	Х	Х	Х
Disposal of Dredged Material, General + Part of Restoration Plan	S	S	Х	С	С	Х
Dredging Maintenance Plan	N/A	S	N/A	N/A	S	S
Fill						
Waterward of the OHWM, General	N/A	С	N/A	N/A	С	С
Waterward of the OHWM, General + Part of Restoration Plan	N/A	S	N/A	N/A	S	S
		•	•	•		•

	1					
Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Prohibited N/A = Not Applicable	High Intensit y	Essenti al Public Facilitie s	Shoreline Residenti al	Urban Conservanc Y	Floodway/Chann el Migration Zone (CMZ)	Aquatic - Lakes
Upland of the OHWM, General	S	S	S	S	С	N/A
Upland of the OHWM, Part of Restoration Plan	S	S	S	S	S	N/A
Flood Hazard Reduction Measures						
Modification of Existing Flood Hazard Facilities (including relocation farther landward)	S	S	S	S	S	N/A
New Facilities	С	С	С	С	С	N/A
Forest Practices						
Forest Practices	N/A	N/A	N/A	N/A	N/A	N/A
Industry/Manufacturing/Storage						
Water-Oriented	S	Х	Х	С	X	С
Nonwater-Oriented						
General	С	Х	Х	X	X	Х
General + Part of Restoration Plan, Provides Other Public Benefit <sup>1</sup> , or Located in Degraded Area <sup>2</sup>	S	х	x	X	X	x
Outdoor Manufacturing, Processing and Storage	х	Х	Х	Х	х	Х
Separated from Shoreline	S	Х	Х	С	X	N/A
Mixed-Use <sup>4</sup> Project That Includes a Water- Dependent Commercial, Industrial, Aquaculture, or Recreational Use	S	x	x	С	X	С
In-Water Structures						
To Protect Public Facilities	С	С	С	С	С	С
To Protect or Restore Ecological Functions	S	S	S	S	S	S
To Monitor Flows, Water Quality, or Other Habitat Characteristics	S	S	S	S	S	S
Other	С	С	С	Х	X	С
Mining						
Surface Mining	С	Х	X	X	X	X

	I		<u> </u>	<u> </u>		
Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Prohibited N/A = Not Applicable	High Intensit y	Essenti al Public Facilitie s	Shoreline Residenti al	Urban Conservanc Y	Floodway/Chann el Migration Zone (CMZ)	Aquatic - Lakes
Underground Mining	Х	Х	Х	Х	Х	Х
Mining for Habitat Restoration	S	S	S	S	С	S
Recreational Development			<u> </u>			
Water-Oriented						
High-Intensity, General	S	S	S	С	С	С
High Intensity, General + Part of Restoration Plan or Located in Degraded Area <sup>2</sup>	S	S	S	S	S	S
Moderate-Intensity, General	S	S	S	S	С	С
Moderate-Intensity, General + Part of Restoration Plan or Located in Degraded Area <sup>2</sup>	S	S	S	S	S	S
Low-Intensity	S	S	S	S	S	S
Trails	S	S	S	S	S	S
Recreation Maintenance Plan	S	S	S	S	S	S
Nonwater-Oriented						
General	С	Х	Х	С	Х	Х
Sites Separated from Shoreline	S	Х	S	S	С	N/A
Indoor		Se	ee Commerc	ial and Service	Development	
Residential Development						
Single-Family Dwelling	S	Х	S	S	X	N/A
Accessory Dwelling Unit	S	Х	S	S	Х	N/A
Duplex	S	Х	С	С	X	N/A
Multifamily Dwelling	S	Х	Х	Х	Х	N/A
Manufactured Home Park or Subdivision <sup>3</sup>	С	Х	Х	Х	Х	N/A
Houseboats and Over-Water Residential Uses	N/A	Х	N/A	N/A	Х	Х
Residential Maintenance Plan	S	N/A	S	N/A	N/A	S
Shoreline Habitat and Natural Systems Enhancement Projects						

Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Prohibited N/A = Not Applicable	High Intensit y	Essenti al Public Facilitie s	Shoreline Residenti al	Urban Conservanc y	Floodway/Chann el Migration Zone (CMZ)	Aquatic - Lakes
Shoreline Habitat and Natural Systems Enhancement Projects	S	S	S	S	S	S
Shoreline Stabilization						
Hard Stabilization	С	С	С	С	С	С
Soft Stabilization	S	S	S	С	С	S
Repair and Replacement	S	S	S	S	S	S
Signs						
On-Premises for Authorized Use	S	S	S	S	S	S
Off-Premises	S	S	X	X	X	X
Informational (directional, landmark, trail marker, etc.)	S	Ø	Ø	S	S	S
Transportation and Parking						
New Access Roads Serving Permitted Uses	S	S	S	S	С	N/A
Expanded Access Roads Serving Permitted Uses	S	S	S	S	S	N/A
New Highways, Freeways, Arterials and Collectors	S	S	С	С	С	С
Expanded Highways, Freeways, Arterials and Collectors	S	S	S	S	S	S
New Bridges	S	S	С	С	С	С
Expanded Bridges	S	S	S	S	S	S
Transportation Maintenance Plan	S	S	S	S	S	N/A
Transportation Maintenance Facilities	С	Ø	Х	С	X	X
New Railways	S	S	С	С	С	С
Expanded Railways	S	S	S	S	S	S
Parking for Authorized Use			Reviewed a	as part of autho	orized use.	
Park and Ride Lots and Similar Stand Alone Parking	С	S	Х	Х	Х	Х
Utilities						
Utility Services Accessory to Individual Shoreline Projects			Reviewed a	as part of autho	prized use.	

Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Prohibited N/A = Not Applicable	High Intensit y	Essenti al Public Facilitie s	Shoreline Residenti al	Urban Conservanc y	Floodway/Chann el Migration Zone (CMZ)	Aquatic - Lakes
Utility Services to Projects outside Shoreline Jurisdiction	S	S	S	S	С	С
New Power Generating Facilities	С	С	Х	С	×	С
Expanded Power Generating Facilities	S	S	Х	С	Х	С
Utility Transmission Lines	S	S	С	С	С	С
New Utility Services, General	С	С	С	С	С	С
Expanded Utility Services, General	S	S	S	S	С	С
Utility Maintenance Plan	S	S	S	S	S	S
Wastewater Treatment Facility	С	S	Х	С	С	Х
Wastewater Treatment Facility+ Part of Restoration Plan or Located in Degraded Area <sup>2</sup>	S	S	Х	S	S	Х

<sup>1</sup> Public benefit = public access for substantial numbers of persons or shoreline ecological restoration.

# 17.03.080 Development standards.

A. There shall be a thirty-five-foot maximum building height for all structures, except that utility towers and poles, water treatment towers, wastewater treatment facilities and bridges are not required to meet this standard. To exceed thirty-five feet, an applicant must apply for a shoreline variance, and comply with the following criteria in addition to standard shoreline variance criteria:

- 1. Demonstrate overriding considerations of the public interest will be served.
- 2. Demonstrate that the proposal will not obstruct the view of a substantial number of residences on areas adjoining such shorelines or impair views from public lands or impair scenic vistas to the Yakima Greenway or Naches River or associated lakes.
- B. Minimum shoreline lot frontage shall be consistent with underlying zoning and be no less in width than the following by shoreline environment:
  - 1. High intensity, essential public facilities: thirty-five feet.
  - 2. Shoreline residential: fifty feet.
  - 3. Urban conservancy, floodway/CMZ: sixty feet.

Degraded area = improved rights-of-way, levees, previously legally degraded land, or existing impervious area.

Construction of a manufactured home on an existing lot is permitted as a "single-family dwelling."

<sup>&</sup>lt;sup>4</sup> In this context, "mixed-use" means a shoreline development that includes and supports a water-dependent use.

<sup>&</sup>lt;sup>5</sup> "Mixed-use building" means a building in a commercial district or planned development used partly for residential use and partly for a community facility or commercial use.

- C. Shoreline buffers: See YMC 17.09.030.
- D. Minimum structure setback from side property lines in shoreline jurisdiction shall be consistent with the underlying zoning and no less than five feet.

## 17.03.090 Official shoreline maps and unmapped or undesignated shorelines.

- A. The shoreline jurisdiction and environment designations established by this title are shown on the official Shoreline Jurisdiction and Environment Designations Map for the Yakima urban growth area. The official Shoreline Jurisdiction and Environment Designations Map, together with all the explanatory material thereon, is adopted by reference and declared to be a part of this SMP. The electronic files of the official map will be considered the official version and may be updated administratively or through an SMP amendment as indicated in subsections B, C and D of this section. The Department of Ecology will be provided with electronic files of the official map when any updates are made. Minor mapping errors corrected administratively shall not be greater than one acre in size. If greater than one acre in size, a SMP amendment shall be completed within three years of finding the mapping error.
- B. Any areas within shoreline jurisdiction that are not mapped and/or designated due to minor mapping inaccuracies in the lateral extent of shoreline jurisdiction from the shoreline waterbody related to site-specific surveys of ordinary high water mark, floodway, channel migration zones, and/or floodplain are automatically assigned the category of the contiguous waterward shoreline environment designation. Where the mapping inaccuracy results in inclusion of an unmapped associated wetland, that wetland shall be assigned an urban conservancy environment designation. Correction of these minor mapping inaccuracies may be made and incorporated into the official Shoreline Jurisdiction and Environment Designations Map without an SMP amendment.
- C. All other areas of shoreline jurisdiction that were neither mapped as jurisdiction nor assigned an environment designation shall be assigned an urban conservancy designation until the shoreline can be redesignated through an SMP amendment process conducted consistent with WAC 173-26-100 and YMC 17.13.140.
- D. The actual location of the OHWM, floodplain, floodway, and wetland boundaries must be determined at the time a development is proposed. Wetland boundary and ordinary high water mark determinations are valid for five years from the date they are assessed and flagged in the field. After five years have elapsed, the City shall determine whether a revision or additional assessment is necessary. Floodplain and floodway boundaries should be assessed using FEMA maps or the most current, accurate, and complete scientific and technical information available.
- E. In addition, any property shown in shoreline jurisdiction that does not meet the criteria for shoreline jurisdiction shall not be subject to the requirements of this SMP. Revisions to the official Shoreline Jurisdiction and Environment Designations Map may be made as outlined in subsection B of this section without an SMP amendment.

# 17.03.100 Predesignation.

The City of Yakima has adopted shoreline environment predesignations for shorelines located outside of City limits but within the City's urban growth area. In the event of annexation of a shoreline, the affected area shall be subject to the Yakima shoreline master program upon the effective date of the annexation.

The City has also adopted shoreline environment predesignations for Buchanan Lake and its future associated shorelands. In the event that the Washington Department of Natural Resources Surface Mine Reclamation Permit lapses or is terminated, or when the City receives a permit application for new development on or uses of Buchanan Lake, Buchanan Lake shall be considered a shoreline waterbody and will be subject to this SMP.

#### Chapter 17.05

## **GENERAL REGULATIONS**

Sections:	
17.05.010	Archaeological and historic resources.
17.05.020	Environmental protection.
17.05.030	Shoreline vegetation conservation.
17.05.040	Water quality, stormwater, and nonpoint pollution
17.05.050	Public access.
17.05.060	Flood hazard reduction.

### 17.05.010 Archaeological and historic resources.

A. The City shall require that permits issued in areas documented to contain archaeological resources or located within an area classified as "high risk and/or very high risk" for archaeological resources based on the Washington State Department of Archaeology and Historic Preservation (DAHP) predictive model require a site inspection or evaluation by a professional archaeologist. Auger tests may be required before construction and representatives of DAHP and Yakama Nation may be invited to observe any tests and construction work, and will be provided the results of such tests. If auger or historical data indicate probable presence of cultural resources which may be disturbed by excavation, the City shall meet the shoreline permit applicant and may impose conditions on any shoreline permit to assure that such resources are protected, preserved or collected.

- B. Developers and property owners shall immediately stop work and notify the City, DAHP, and the Yakama Nation if archaeological resources are uncovered during excavation. Following such notification, the City may follow the provisions of subsection C of this section.
- C. Where a professional archaeologist or historian, recognized by the state of Washington, has identified an area or site as having significant value, or where an area or site is listed in national, state or local historical registers, or where the DAHP predictive model identifies the area as having "high risk and/or very high risk" for archaeological resources, the City shall require an evaluation of the resource, and appropriate conditions, which may include preservation and/or retrieval of data, proposal modifications to reduce impacts, or other mitigation authorized through the State Environmental Policy Act, or other local, state, or federal laws.

## 17.05.020 Environmental protection.

- A. Ecological Functions. Uses and developments on City of Yakima shorelines must be designed, located, sized, constructed and maintained to achieve no net loss of shoreline ecological functions necessary to sustain shoreline natural resources. Uses and developments must not have an unmitigated significant adverse impact on other shoreline functions fostered by this SMP.
- B. Protection of Critical Areas and Critical Areas Buffers. Critical areas, critical area buffers, and shoreline buffers must be protected in accordance with the provisions of Chapter 17.09 YMC, Critical Areas in Shoreline Jurisdiction.
- C. Mitigation Requirement. If a proposed shoreline development, use or modification is entirely addressed by specific, objective standards (such as setback distances, pier dimensions, or materials requirements) contained in this SMP, only then is a mitigation sequencing analysis described in subsection D of this section not required. In the following circumstances, the applicant must provide the mitigation sequencing analysis described in subsection D of this section:
  - 1. If a proposed shoreline use or modification is addressed in any part by discretionary standards (such as standards requiring a particular action if feasible or requiring the minimization of development size) contained in this chapter, then the mitigation sequencing analysis is required for the discretionary standard(s); or
  - 2. When an action requires a shoreline conditional use permit or shoreline variance permit; or
  - 3. When specifically required by regulations contained in this chapter and Chapters 17.07 and 17.09 YMC.
- D. Mitigation Sequence. In order to ensure that development activities contribute to meeting the no net loss of ecological functions provisions by avoiding, minimizing, and mitigating for adverse impacts to ecological functions or ecosystem-wide processes, an applicant required to complete a mitigation analysis pursuant to subsection C of this section must describe how the proposal will follow the sequence of mitigation as defined below:
  - 1. Avoid the impact altogether by not taking a certain action or parts of an action;

- 2. Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- 3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;
- 4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
- 5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and
- 6. Monitor the impact and the compensation projects and take appropriate corrective measures.
- E. Mitigation Plan. All proposed alterations to shoreline jurisdiction that will have adverse effects on ecological functions require mitigation sufficient to provide for and maintain the functions and values of the shoreline area or to prevent risk from a critical areas hazard. The applicant must develop and implement a mitigation plan prepared by a qualified professional. Mitigation in excess of that necessary to ensure that development will result in no net loss of ecological functions will not be required by the City of Yakima, but may be voluntarily performed by an applicant. In addition to any requirements found in Chapter 17.09 YMC, Critical Areas in Shoreline Jurisdiction, a mitigation plan must include:
  - 1. An inventory and assessment of the existing shoreline environment including relevant physical, chemical and biological elements;
  - 2. A discussion of any federal, state, or local management recommendations which have been developed for critical areas or other species or habitats located on the site;
  - 3. A discussion of proposed measures which mitigate the adverse impacts of the project to ensure no net loss of shoreline ecological functions;
  - 4. A discussion of proposed management practices which will protect fish and wildlife habitat both during construction and after the project site has been fully developed;
  - 5. Scaled drawings of existing and proposed conditions, materials specifications, and a minimum three-year maintenance and monitoring plan, including performance standards;
  - 6. A contingency plan if mitigation fails to meet established success criteria; and
  - 7. Any additional information necessary to determine the adverse impacts of a proposal and mitigation of the impacts.
- F. Alternative Mitigation. To provide for flexibility in the administration of the ecological protection provisions of this SMP, alternative mitigation approaches may be approved within shoreline jurisdiction where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this SMP and are scientifically supported.

## 17.05.030 Shoreline vegetation conservation.

- A. Vegetation conservation standards do not apply retroactively to existing uses and developments. Vegetation associated with existing structures, uses and developments may be maintained within shoreline jurisdiction as stipulated in the approval documents for the development.
- B. Vegetation within shoreline buffers, other stream buffers, wetlands and wetland buffers, WDFW-mapped priority habitats and species areas, and other critical areas must be managed consistent with Chapter 17.09 YMC, Critical Areas in Shoreline Jurisdiction. Regulations specifying establishment and management of shoreline buffers (buffers associated with Type 1 streams and shoreline lakes) are located in YMC 17.09.030, Fish and wildlife habitat conservation areas.
- C. Other vegetation within shoreline jurisdiction, but outside of shoreline buffers, other stream buffers, wetlands and wetland buffers, and other WDFW-mapped priority habitats and species areas must be managed according to YMC 17.05.020, Environmental protection, and any other regulations specific to vegetation management contained in this SMP and City of Yakima Code.

- D. Vegetation clearing must be limited to the minimum necessary to accommodate approved shoreline development that is consistent with all other provisions of this SMP and City of Yakima Code. Mitigation sequencing per YMC 17.05.020(D) must be applied unless specifically excluded by this SMP, so that the design and location of the structure or development minimizes native vegetation removal. The City may approve modifications or require minor site plan alterations to achieve maximum tree retention.
- E. Where vegetation removal conducted consistent with this section results in adverse impacts to shoreline ecological function, new developments or site alterations are required to develop and implement a supplemental mitigation plan. Adverse impacts are assumed to result from:
  - 1. Removal of native trees and shrubs;
  - 2. Removal of nonnative trees or shrubs that overhang aquatic areas or stabilize slopes; or
  - 3. Removal of native or nonnative trees or shrubs that disrupts an existing vegetation corridor connecting the property to other critical areas or buffers.

Mitigation plans must be prepared by a qualified professional and must contain information required in YMC 17.05.020(E). Mitigation measures must be maintained over the life of the use or development, and must include compensation for temporal loss of function and the restoration of specific functions adversely impacted by the vegetation removal. Removal of invasive species does not require mitigation, but the removal site must be managed as outlined in subsection I of this section to avoid and minimize potential adverse impacts.

- F. Shoreline vegetation may be removed to accommodate a temporary staging area when necessary to implement an allowed use or modification, but mitigation sequencing must be utilized and the area must be immediately stabilized and restored with native vegetation once its use as a staging area is complete.
- G. Where a tree poses a safety hazard, it may be removed or converted to a wildlife snag if the hazard cannot be eliminated by pruning, crown thinning, or other technique that maintains some habitat function. If a safety hazard cannot be easily determined by the City, a written report by a certified arborist or other qualified professional is required to evaluate potential safety hazards.
- H. Selective pruning of trees for views is allowed. Selective pruning of trees for views does not include removal of understory vegetation, and must not compromise the health of the tree.
- I. Hand removal or spot-spraying of invasive species or noxious weeds on shorelands outside of steep or unstable slope areas is encouraged. Where noxious weeds and invasive species removal results in bare soils that may be subject to erosion or recolonization by invasive species, the area must be stabilized using best management practices and replanted with native plants.
- J. Aquatic weed control may only be permitted where the presence of aquatic weeds will adversely affect native plant communities, fish and wildlife habitats, or an existing water-dependent recreational use. Aquatic weed control efforts must comply with all applicable laws and standards. Removal using mechanical methods is preferred over chemical methods.

# 17.05.040 Water quality, stormwater, and nonpoint pollution.

- A. Do Not Degrade Ecological Functions. Design, construction and operation of shoreline uses and developments shall incorporate measures to protect and maintain surface and groundwater quantity and quality in accordance with all applicable laws, so that there is no net loss of ecological functions.
- B. Do Not Degrade Views and Recreation Opportunities. Design, construction and operation of shoreline uses and developments shall incorporate measures to protect and maintain surface and groundwater quantity and quality in accordance with all applicable laws, so that significant impacts to aesthetic qualities or recreational opportunities do not occur. A significant impact to aesthetics or recreation would occur if a stormwater facility and appurtenant structures such as fences or other features have the potential to block or impair a view of shoreline waters from public land or from a substantial number of residences per RCW 90.58.320, or if water quality were visibly degraded such that the color and character were unattractive and discouraged normal uses such as swimming, fishing, boating, or viewing.
- C. Requirements for New Development.
  - 1. New development and redevelopment shall manage short-term and long-term stormwater runoff to avoid and minimize potential adverse effects on shoreline ecological functions through compliance with the latest

edition of the Stormwater Management Manual for Eastern Washington or approved local equivalent if applicable to the project. If certain thresholds are not met by a development that trigger compliance with the Stormwater Management Manual or approved local equivalent, best management practices (BMPs) must still be employed to avoid and minimize potential adverse effects.

- 2. When the Stormwater Management Manual applies, deviations from the standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.
- D. Chemical Applications. Pesticides, herbicides, and fertilizers should be applied in a manner which minimizes direct or indirect entrance into nearby waters. Application of pesticides intended to abate mosquitoes or similar water-related infestations should be administered in accordance with Environmental Protection Agency standards.
- E. Sewage Management. To avoid water quality degradation, sewer service is subject to the requirements outlined below.
  - 1. Any existing septic system or other on-site system that fails or malfunctions will be required to connect to an existing municipal sewer service system if feasible, or make system corrections approved by Yakima public health.
  - 2. Any new development, business, single-family or multifamily unit will be required to connect to an existing municipal sewer service system if feasible, or install an on-site septic system approved by Yakima public health.
- F. Materials Requirements. All materials that may come in contact with water shall be untreated or approved treated wood, concrete, approved plastic composites or steel that will not adversely affect water quality or aquatic plants or animals.
- G. Low Impact Development (LID). Use of the most current version of the Yakima Regional Low Impact Development (LID) Stormwater Design Manual throughout the various stages of development, including site assessment, planning and design, site preparation, construction, and ongoing management, is encouraged.

## 17.05.050 Public access.

- A. Shoreline development shall not interfere with public access and enjoyment of any nearby publicly owned land areas.
- B. The City shall not vacate any road, street, or alley abutting a body of water except as provided under RCW 35.79.035.
- C. Efforts to implement the public access provisions of this section shall be consistent with all relevant constitutional and other legal limitations on regulation of private property and the principles of nexus and proportionality. Public access requirements on privately owned lands should be commensurate with the scale and character of the development and should be compatibly designed to meet needs of affected parties including, but not limited to, the landowner and the public.
- D. Applications that access or are part of properties owned by Yakima County shall submit documentation of county approval prior to submittal to the City.
- E. Public access does not include the right to enter upon or cross private property, except on dedicated public rights-of-way or easements or where development is specifically designed to accommodate public access.
- F. Except as provided in subsection G of this section, shoreline substantial developments and shoreline conditional uses shall provide for safe and convenient public access to and along the shoreline where any of the following conditions are present:
  - 1. The development is proposed by a public entity or on public lands, or is a publicly financed erosion control measure;
  - 2. The nature of the proposed use, activity or development will likely generate a public demand for one or more forms of physical or visual access to the shoreline;
  - 3. The proposed use, activity or development is not a water-oriented or other preferred shoreline use, activity or development under the Act, such as a nonwater-oriented commercial or industrial use; or

- 4. The proposed use, activity or development will interfere with the public use, activity and enjoyment of shoreline areas or waterbodies subject to the public trust doctrine (see definition, YMC 17.01.090).
- G. An applicant shall not be required to provide public access where the City determines that one or more of the following conditions apply:
  - 1. Reasonable, safe and convenient public access to the shoreline is accessible within one-quarter mile (one thousand three hundred twenty feet) of the site, or the City's adopted parks and recreation plans do not indicate a need for a trail or access at the property;
  - 2. The site is within or part of an overall development which has previously provided public access through other application processes;
  - 3. The economic cost of providing for public access upon the site is unreasonably disproportionate to the total long-term economic value of the proposed use, activity or development;
  - 4. The proposed use, activity or development only involves the construction of four or fewer single-family or multifamily dwellings;
  - 5. The proposed use, activity or development only involves agricultural activities;
  - 6. The proposal consists of a new or expanded road or utility crossing through shoreline jurisdiction serving development located outside of shoreline jurisdiction;
  - 7. The nature of the use, activity or development or the characteristics of the site make public access requirements inappropriate due to health, safety or environmental hazards based on evidence provided in the proposed application;
  - 8. The proposed use, activity or development has security requirements that are not feasible to address through the application of alternative design features or other measures;
  - 9. Significant and unmitigable harm to the shoreline environment would be likely to result from an increase, expansion or extension of public access upon the site;
  - 10. Public access is deemed detrimental to threatened and/or endangered species under the Endangered Species Act.
- H. Public Access Standards. When public access is provided, the following standards shall apply:
  - 1. Physical public access is preferred to solely visual access. Where physical public access is not feasible, the applicant shall incorporate visual public access. Visual public access may consist of view corridors, viewpoints, or other means of visual approach to public waters. Physical public access may consist of a dedication of land or easement and a physical improvement in the form of a trail, park, or other area serving as a means of physical approach to public waters.
  - 2. Physical public access shall be designed to connect to existing or future public access features on adjacent or abutting properties, or shall connect to existing public rights-of-way or access easements, consistent with design and safety standards.
  - 3. Public access proposals shall be designed consistent with parks and recreation standards or plans contained in applicable City, county, state, or federal codes or approved plans.
- I. Shared community access may be allowed if there is no existing or planned public access along the shoreline as determined by a review of adopted parks and recreation plans. Where provided, community access is subject to all applicable development standards of this section.
- J. Off-site public access, either physical or visual, may be permitted by the City where it results in an equal or greater public benefit than on-site public access, or when on-site limitations of security, environment, or feasibility are present. Off-site public access is preferred where it implements adopted City, county, or Yakima Greenway parks and recreation plans. Off-site public access may include, but is not limited to, enhancing a nearby public property (e.g., existing public recreation site; existing public access; road, street or alley abutting a body of water; or similar) in accordance with City standards; providing, improving or enhancing public access on another property under the control of the applicant/proponent: or another equivalent measure.

K. The City may condition public access proposals to ensure compatibility with existing public access or transportation facilities, address environmental conditions or environmental impacts, and/or address compatibility with adjacent properties. Public access facilities shall be made compatible with adjacent private properties through the use of techniques to define the separation between public and private space.

#### 17.05.060 Flood hazard reduction.

- A. Development in floodplains shall avoid significantly or cumulatively increasing flood hazards. Development shall be consistent with this SMP, as well as Part Four of YMC 15.27, applicable guidelines of the Federal Emergency Management Agency, and an approved comprehensive flood hazard management plan.
- B. The channel migration zone (CMZ) is considered to be that area of a stream channel which may erode as a result of normal and naturally occurring processes and has been mapped consistent with WAC guidelines.
- C. The following uses and activities may be authorized within the CMZ or floodway:
  - 1. New development or redevelopment on or landward of existing legal structures, such as levees, that prevent active channel movement and flooding.
  - 2. Development of new or expansion or redevelopment of existing bridges, public stormwater facilities and outfalls, and other public utility and transportation structures, including trails, where no other feasible (see definition in YMC 17.01.090) alternative exists or the alternative would result in unreasonable and disproportionate costs (see definition in YMC 17.01.090). The evaluation of cost differences between options within the CMZ or floodway and outside of the CMZ or floodway shall include the cost of design, permitting, construction and long-term maintenance or repair. Where such structures are allowed, mitigation shall address adversely impacted functions and processes in the affected shoreline.
  - 3. Development of new or expansion or redevelopment of existing utility lines where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate costs. The evaluation of cost differences between options within the CMZ or floodway and outside of the CMZ or floodway shall include the cost of design, permitting, construction and long-term maintenance or repair. Where such structures are allowed, mitigation shall address adversely impacted functions and processes in the affected shoreline. When the primary purpose of a utility transmission line is to transfer bulk products or energy through a floodway en route to another destination, as opposed to serving customers within a floodway, such transmission lines shall conform to the following:
    - a. All utility transmission lines shall cross floodways by the most direct route feasible as opposed to paralleling floodways;
    - b. Electric transmission lines shall span the floodway with support towers located in floodway fringe areas or beyond. Where floodway areas cannot be spanned due to excessive width, support towers shall be located to avoid high floodwater velocity and/or depth areas, and shall be adequately floodproofed:
    - c. Buried utility transmission lines transporting hazardous and nonhazardous materials, including but not limited to crude and refined petroleum products and natural gas, shall be buried a minimum of four feet below the maximum established scour of the waterway, as calculated on the basis of hydrologic analyses. Such burial depth shall be maintained horizontally within the hydraulic floodway to the maximum extent of potential channel migration as determined by hydrologic analyses. In the event potential channel migration extends beyond the hydraulic floodway, conditions imposed upon floodway fringe and special flood hazard areas shall also govern placement. All hydrologic analyses are subject to acceptance by the City of Yakima, which shall assume the conditions of a one-hundred-year frequency flood as verified by the U.S. Army Corps of Engineers, and shall include on-site investigations and consideration of historical meander characteristics in addition to other pertinent facts and data. The use of riprap as a meander containment mechanism within the hydraulic floodway shall be consistent with this title;
    - d. Beyond the maximum extent of potential channel migration, utility transmission lines transporting hazardous and nonhazardous materials shall be buried below existing natural and artificial drainage features; and
    - e. Aboveground utility transmission lines, not including electric transmission lines, shall only be allowed for the transportation of nonhazardous materials where an existing or new bridge or other structure is available and capable of supporting the line. When located on existing or new bridges or other structures with elevations below the one-hundred-year flood level, the transmission line shall be placed on the

downstream side and protected from flood debris. In such instances, site-specific conditions and flood damage potential shall dictate placement, design and protection throughout the floodway. Applicants must demonstrate that such aboveground lines will have no appreciable effect upon flood depth, velocity or passage, and shall be adequately protected from flood damage. If the transmission line is to be buried except at the waterway crossing, burial specifications shall be determined as in this subsection (C)(3).

- 4. New or redeveloped measures to reduce shoreline erosion; provided, that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measures do not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measures include appropriate mitigation of adverse impacts on ecological functions associated with the river or stream.
- 5. Actions that protect or restore the ecosystem-wide processes or ecological functions or development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
- 6. Water-dependent installations which by their very nature must be in the floodway. In all instances of locating utilities and other installations in floodway locations, project design must incorporate floodproofing (examples of water-dependent installations are: docks and boat launches; dams for domestic/industrial water supply; wastewater treatment and collection systems; flood control and/or hydroelectric production; water diversion structures and facilities for water supply; irrigation and/or fisheries enhancement; floodwater and drainage pumping plants and facilities; hydroelectric generating facilities and appurtenant structures; and nonstructural uses and practices; provided, that the applicant shall provide evidence that a floodway location is necessary in view of the objectives of the proposal, and provided further that the proposal is consistent with other provisions of this chapter and title).
- 7. Modifications or additions to an existing nonagricultural legal use; provided, that channel migration is not further limited and that the modified or expanded development includes appropriate protection of ecological functions.
- 8. Repair and maintenance of existing legally established use and developments; provided, that channel migration is not further limited, flood hazards to other uses are not increased, and significant adverse ecological impacts are avoided.
- 9. Existing and ongoing agricultural activities; provided, that no new restrictions to channel movement are proposed.
- D. Existing structural flood hazard reduction measures, such as levees, may be repaired and maintained as necessary to protect legal uses on the landward side of such structures. Increases in height of an existing levee, with any associated increase in width, that may be needed to prevent a reduction in the authorized level of protection of existing legal structures and uses shall be considered an element of repair and maintenance.
- E. Flood hazard reduction measures shall not result in channelization of normal stream flows, interfere with natural hydraulic processes such as channel migration, or undermine existing structures or downstream banks.
- F. New development in shoreline jurisdiction, including the subdivision of land, shall not be permitted if it is reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway.
- G. New public and private structural flood hazard reduction measures:
  - 1. Shall be approved when a scientific and engineering analysis demonstrates the following:
    - a. That they are necessary to protect existing development;
    - b. That nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use or structure removal or relocation, biotechnical measures, and stormwater management programs are not feasible:
    - c. That adverse effects upon adjacent properties will not result relative to increased floodwater depths and velocities during the base flood or other more frequent flood occurrences;
    - d. That the ability of natural drainage ways to adequately drain floodwaters after a flooding event is not impaired;

- e. That the proposal has been coordinated through the appropriate diking district where applicable, and that potential adverse effects upon other affected diking districts have been documented; and
- f. That adverse impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss.
- 2. Shall be consistent with an approved comprehensive flood hazard management plan.
- 3. Shall be placed landward of associated wetlands and designated shoreline buffers, except for actions that increase ecological functions, such as wetland restoration, or when no other alternative location to reduce flood hazard to existing development is feasible as determined by the shoreline administrator.
- H. All new flood control projects shall define maintenance responsibilities and a funding source for operations, maintenance, and repairs for the life of the project.
- I. New public structural flood hazard reduction measures, such as levees, shall dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant adverse ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development. Setbacks of existing levees are not considered "new" structural flood hazard reduction measures for purposes of this regulation.
- J. In those instances where management of vegetation as required by this SMP conflicts with vegetation provisions included in state, federal or other flood hazard agency documents governing City-authorized, legal flood hazard reduction measures, the vegetation requirements of this SMP will not apply. However, the applicant shall submit documentation of these conflicting provisions with any shoreline permit applications, and shall comply with all other provisions of this section and this SMP that are not strictly prohibited by the approving flood hazard agency.
- K. The removal of gravel or other riverbed material for flood management purposes shall be consistent with YMC 17.07.050, Dredging and dredge material disposal, and be allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.
- L. Roads shall be located outside the floodway, except necessary crossings which shall be placed perpendicular to the waterbody as much as is physically feasible. New transportation facilities shall be designed so that the effective base flood storage volume of the floodplain is not reduced. The applicant shall provide all necessary studies, reports and engineering analyses which shall be subject to review and modification by the City. If proposed transportation facilities effectively provide flood control, they shall comply with policies and regulations of this section.
- M. In recognition of the significant benefits of levee setbacks, maximum flexibility of this title, including Chapter 17.09 YMC, Critical Areas in Shoreline Jurisdiction, should be granted when existing structural flood hazard reduction measures are proposed for relocation landward of the existing flood hazard reduction measure. Existing public access or recreation facilities that need to be relocated to accommodate the relocated flood hazard reduction measure shall be allowed to be reconstructed in the floodway or channel migration zone provided they do not further limit channel migration or increase flood hazards.

#### Chapter 17.07

## **USE-SPECIFIC AND MODIFICATION REGULATIONS**

Occions.	
17.07.010	Agriculture.
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# 17.07.010 Agriculture.

Sections

- A. For shoreline purposes, WAC 173-26-020 (Definitions) and WAC 173-26-241(3)(a) (Agriculture) shall determine the need for shoreline review for agricultural activities.
- B. The provisions of this SMP do not limit or require modification of agricultural activities on agricultural lands as of the date of adoption of the SMP.
- C. SMP provisions shall apply in the following cases:
  - 1. New agricultural activities on land not meeting the definition of agricultural land;
  - 2. Expansion of agricultural activities on nonagricultural lands or conversion of nonagricultural lands to agricultural activities;
  - 3. Conversion of agricultural lands to other uses;
  - 4. Other development on agricultural land that does not meet the definition of agricultural activities; and
  - 5. Agricultural development and uses not specifically exempted by the Act.
- D. Concentrated animal feeding operations (see definition in YMC 17.01.090) are prohibited in shoreline jurisdiction.
- E. New agricultural activities and facilities shall utilize best management practices established by the USDA Natural Resources Conservation Service or other similar agency.
- F. Development in support of agricultural uses shall be consistent with the environment designation intent and management policies, located and designed to assure no net loss of ecological functions, and shall not have a significant adverse impact on other shoreline resources and values.

# 17.07.020 Aquaculture.

The following provisions apply to any development, construction, or use of land or water for aquacultural purposes within shoreline jurisdiction:

- A. All structures located within waterbodies shall not preclude navigability of those waters at any time, and shall be clearly marked so as to provide no hazard to navigation on those waters.
- B. Aquaculture facilities shall be designed and located to avoid significant conflict with water-dependent uses, the spreading of disease, introduction of nonnative species, or impacts to shoreline aesthetic qualities.

- C. New aquaculture proposals shall comply with mitigation sequencing requirements as outlined in YMC 17.05.020(D), and with all other general standards in Chapter 17.05 YMC. Aquaculture activities that would have a significant adverse impact on natural, dynamic shoreline processes, or that would result in a net loss of shoreline ecological functions, shall be prohibited.
- D. Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, and commercial navigation. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Therefore, some latitude in the development of this use should be given, while the potential impacts on existing uses and natural systems are recognized.
- E. Aquaculture that supports recovery of endangered or threatened fish species or supports public or community recreation is encouraged provided it is conducted within the bounds of subsections A through C of this section.

# 17.07.030 Boating and private moorage facilities.

- A. All boating facilities and residential moorage structures shall be the minimum size necessary to meet the needs of the use.
- B. New pier or dock construction, excluding docks accessory to single-family residences, must demonstrate that a specific need exists to support the intended water-dependent or public access use. Docks associated with single-family residences are defined as water-dependent uses provided they are designed and intended as a facility for access to watercraft.
- C. New residential development of two or more dwellings must provide joint-use or community dock facilities, when feasible, rather than allow individual docks for each residence.
- D. Docks, piers, and any other over-water structures for purposes of temporary or permanent boat moorage are prohibited in free-flowing streams and rivers.
- E. Public, commercial, industrial, or community residential boating facilities shall:
  - 1. Comply with the health, safety and welfare standards of state and local agencies for such facilities;
  - 2. Be so located and designed as not to obstruct or cause danger to normal public navigation of waterbodies, if applicable;
  - 3. Be restricted to suitable locations;
  - 4. Avoid or mitigate for aesthetic impacts;
  - 5. Mitigate impacts to existing public access and navigation, if applicable;
  - 6. Provide documentation of ownership or authorization to use associated water areas;
  - 7. Demonstrate that state and local regulations will be met. Agencies responsible for such regulations shall be consulted as to the viability of the proposed design; and
  - 8. Submit an operations and site plan demonstrating:
    - a. Location and design of fuel handling and storage facilities to minimize accidental spillage and protect water quality;
    - b. Proper water depth and flushing action for any area considered for overnight or long-term moorage facilities;
    - c. Adequate facilities to properly handle wastes from holding tanks;
    - d. That boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, and access; and
    - e. Adequate access, parking, and restroom facilities for the public when required or appropriate. Such facilities should be located away from the immediate water's edge.

- F. Private Residential Docks.
  - 1. Aspen Lake. The maximum length of docks is eight feet measured perpendicular from the OHWM, and no new dock may be situated directly across from an existing dock.
  - 2. Willow Lake. The maximum length of docks is twelve feet measured perpendicular from the OHWM.
- G. Boat Launches.
  - 1. Launch ramps shall be designed and constructed using methods/technology that have been recognized and approved by state and federal resource agencies as the best currently available, with consideration for site-specific conditions and the particular needs of that use. At a minimum, they shall minimize the obstruction of currents, alteration of sediment transport, and the accumulation of drift logs and debris.
  - 2. New boat launch facilities shall be approved only if they provide public access to public waters that are not adequately served by existing access facilities, or if use of existing facilities is documented to exceed the designed capacity. Prior to providing boat launch facilities at a new location, documentation shall be provided demonstrating that expansion of existing launch facilities is not feasible or would not be adequate to meet a specific recreation or safety-related demand.

#### 17.07.040 Commercial and service development.

The following provisions apply to any development, construction, or use of land or water for commercial and community service purposes within shoreline jurisdiction:

- A. Water-dependent commercial development shall be given priority over nonwater-dependent commercial uses. Secondarily, water-related and water-oriented uses shall be given priority over nonwater-oriented commercial uses.
- B. Application for new commercial or community services shall demonstrate either:
  - 1. How the use qualifies as a water-oriented use and how facilities function as such; or
  - 2. The use is part of a mixed-use project that includes water-dependent uses; or
  - 3. Navigability is severely limited at the proposed site, and the use will provide a significant public benefit towards meeting SMA objectives, such as providing public access consistent with YMC 17.05.050 and ecological restoration; or
  - 4. That a nonwater-oriented use is physically separated from the shoreline by either a public right-of-way or a separate parcel.
- C. Mixed-use buildings, as defined in YMC 17.03.070, may be allowed subject to compliance with all of the following criteria:
  - 1. The project includes one or more water-dependent uses.
  - 2. Water-dependent commercial uses as well as other water-oriented commercial uses have preferential locations along the shoreline.
  - 3. The underlying zoning district permits residential uses together with commercial uses.
  - 4. Public access is provided for substantial numbers of persons in accordance with YMC 17.05.050 and ecological restoration is provided as a public benefit. The shoreline administrator shall interpret substantial numbers of persons consistent with the Act, SMP Guidelines, and shorelines hearings board cases.
  - 5. Residential uses meet requirements of YMC 17.07.130.
- D. If required by YMC 17.05.050, commercial and community services uses shall be designed to facilitate public access to and enjoyment of nearby shoreline areas.
- E. Nonwater-oriented commercial uses shall not be allowed over water in any shoreline environment unless they are accessory to and support water-dependent uses.

# 17.07.050 Dredging and dredge material disposal.

- A. Siting and Design. New development shall be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
- B. Dredging and dredge material disposal shall be done in a manner which avoids or minimizes significant ecological impacts, and impacts which cannot be avoided shall be mitigated in a manner that assures no net loss of shoreline ecological functions. Dredging and excavation shall be confined to the minimum area necessary to accomplish the intended purpose or use.
- C. Dredging shall be permitted for the following activities when significant ecological impacts are minimized and when mitigation is provided:
  - 1. Establishment, expansion, relocation or reconfiguration of navigation channels and basins where necessary for assuring safe and efficient accommodation of existing navigational uses.
  - 2. Maintenance dredging of established navigation channels and basins, provided dredging is restricted to maintaining previously dredged and/or existing authorized location, depth, and width.
  - 3. Development, expansion and maintenance of essential public facilities when there are no feasible alternatives.
  - 4. Maintenance of irrigation reservoirs, drains, canals, or ditches for agricultural purposes.
  - 5. Restoration or enhancement of shoreline ecological functions and processes benefiting water quality and/or fish and wildlife habitat.
  - 6. Reduction of flood hazards.
- D. Dredging waterward of the ordinary high-water mark for the primary purpose of obtaining fill material shall not be allowed, except when the material is necessary for the restoration of ecological functions. When allowed, the site where the fill is to be placed must be located waterward of the ordinary high-water mark. The project must be either associated with a Model Toxics Control Act or Comprehensive Environmental Response, Compensation, and Liability Act habitat restoration project or, if approved through a shoreline conditional use permit, any other significant habitat enhancement project.
- E. Use of dredged material for the purpose of ecological restoration is encouraged.
- F. Disposal of dredge material on shorelands or wetlands within a river's channel migration zone is discouraged. In the limited instances where it is allowed, such disposal requires a shoreline conditional use permit. This provision is not intended to address discharge of dredge material into the flowing current of the river or in deep water within the channel where it does not substantially affect the geohydrologic character of the channel migration zone.
- G. Hydraulic dredging (see definition in YMC 17.01.090) or other techniques that minimize the dispersal and broadcast of bottom materials shall be preferred over agitation forms of dredging.
- H. Curtains and other appropriate mechanisms shall be used to minimize widespread dispersal of sediments and other dredge materials.
- I. Dredge spoils are also considered fill, and shall not be deposited within a waterbody except where such deposit is in accordance with approved procedures intended to preserve or enhance wildlife habitat, natural drainage, or other naturally occurring conditions.
- J. The City may approve five-year management plans addressing maintenance dredging, use of best management practices, and other measures to assure no net loss of shoreline ecological functions.
- K. All applications for shoreline permits that include dredging shall supply a dredging plan that includes the following information:
  - 1. The quantity of material to be removed.
  - 2. The method of removal.
  - 3. Location of spoil disposal sites and measures that will be taken to protect the environment around them.

- 4. Plans for the protection and restoration of the shoreline environment during and after dredging operations.
- L. A dredging operation judged by the administrator to be insufficient for protection or restoration of the shoreline environment shall cause denial of a shoreline permit.

#### 17.07.060 Fill.

- A. All fills shall be located, designed and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration. Any adverse impacts to shoreline ecological functions shall be mitigated.
- B. Permissible fill in sensitive areas, including fill within wetlands, floodways, channel migration zones, or waterward of the OHWM, shall only be permitted in limited instances for the following purposes and when other required state or federal permits have been obtained, with due consideration given to specific site conditions, and only along with approved shoreline use and development activities that are consistent with this SMP, such as:
  - 1. Water-dependent uses, public access, and cleanup and disposal of contaminated sediments as part of an interagency environmental cleanup plan;
  - Disposal of dredged material considered suitable under, and conducted in accordance with, the Dredged Material Management Program of the Department of Natural Resources and/or the Dredged Material Management Office of the U.S. Army Corps of Engineers (see YMC 17.07.050 of this SMP);
  - 3. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible;
  - 4. Ecological restoration or enhancement when consistent with an approved restoration plan;
  - 5. Maintenance or installation of flood hazard reduction measures consistent with a comprehensive flood hazard management plan and YMC 17.05.060, Flood hazard reduction;
  - 6. Protection of cultural or historic resources when fill is the most feasible method to avoid continued degradation, disturbance or erosion of a site. Such fills must be coordinated with the Yakama Nation and comply with applicable provisions of YMC 17.05.010 of this SMP.

All fills waterward of the OHWM not associated with ecological restoration, flood control or approved shoreline stabilization shall require a shoreline conditional use permit.

- C. Permissible Upland Fill. All other upland fill is permitted, provided it:
  - 1. Is conducted outside applicable buffers, unless specifically allowed in buffers;
  - 2. Is part of an approved shoreline use or modification, or is necessary to provide protection to cultural or historic resources:
  - 3. Is the minimum necessary to implement the approved use or modification;
  - 4. Is planned to fit the topography so that minimum alterations of natural conditions will be necessary;
  - 5. Does not adversely affect hydrologic conditions or increase the risk of slope failure; and
  - 6. Is consistent with applicable provisions of Chapter 17.09 YMC, particularly regulations governing floodways and one-hundred-year floodplains.
- D. Fill shall be the minimum necessary to accomplish the use or purpose and shall be confined to areas having the least impact to the shoreline area. Other alternatives shall be preferred over fill to elevate new structures in the floodplain, such as use of pile or pier supports, posts, columns, other zero-rise methods, or increasing foundation height.
- E. Unless site characteristics dictate otherwise, fill material within aquatic fish and wildlife habitat conservation areas or wetlands shall be sand, gravel, rock, or other clean material obtained from a state-certified source, with a minimum potential to degrade water quality and meeting the specifications included in project plans approved by local, state and federal review agencies.

- F. Fill placement shall be scheduled at times having the least impact to fish spawning, nesting patterns, and other identified natural processes.
- G. Erosion Control. A temporary erosion and sediment control (TESC) plan, including BMPs, consistent with the Stormwater Management Manual for Eastern Washington, or the most recent adopted stormwater manual, shall be provided for all proposed fill and excavation activities, and approved by the shoreline administrator prior to commencement of activity. Disturbed areas shall be immediately protected from erosion using weed-free straw, mulches, hydroseed, or similar methods and revegetated, as applicable.
- H. Projects that propose fill shall make every effort to acquire fill onsite (also known as compensatory storage) where appropriate.
- I. Fill should not obstruct, cut off, or isolate aquatic fish and wildlife habitat conservation areas.

## 17.07.070 Industry.

The following provisions apply to any development, construction, or use of land for industrial purposes within shoreline jurisdiction:

- A. Water-dependent uses shall be given preference over nonwater-dependent uses. Water-oriented industrial uses shall be given preference over nonwater-oriented uses.
- B. Facilities and structures shall be designed and screened with vegetation to minimize degradation of shoreline aesthetic qualities.
- C. The location, design, and construction of industrial uses and redevelopment are required to demonstrate no net loss of ecological functions and that significant adverse impacts to other shoreline resources and values are avoided. Industries which have proven to be environmentally hazardous are prohibited from locating along the shorelines provided such industries may be allowed consistent with the Shoreline Use and Modification Matrix (Table 03.070-1) if a hazard mitigation plan is approved by the shoreline administrator upon a finding that the plan would adequately mitigate hazards and provide for no net loss of ecological function. If the plan is found insufficient for protection of the shoreline environment, the shoreline administrator may require a third-party review of the hazard mitigation plan at the applicant's expense.
- D. New industrial uses and redevelopment of industrial uses shall provide for environmental cleanup and restoration in degraded or contaminated locations.
- E. Application for new industrial activities shall demonstrate either:
  - 1. How the use qualifies as a water-oriented use and how facilities function as such; or
  - 2. That a nonwater-oriented use is part of a mixed-use development that includes a water-dependent use; or
  - 3. Navigability is severely limited at the proposed site and the use will provide a significant public benefit towards meeting SMA objectives, such as providing public access and ecological restoration; or
  - 4. That a nonwater-oriented use is physically separated from the shoreline by either a public right-of-way or a separate parcel.
- F. New or expanded industrial developments shall be required to make adequate provisions for public and private visual and physical shoreline access unless such a requirement would interfere with operations or create hazards to life or property or another exception is met consistent with YMC 17.05.050.

#### 17.07.080 In-water structures.

- A. Prohibited and Allowed Projects. Projects that damage fish and wildlife resources, degrade recreation and aesthetic resources, result in a net loss of ecological functions, or result in high flood stages and velocities are prohibited. Structures waterward of the ordinary high-water mark allowed only for water-dependent uses, public access, shoreline stabilization, or other specific public purpose.
- B. Soil Stabilization. Upland cut-and-fill slopes and back-filled areas resulting from installation of in-water structures shall be stabilized with bioengineering approaches, including but not limited to brush matting and buffer strips and revegetated with native grasses, shrubs, or trees to prevent loss of shoreline ecological functions and processes. In order to ensure soil stabilization, revegetation must include native shrubs or trees and may not be limited to native grasses.

- C. Water Quality. In-water structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters. The City shall require conditions to achieve this objective.
- D. Prohibited Structures. In-water structures may not utilize components other than those designed expressly for the approved in-water use.
- E. Natural Features. Natural in-water features, such as snags, uprooted trees, or stumps, shall be left in place unless it can be demonstrated that they are actually causing bank erosion or higher flood stages or pose a hazard to navigation or human safety.
- F. Protect Functions, Processes and Cultural Resources. In-water structures shall provide for the protection and preservation of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. The location and planning of in-water structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.
- G. Design. In-water structures shall be designed by a qualified professional as determined by the shoreline administrator. In-water structures shall preserve valuable recreation resources and aesthetic values such as point and channel bars, islands, and braided channels. In-water structures shall not be a safety hazard or obstruct water navigation as determined by the shoreline administrator.
- H. Permits. Construction of in-water structures may not commence without having obtained all applicable federal, state, and local permits and approvals.
- I. Public Access. Design of in-water structures by public entities, including the City, other local governments, state and federal agencies, and public utility districts, shall include access to public shorelines whenever possible, unless it is demonstrated that public access would cause unavoidable public health and safety hazards, security problems, unmitigatable ecological impacts, unavoidable conflicts with proposed uses, or unreasonable cost. At a minimum, inwater structures should not decrease public access or use potential of shorelines.

# 17.07.090 Mining

The following provisions shall apply to commercial mining within shoreline jurisdiction. Processing and other activities that occur off-site or after active mineral extraction has concluded on-site are also regulated as an industrial use (see YMC 17.07.070):

- A. Prior to the authorization of a commercial mining operation, the project proponent shall provide maps to scale which illustrate the following:
  - 1. The extent to which excavation and processing will affect or modify existing fish and wildlife habitat conservation areas, including existing riparian vegetation;
  - 2. The location, extent and size in acreage of any pond, lake, or feature that will be created as a result of mining excavation;
  - 3. The description, location, and extent of any proposed subsequent use that would be different than existing uses.
- B. The operations and any subsequent use or uses shall not cause permanent impairment or loss of critical area functions and values. Mitigation shall be provided consistent with YMC 17.09.010(I), 17.09.030(P), or 17.09.040(F).
- C. Except where authorized by the City in consultation with the State Department of Fish and Wildlife and Department of Ecology, the following shall apply:
  - 1. The excavation zone shall be located a minimum of one hundred feet upland from the ordinary high water mark (OHWM) of the waterbody.
  - 2. Equipment shall not be operated, stored, refueled, or provided maintenance within one hundred feet of the OHWM.
  - 3. Washing, crushing, screening, or stockpiling of mined materials shall not occur within one hundred feet of the OHWM.

- D. Mining proposals shall be consistent with the Washington Department of Natural Resources Surface Mine Reclamation standards (Chapter 332-18 WAC, Chapter 78.44 RCW).
- E. Additional Shoreline Standards for Industrial Mining.
  - 1. Applicants shall submit a mining and reclamation plan to the shoreline administrator describing the proposed site, quantity of material to be removed, method of removal, and measures that will be taken to protect lakes and streams from siltation and sedimentation. A surface mining plan or a reclamation plan judged by the shoreline administrator to be insufficient for protection or restoration of the shoreline environment shall cause denial of a shoreline permit.
  - 2. Mining stockpiles shall be sited in such a manner so as to avoid damage or loss resulting from flooding.
  - 3. New mining and associated activities shall assure that proposed subsequent use of the mined property is consistent with the provisions of the environment designation and that reclamation of disturbed shoreline areas provides appropriate ecological functions consistent with the setting.

## 17.07.100 Recreational development.

The following provisions apply to any development, construction, or use of land or water for recreational purposes within shoreline jurisdiction, whether public or commercial:

- A. Recreational activities must be compatible with existing or proposed uses in the area and must not create a noise, traffic, visual or similar problem.
- B. The location, design, and operation of recreational facilities shall be consistent with the purpose of the environmental designation.
- C. Recreational uses and facilities located within shoreline jurisdiction shall include features that relate to access, enjoyment and use of the water and shorelines of the state. Access to recreational areas should emphasize both consolidated park or open space areas and trail access. Linkage of shoreline parks and public access points by means of linear access should be encouraged.
- D. Different uses within a specific recreational facility must be compatible with each other.
- E. Commercial components of the use that are not explicitly related to the recreational operation must also conform to the commercial use standards of YMC 17.07.040 (Commercial and service development).
- F. Recreational development shall demonstrate achievement of no net loss of ecological functions.
- G. Applicants may apply for a multiyear recreation maintenance plan for exempt and nonexempt repair and maintenance activities consistent with YMC 17.07.170.

# 17.07.110 Residential development.

The following provisions apply to any development, construction, or use of land for residential purposes within shoreline jurisdiction:

- A. New multiunit development, plats or subdivisions containing land adjacent to publicly owned or controlled bodies of water shall allow for pedestrian access to such waterbodies for residents and the public consistent with YMC 17.05.050.
- B. Residential development and preliminary plats shall contain plans indicating how shoreline vegetation will be preserved and erosion controlled. A vegetation protection and/or erosion control plan shall demonstrate adequate protection of vegetation and avoidance of soil erosion. If the plan is found insufficient for protection of the shoreline environment the shoreline administrator may require a third-party review at the applicant's expense.
- C. Applications for new shoreline residences shall ensure that shoreline stabilization and flood control structures are not necessary to protect proposed residences. A geotechnical analysis (see definition in YMC 17.01.090) shall be provided to demonstrate that such structures are unnecessary to protect proposed residences; this study may be waived by the shoreline administrator if a study or information provided by the USACE, FEMA, Ecology, or other agency exists and provides sufficient information to conclude that shoreline stabilization and flood control structures are not necessary.
- D. New floating residences and over-water residential structures shall be prohibited in shoreline jurisdiction.

- E. Private lake owners or homeowners' associations may apply for a multiyear residential maintenance plan for exempt and nonexempt repair and maintenance activities consistent with YMC 17.07.170.
- F. Single-family residences identified as a priority use only when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.

# 17.07.120 Shoreline habitat and natural systems enhancement projects.

- A. Applicability. Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring or enhancing habitat for priority species in shorelines. Such projects may include shoreline modification actions such as modification of vegetation, removal of nonnative or invasive plants, shoreline stabilization, dredging, and filling; provided, that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline. This section does not apply to mitigation.
- B. Approved Plan. Restoration and enhancement shall be carried out in accordance with an approved shoreline restoration plan.
- C. Protect Adjacent Resources. All shoreline restoration and enhancement projects shall protect the integrity of adjacent natural resources, including aquatic habitats and water quality.
- D. Maintenance and Monitoring. Long-term maintenance and monitoring (minimum of three years, but preferably longer) shall be arranged by the project applicant and included in restoration or enhancement proposals.
- E. Adverse Effects. Shoreline restoration and enhancement may be allowed if the project applicant demonstrates that no significant adverse changes to sediment transport or river current will result and that the enhancement will not adversely affect ecological processes, properties, or habitat.
- F. Use of Best Information and BMPs. Shoreline restoration and enhancement projects shall be designed using the most current, accurate and complete scientific and technical information, and implemented using best management practices.
- G. Public Use of Waters and Lands. Shoreline restoration and enhancement shall not interfere with lands or waters dedicated specifically for public use, as determined by the shoreline administrator, without appropriate mitigation. For projects on state-owned aquatic lands, project proponents must coordinate with the Washington Department of Natural Resources to ensure the project will be appropriately located prior to the solicitation of permits from regulatory agencies.
- H. Relief for OHWM Shifts. Applicants seeking to perform restoration projects are advised to work with the City to assess whether and how the proposed project is allowed relief under RCW 90.58.580 and WAC 173-27-215, in the event that the project shifts the OHWM landward.

#### 17.07.130 Shoreline stabilization.

- A. Shoreline stabilization projects shall be allowed only where there is evidence of erosion which clearly represents a threat to existing property, structures, uses or facilities, and which stabilization will not jeopardize other upstream or downstream properties. A geotechnical analysis must estimate time frames and rates of erosion and report on the urgency associated with the specific situation. New hard shoreline stabilization solutions to protect primary structures shall not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such measures, or where waiting until the need is that immediate would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.
- B. New development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible. Subdivision of land must be regulated to assure that the lots created will not require shoreline stabilization in order for reasonable development to occur using geotechnical analysis of the site and shoreline characteristics.
- C. Stabilization projects shall be developed under the supervision of, or in consultation with, agencies or professionals with appropriate expertise.
- D. Stabilization projects shall be limited in size to the minimum protective measures necessary, and shall use measures designed to assure no net loss of shoreline ecological functions and avoidance and minimization of

impacts to sediment transport processes. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.

- E. The use of fill to restore lost land may accompany stabilization work, provided the resultant shore does not extend beyond the original ordinary high water mark, finished grades are consistent with abutting properties, a restoration plan is approved for the area, and the fill material is in compliance with YMC 17.07.060 (Fill).
- F. Stabilization projects shall use design, material, and construction alternatives that do not require high or continuous maintenance and which prevent or minimize the need for subsequent stabilization to other segments of the shore. Junk car bodies and other unsuitable debris are not to be used in shore stabilization projects.
- G. Shoreline stabilization measures shall be designed, located, and constructed in such a manner as to minimize the disruption of natural channel characteristics.
- H. Required geotechnical reports shall meet the provisions of the definition provided in YMC 17.01.090.
- I. Demonstration of Necessity. New structural shoreline stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:
  - 1. New or enlarged structural stabilization measures to protect an existing primary structure, including residences, shall not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shore stabilization.
  - 2. Erosion control structures in support of new nonwater-dependent development, including single-family residences, when all of the conditions below apply:
    - a. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
    - b. Nonstructural measures, such as placing the development farther from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
    - c. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes, such as currents and waves.
  - 3. Erosion control structures in support of water-dependent development when all of the conditions below apply:
    - a. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
    - b. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
    - c. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report.
  - 4. Erosion control structures to protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to the Model Toxics Control Act (Chapter 70.105D RCW) shall not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that demonstrates that nonstructural measures such as planting vegetation, or installing on-site drainage improvements, is not feasible or not sufficient.
- J. An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion. For purposes of this section, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.
- K. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shore stabilization structure.

L. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark..

# 17.07.140 Signs.

- A. Outdoor advertising signs must conform to size, spacing and lighting provisions of the Washington State Scenic Vistas Act of 1971, where applicable.
- B. Signs shall meet applicable City municipal code requirements regarding size, location, lighting, and other relevant performance standards.
- C. Proposals for signage shall submit plans for signage at the time of application for shoreline permits, including shoreline exemptions.
- D. The shoreline administrator may condition signage regarding size, illumination, and placement, to ensure that signage is compatible with adjacent shoreline environments and does not:
  - 1. Significantly (see definition in YMC 17.01.090) obstruct visual access to the water from public lands or a substantial number of residences per YMC 17.03.080, Development standards, and shorelines hearings board case law: or
  - 2. Impair scenic vistas to the Yakima Greenway or Naches River or associated lakes; or
  - 3. Impair driver vision such as due to lines of sight, type or frequency of lighting, or other feature that has the potential to result in safety concerns.

## 17.07.150 Transportation and parking.

The following provisions shall apply to the location and construction of roads; railroads; bridges; water crossings; pedestrian, bicycle, and public transportation; and parking within shorelines, where appropriate:

- A. Transportation and parking activities consistent with exemptions in YMC 17.13.050 are exempt from the requirement to obtain a shoreline substantial development permit, but shall meet applicable provisions of this master program. Applicants may apply for a multiyear transportation maintenance plan for exempt and nonexempt repair and maintenance activities consistent with YMC 17.07.170.
- B. New or expanded transportation and parking facilities must be designed and located where they will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions, and will not adversely impact existing or planned water-dependent uses.
- C. New or expanded roads and railroads shall not be located within a designated stream corridor except where it is necessary to cross the corridor, or where existing development, topography, and other conditions preclude locations outside the stream corridor. Applications for new or expanded roads and railroads shall demonstrate through engineering studies that a shoreline location is the most feasible of the available options.
  - 1. Construction of roadways or railroads across stream corridors shall be by the most direct route possible having the least impact to the stream corridor.
  - 2. Roadways or railroads that must run parallel to stream or wetland edges shall be along routes having the greatest possible distance from stream or wetland and the least impact to the corridor.
  - 3. Roadways or railroads within the stream corridor shall not hydrologically obstruct, cut off or isolate stream corridor features.
- D. Material excavated from the roadway area to achieve the design grade shall be used as fill where necessary to maintain grade, or shall be transported outside the corridor if it contains material unsuited to the current construction project. Spoil, construction waste, and other debris shall not be used as road fill or buried within the stream corridor.
- E. Bridges, water-crossing structures, or necessary fill to elevate roadways shall not constrict the stream channel; impede the normal flow of floodwaters, sediment, and woody debris; or cause displacement that would increase the elevation of floodwaters such that it would cause properties not in the floodplain to be flood-prone.
- F. Natural stream channels and drainage ways shall be preserved through the use of bridges for crossings, unless the use of culverts is demonstrated to be the only technically feasible means for crossing. The use of bridges shall be the preferred means to preserve natural streams and drainageways. Where bridges are not feasible, large, natural

bottom culverts; multi-plate pipes; and bottomless arches shall be used, and shall be designed consistent with the latest guidance from the Washington Department of Fish and Wildlife.

- G. Parking. The standards in this section only apply to new or expanded uses within shoreline jurisdiction.
  - 1. Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use consistent with the use matrix and definitions in YMC 17.03.070 and 17.01.090, respectively.
  - 2. Parking areas shall be located upland of the areas they serve, unless:
    - a. A location waterward is required to meet Americans with Disabilities Act requirements, or
    - b. No other feasible location upland of the area served is possible due to topographical or other physical constraints.
    - c. In the above cases in subsections (H)(2)(a) and (H)(2)(b) of this section, parking shall be located as far upland from the OHWM as feasible, recognizing the limited supply of shoreline areas.
  - 3. Proposals for new or expanded parking facilities shall minimize environmental and visual impacts of parking facilities through compliance with Chapter 17.05 YMC, General Regulations, Chapter 17.09 YMC, Critical Areas in Shoreline Jurisdiction, and applicable City zoning standards addressing lighting and landscaping.

## 17.07.160 Utilities.

The following provisions shall apply to the location, construction, or installation of utility transmission lines and facilities (such as those for wastewater, water, communication, natural gas, etc.) within shoreline jurisdiction:

- A. Utilities activities consistent with exemptions in YMC 17.13.050 are exempt from the requirement to obtain a shoreline substantial development permit, but shall meet applicable provisions of this master program. Applicants may apply for a multiyear utilities maintenance plan for exempt and nonexempt repair and maintenance activities consistent with YMC 17.07.170.
- B. New or expanded nonwater-oriented utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities that are nonwater-oriented, shall not be allowed in shoreline jurisdiction unless it can be demonstrated that:
  - 1. No other feasible option is available; or
  - 2. The new location is necessary due to channel migration or levee setback; or
  - 3. The facilities are being added or improved to meet federal or state mandates.
- C. Utility transmission lines and facilities shall be permitted within the stream corridor only where it is necessary to cross the corridor or where existing development, topography, and other conditions preclude locations outside the stream corridor. For example, lines and facilities that are essential public facilities (e.g., regional sewer facilities) that must cross the stream are permitted.
  - 1. Utility transmission lines and facilities across stream corridors shall be by the most direct route possible having the least impact to the stream corridor.
  - 2. The construction of utility transmission lines and facilities within a stream corridor shall be designed and located to ensure minimum disruption to the functional properties specified under YMC 17.09.030.
- D. Utility lines under streams and wetlands shall be placed in a sleeve casing to allow easy replacement or repair with minimal disturbance to the stream corridor.
- E. Buried utility transmission lines crossing a stream corridor shall be buried a sufficient depth below the bankfull depth of the waterway, associated floodway and floodplain to the maximum extent of potential channel migration as determined by hydrologic analysis.
- F. Preference shall be given to utility systems contained within the footprint of an existing right-of-way or utility easement over new locations for utility systems. Wherever possible, new aboveground installations shall use available, existing bridge and utility locations and stream corridor crossings as opposed to creating new locations and stream corridor crossings.

- G. Aboveground electrical support towers and other similar transmission structures shall be located as far upland as is practical.
- H. Transmission support structures shall be located clear of high flood velocities, located in areas of minimum flood depth which require the least floodproofing, and shall be adequately floodproofed.
- I. Underground utility transmission lines shall be constructed so they do not alter, intercept or dewater groundwater patterns that support streams, wetlands and hyporheic flow.
- J. Utility services to individual projects undergoing shoreline review, including those where the primary use may be in a different shoreline environment than the utility service, shall not require separate substantial development permits for utility service installations, but are subject to all of the provisions in this section, except those listed below. Utility service to projects outside shoreline jurisdiction is subject to normal shoreline permitting, and is subject to all of the provisions in this section, except those listed below.
  - 1. Where feasible, utilities shall be placed underground unless such undergrounding would be economically or technically prohibitive.
  - 2. New utility facilities shall be designed and located to preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses, especially recreation, residential and public access.
  - 3. Expansion, updating, and maintenance of existing facilities is allowed, but shall be designed to be located to avoid adverse impacts and achieve no net loss of ecological function to shoreline resources as much as possible.
  - 4. The presence of existing utilities shall not justify more intense development beyond levels planned in the comprehensive plan or zoning.
  - 5. Permit applications shall meet the following submittal review standards:
    - a. Applications shall submit studies (social, economic, environmental, engineering, etc.) to demonstrate that a shoreline location is the most feasible of the available options.
    - b. Applications to locate transmission lines shall submit a location plan that shows existing utility routes in the vicinity of the proposed transmission line. Failure of utility lines to follow existing routes, where feasible, shall cause denial of the application.
    - c. Applications shall include a reclamation plan that provides for revegetation and protection of shoreline areas from erosion and siltation. A revegetation or erosion protection plan shall demonstrate adequate protection of vegetation and avoidance of soil erosion. If the plan is found insufficient for protection of the shoreline environment, the shoreline administrator may require a third-party review at the applicant's expense.

## 17.07.170 Redevelopment, repair, and maintenance.

This section addresses how regulations apply to redevelopment, repair, or maintenance activities; clarifies how SMP standards proportionally apply to redevelopment activities; and provides a process for multiyear management plans for maintenance and repair.

- A. SMP provisions shall not apply retroactively to existing uses and developments.
- B. Legally established uses and developments may be maintained, repaired, and operated within shoreline jurisdiction and within shoreline and critical area buffers established in this SMP. Normal maintenance and repair, as specified in YMC 17.01.090, is exempt from a shoreline substantial development permit, but not the standards of the SMP.
- C. Consistent with the applicability provisions of YMC 17.01.020, SMP standards shall apply to expansions or alterations of uses or developments and to new development or redevelopment of a property as follows:
  - 1. The shoreline administrator shall determine the extent of compliance with SMP provisions.
  - 2. The required provisions shall be related to and in proportion to the proposal. For example, if an upper story is added to a structure, requirements related to building heights and views may apply. If vegetation is removed

beyond normal maintenance pursuant to YMC 17.05.030, vegetation conservation and shoreline buffer standards may apply.

- D. In order to provide consistent interpretation of SMP exemptions, streamline permitting, determine applicable SMP standards regarding maintenance or repair activities, apply best management practices or protocols to ensure no net loss of shoreline ecological function, and identify the need for notification of activities, the City may approve multiyear programmatic shoreline exemptions consistent with specific exempt activities allowed in YMC 17.13.050 for the following types of uses and modifications.
  - 1. Dredging.
  - 2. Private development and facilities on private lakes.
  - 3. Public parks and recreation.
  - 4. Transportation facilities.
  - 5. Utility facilities, including but not limited to wastewater and water systems.
- E. Applicants for multiyear maintenance plans shall provide the following information for consideration by the shoreline administrator:
  - 1. Description of proposed maintenance activities and best management practices;
  - 2. Type, methods, and frequency of maintenance or repair activities;
  - 3. Length of requested multiyear maintenance plan. Multiyear maintenance approval should not exceed five years, except where expressly allowed in this master program;
  - 4. Specification of which activities the applicant will regularly notice the City or which do not require advanced notice;
  - 5. Description of aquatic habitat protection measures and any applicable permits received for that work;
  - 6. Description of riparian and wetland protection measures and any applicable permits received for that work;
  - 7. Description of stormwater management practices to reduce both water quantity and water quality impacts and any applicable permits received for that work;
  - 8. Description of erosion and sediment control practices that prevent off-site movement;
  - 9. Description of revegetation or restoration activities following maintenance or repair;
  - 10. Description of chemical and nutrient use and containment practices such as Integrated Pest Management (IPM); and
  - 11. Description of compliance with use-specific criteria in subsections F to J of this section.
- F. Dredging. Applications for dredging maintenance plans shall demonstrate compliance with regulations in YMC 17.07.050.
- G. Private Development and Facilities on Private Lakes.
  - 1. A multiyear maintenance plan for private development and facilities on private lakes shall be consistent with covenants, codes, and restrictions of a property owners association, where such an association exists.
  - 2. The applicable use or modification performance standards of this chapter shall be demonstrated to be met by applications for multiyear maintenance plans.
- H. Public Parks and Recreation.
  - 1. A multiyear maintenance plan for public parks and recreation facilities shall describe management objective or desired outcome for shoreline habitat and water quality topics stated in application criteria in subsections

- (E)(3) to (E)(9) of this section, specific performance requirements for each standard, and corrective actions that would be implemented if the performance requirement(s) is not met.
- 2. Applications for parks and recreation maintenance plans shall demonstrate compliance with regulations in YMC 17.07.100.
- I. Transportation Facilities. Applications for transportation maintenance plans shall demonstrate compliance with regulations in YMC 17.07.150.
- J. Utility Facilities. Applications for utility maintenance plans shall demonstrate compliance with regulations in YMC 17.07.160.
- K. City Authorization of Multiyear Programmatic Maintenance Plans.
  - 1. The City may approve multiyear programmatic maintenance plans that solely contain exempt activities consistent with the interpretation process of YMC 17.13.020, when consistent with the following criteria:
    - a. The policies and procedures of the SMA;
    - b. The provisions of Chapter 173-27 WAC;
    - c. Chapter 10, Section 3 of the City of Yakima Comprehensive Plan; and
    - d. This title.
  - 2. The City may approve multiyear programmatic maintenance plans that include a combination of exempt and nonexempt activities. The permit process shall follow the permit process consistent with nonexempt activities pursuant to YMC 17.03.070, Shoreline use and modification matrix. The criteria for approval shall follow the applicable criteria for the permit type in Chapter 17.13 YMC, e.g., shoreline substantial development permit or shoreline conditional use permit.
  - 3. The City may attach conditions to the approval of multiyear maintenance plans as necessary to assure consistency of the project with the Act and this SMP. Additionally, nothing shall interfere with the City's ability to require compliance with all other applicable laws and plans.

#### Chapter 17.09

#### CRITICAL AREAS IN SHORELINE JURISDICTION

Sections:	
17.09.010	General provisions.
17.09.020	Flood hazard areas.
17.09.030	Fish and wildlife habitat conservation areas
17.09.040	Wetlands.
17.09.050	Geologically hazardous areas.
17.09.060	Critical aguifer recharge areas.

## 17.09.010 General provisions.

- A. Purpose of Chapter. The purpose of this chapter is to establish a single, uniform system of procedures and standards for development within designated critical areas within the shoreline jurisdiction of the incorporated City of Yakima.
- B. Intent of Chapter. This chapter establishes policies, standards, and other provisions pertaining to development within designated critical areas regulated under the provisions of the Growth Management Act (Chapter 36.70A RCW) and development regulated under the National Flood Insurance Program. Flood hazard areas, fish and wildlife habitat conservation areas, wetlands, geologically hazardous areas, and areas with a critical recharging effect on aquifers used for potable water constitute the City of Yakima's critical areas pursuant to WAC 365-190-030. These areas are of special concern to the people of the City of Yakima and the state of Washington because they are environmentally sensitive lands, or hazardous areas, which comprise an important part of the state's natural resource base. The policies, standards, and procedures of this chapter are intended to:
  - 1. Preserve development options within designated critical areas where such development will result in "no net loss" of the functions and values of the critical areas:
  - 2. Where appropriate, avoid uses and development which are incompatible with critical areas;
  - 3. Prevent further degradation of critical areas;
  - 4. Conserve and protect essential or important natural resources;
  - 5. Protect the public health, safety, and general welfare;
  - 6. Further the goals and policies of the Yakima Comprehensive Plan 2040;
  - 7. Implement the goals and requirements of the Washington Growth Management Act (Chapter 36.70A RCW), the Shoreline Management Act (Chapter 90.58 RCW), and the National Flood Insurance Program (CFR Title 42);
  - 8. Recognize and protect private property rights; and
  - 9. Provide development options for landowners of all existing lots to the greatest extent possible.
- C. The policies, standards and procedures of this chapter are not intended to:
  - 1. Regulate the operation and maintenance of existing, legally established uses and structures, including but not limited to vegetative buffers on existing uses that have been reduced in width prior to the effective date of this chapter;
  - 2. Result in an unconstitutional regulatory taking of private property;
  - 3. Require the restoration of degraded critical areas for properties in a degraded condition prior to the effective date of this chapter unless improvement of the buffer is needed for new development proposed on the property;
  - 4. Presume that regulatory tools are the only mechanism for protection; and
  - 5. Prohibit the use of valid water rights.

- D. Applicability. The provisions of this chapter shall apply to any new development, construction, or use within the incorporated portion of the City of Yakima's shoreline jurisdiction that is designated as a critical area. However, this chapter does not apply to the situations below:
  - 1. Within designated critical areas, there may exist lots, structures, and/or uses which were lawfully established prior to the adoption of this chapter, as provided below, but which would be subsequently prohibited, regulated, or restricted under this chapter. Such existing lots, structures, and/or uses shall be classified as legally nonconforming uses.
  - 2. It is the intent of this chapter to permit these preexisting legally nonconforming uses and structures to continue until such time as conformity is possible:
    - a. Minor, temporary, or transient activities (including those of a recreational nature) that do not alter the environment or require a dedicated staging area, use area, or route (including temporary signs) are not subject to this chapter;
    - b. Mining, as defined in YMC 17.01.090, as carried out under a Washington Department of Natural Resources reclamation permit, is not subject to the geologically hazardous areas provisions of this chapter for erosion hazard areas, over-steepened slope hazard areas, landslide hazard areas and suspected geologic hazard areas. Other critical areas provisions continue to apply.
- E. Critical Area Development Authorization Required.
  - 1. No new development, construction or use shall occur within a designated critical area without obtaining a development authorization in accordance with the provisions of this chapter, except for those provided for in subsection H of this section or YMC 17.13.050.
  - 2. With respect to application and review procedures, it is the intent of this chapter to streamline and coordinate development authorization within a critical area and recognize other requirements by local, state and/or federal permits or authorizations. Development, construction or use occurring within a designated critical area shall be processed according to the provisions of this chapter, unless determined to be exempt.
  - 3. Approval of a development authorization under this chapter shall be in addition to and not a substitute for any other development permit or authorization required by the City of Yakima. Approval of a development authorization under this chapter shall not be interpreted as an approval of any other permit or authorization required of a development, construction or use.
  - 4. Development authorizations shall be issued in accordance with this chapter, the Shoreline Management Act, and permit procedures of Chapter 173-27 WAC.
  - 5. Coordination with Other Jurisdictions.
    - a. Where all or a portion of a standard development project site is within a designated critical area and the project is subject to another local, state or federal development permit or authorization, the shoreline administrator shall determine whether the provisions of this chapter can be processed in conjunction with a local, state or federal development permit or authorization. The decision of the shoreline administrator shall be based upon the following criteria:
      - i. The nature and scope of the project and the critical area features involved or potentially impacted;
      - ii. The purpose or objective of the permit or authorization and its relationship to protection of the critical area;
      - iii. The feasibility of coordinating the critical area development authorization with other permitting agency;
      - iv. The timing of the permit or authorization.
    - b. If a determination has been made that provisions of this chapter can be handled in conjunction with another applicable development permit or authorization process, the shoreline administrator will not accept the development authorization and/or permits in place of a shoreline permit or critical area development authorization. Project proponents may be required to provide additional site plans, data and other information necessary as part of that process to ensure compliance with this chapter. The shoreline

administrator's decision on the critical area development authorization shall be coordinated to coincide with other permits and authorizations.

#### INQUIRY AND EARLY ASSISTANCE

- F. Critical Area Identification Form and Critical Area Report Requirements.
  - 1. Prior to the review of any applicable proposed development, construction or use, the applicant shall provide the City with a critical areas identification form and site plan and any other information the City may require to determine if a critical area is present.
  - 2. Upon receipt of a critical area identification form and site plan, the shoreline administrator or designee may conduct a site examination to review critical area conditions. The shoreline administrator or designee shall notify the property owner of the site examination prior to the site visit. Reasonable access to the site shall be provided by the property owner.
  - 3. The shoreline administrator or designee shall review the available information pertaining to the proposal and make a determination whether any critical areas may be affected. If so, a more detailed critical area report shall be submitted in conformance with subsections P and Q of this section, except as provided below:
    - a. No Critical Areas Present. If the shoreline administrator or designee is able to sufficiently determine a critical area does not exist within or adjacent to the project area and/or a critical area report is not required.
    - b. Critical Areas Present, But No Impact. If the shoreline administrator or designee is able to determine the existence, location and type of critical area and the project area is not within the critical area and/or the project will not have an indirect impact on the function of an adjacent wetland.
    - c. Critical Areas May Be Affected by a Proposal. The shoreline administrator or designee may waive the requirement for a critical areas report utilizing the technical expertise of other reviewing agencies if:
      - i. The shoreline administrator is sufficiently able to determine the existence, location and type of the critical area;
      - ii. The project scale or nature is such that a specialist is not necessary to identify impacts and mitigation; and
      - iii. The applicant agrees to provide mitigation the shoreline administrator deems adequate to mitigate for anticipated impacts.
  - 4. Reports will generally fall into the following groups:
    - a. Determining the absence of a critical area;
    - b. Determining the existence, location and type of a critical area;
    - c. Determining impacts of an encroachment on a critical area and general mitigation measures; and
    - d. Developing a compensatory mitigation plan.
- G. Preapplication Conference. Any new development or use falling under the provisions of this chapter may be subject to a preapplication conference. Prior to the preapplication conference, the project proponent must submit a critical area identification form and preliminary site plan. The preapplication conference is intended to allow the shoreline administrator or designee to:
  - 1. Establish the scope of the project and identify potential concerns that may arise;
  - 2. Identify permits, exemptions, and authorizations, which the project proponent may need to obtain;
  - 3. Determine whether the project will be processed through the development procedures of this chapter or coordinated with the review procedures of another development permit or authorization;
  - 4. Provide the proponent with resources and technical assistance (such as maps, scientific information, other source materials, etc.); and

5. Determine whether there is a need for a preliminary site assessment.

## ABBREVIATED REVIEW ALTERNATIVES

- H. Minor Activities Allowed Without a Critical Areas Permit. The project may require a shoreline permit or shoreline exemption under other provisions of this title. This chapter shall be inapplicable to the following actions:
  - 1. Maintenance of existing, lawfully established areas of crop vegetation, landscaping, paths, and trails or gardens within a regulated critical area or its buffer. Examples include: mowing lawns, weeding, garden crops, pruning, and planting of noninvasive ornamental vegetation or indigenous native species to maintain the general condition and extent of such areas:
  - 2. Minor maintenance and/or repair of structures that do not involve additional construction, earthwork or clearing. Examples include painting, trim or facing replacement, re-roofing, etc. Cleaning, operation and maintenance of canals, ditches, drains, waste ways, etc., is not considered additional earthwork, as long as the cleared materials are placed outside the stream corridor, wetlands, and buffers;
  - 3. Low impact activities such as hiking, canoeing, viewing, nature study, photography, hunting, fishing, education or scientific research;
  - 4. Creation of private trails that do not cross streams or wetlands that are less than two feet wide and do not involve placement of fill or grubbing of vegetation;
  - 5. Maintenance and normal work of the Greenway pathway and grounds;
  - 6. Planting of native vegetation;
  - 7. Noxious weed control outside vegetative buffers identified in YMC 17.09.030(O) and 17.09.040(E); and
  - 8. Noxious weed control within vegetative buffers, if the criteria listed below are met. Control methods not meeting these criteria may still apply for a restoration exemption, or other authorization as applicable:
    - a. Hand removal/spraying of individual plants or other acceptable method approved by the administrative official:
    - b. No area-wide vegetation removal/grubbing.
- I. Mitigation Requirements.
  - 1. All mitigation shall be sufficient to maintain the functions and values of the critical area;
  - 2. All development shall demonstrate that reasonable efforts have been examined to avoid and minimize impacts to critical areas;
  - 3. When an alteration to a critical area is proposed, it shall be avoided, minimized, or mitigated for as specified in YMC 17.05.020(D);
  - 4. If an alteration to a critical area is unavoidable, all adverse impacts to that critical area and its buffers shall be mitigated for in accordance with an approved mitigation plan and mitigation for wetland impacts shall be mitigated in accordance with the Washington State Department of Ecology Wetland Mitigation in Washington State, Parts 1 and 2 (April 2021 and March 2006 or as updated); and
  - 5. Mitigation shall be in kind and on site, whenever possible, and may be out of kind and/or off site when deemed appropriate by the shoreline administrator or designee.

# **REVIEW PROCESS**

- J. Application Submittal.
  - 1. Applications for development authorizations under this chapter shall be made on forms provided by the department. Application submittals shall include a site plan drawn to an engineering scale of 1:20 showing:
    - a. Dimensions of all sides of the parcel;

- b. Size and location of existing and proposed structures;
- c. Excavation, fill, drainage facilities, impervious surfaces, topography, slope;
- d. Other information as needed to determine the nature and scope of the proposed development; and
- e. Location of all critical areas.
- 2. The submittal shall also include all required critical areas reports prepared in conformance with subsections P and Q of this section.
- 3. To be complete, a critical area development authorization application must include all maps, drawings and other information or data specified by this chapter or requested on the basis of the preapplication conference (subsection G of this section).
- K. Determination of Review Process.
  - 1. The shoreline administrator or designee shall determine from the application submittal and other available information what type of permit(s) and/or review(s) will be required under this chapter.
  - 2. Specific information of permit type, review and process can be found in subsequent sections of this chapter and in Chapter 17.13 YMC.
- L. Development Authorization—Review Procedure. Upon submittal and acceptance of a completed development authorization application, the shoreline administrator or designee shall process and review the application as follows.
  - 1. Development authorizations shall be processed in accordance with statutory noticing requirements in YMC 17.13.030 and with specific requirements provided in Chapter 17.13 YMC, including but not limited to:
    - a. Submittals;
    - b. Completeness review;
    - c. Notices;
    - d. Hearings;
    - e. Decisions; and
    - f. Appeals.
  - 2. In circumstances where a critical area is proposed to be altered, but the development otherwise requires only a shoreline exemption, the development must be reviewed and processed as a shoreline substantial development permit or a shoreline variance.
  - 3. Development authorizations shall be reviewed in conformance with the applicable development standards of subsection R of this section and with YMC 17.09.030 through 17.09.060.
  - 4. Decisions on a development authorization shall be consistent with subsections M and N of this section, and with any specific decision criteria provided under the section for each relevant permit type, as provided in Chapter 17.13 YMC and subsection R of this section.
- M. Authorization Decisions—Basis for Action.
  - 1. In addition to meeting the shoreline permit-specific criteria in Chapter 17.13 YMC, the action on any development authorization under this chapter shall also be based upon the following criteria:
    - a. Impact of the project to critical area features on and abutting the property;
    - b. Danger to life or property that would likely occur as a result of the project;
    - c. Compatibility of the project with the critical area features:

- d. Conformance with applicable development standards;
- e. Adequacy of the information provided by the applicant or available to the department.
- 2. Based upon the project evaluation, the shoreline administrator shall take one of the following actions:
  - a. Grant the development authorization;
  - b. Grant the development authorization with conditions, as provided in subsection N of this section, to mitigate impacts to the critical area feature(s); or
  - c. Deny the development authorization.
- 3. The decision by the shoreline administrator or designee shall include written findings and conclusions.
- N. Conditional Approval of Development Authorization. In granting any development authorization, the shoreline administrator or designee may impose conditions to:
  - 1. Accomplish the purpose and intent of this chapter;
  - 2. Eliminate or mitigate any identified negative impacts of the project; and
  - 3. Protect critical areas from damaging and incompatible development.
- O. Fees and Charges. The Yakima City Council shall establish the schedule of fees and charges listed in Chapter 15.26 YMC (Land Development Fees), for development authorizations, variances, appeals and other matters pertaining to this chapter.

## CRITICAL AREAS REPORTS

- P. Critical Areas Report Requirements.
  - 1. The shoreline administrator or designee may require a critical areas report, paid for by the applicant, when it is determined necessary.
  - 2. A qualified professional shall prepare the report consistent with most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern. The intent of these provisions is to require a reasonable level of technical study and analysis sufficient to protect critical areas. The analysis shall be appropriate to the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity.
  - 3. The critical area report shall:
    - a. Demonstrate the proposal is consistent with the purposes and standards of this chapter;
    - b. Describe all potential risks to critical areas, and assess impacts on the critical area from the activities and uses proposed; and
    - c. Identify mitigation and protective measures.
  - 4. The critical areas report shall include information addressing the supplemental report requirements (see subsection Q of this section).
  - 5. The shoreline administrator or designee shall review the critical areas report for completeness and accuracy and shall consider the recommendations and conclusions to assist in making decisions on development authorizations, appropriate mitigation, and protective measures.
  - 6. Critical areas reports shall be valid for a period of five years, unless it can be demonstrated that a previous report is adequate for current analysis. Reports prepared for adjacent properties may be utilized for current analysis only when it can be shown through a supplemental report or site investigation that conditions on site are unchanged.

- 7. The shoreline administrator or designee may require the preparation of a new critical area assessment or a supplemental report if the initial assessment is in error.
- 8. The shoreline administrator or designee may reject or request revision of the critical areas report when it can be demonstrated that the assessment is inaccurate, incomplete or does not fully address the critical areas impacts involved.
- 9. Applicants shall provide reports and maps to the City in both electronic and paper formats. In addition, all critical area delineations/maps shall be provided to the City by means of a GPS projected coordinate system data set as specified by the City of Yakima engineer. The City may waive this requirement for single-family developments. Applicants are encouraged to coordinate with the shoreline administrator or designee regarding electronic submittal guidelines.
- 10. At a minimum, a critical areas report shall include the following information:
- a. A site plan showing the proposed development footprint and clearing limits, and all relevant critical areas and buffers;
- b. A written summary of the critical areas, including their size, type, classification or rating, condition, disturbance history, and functions and values. For projects on or adjacent to geologically hazardous areas or areas subject to high floodwater depth or velocity the description shall identify the type and characteristics of the hazard:
- c. An analysis of potential adverse impacts and how they will be mitigated or avoided. Geologically hazardous areas are additionally required to assess the risks posed by the development to critical areas, public and private properties, and both associated and unassociated nearby facilities and uses;
- d. When impacts cannot be avoided, the report shall include a plan describing mitigation to replace critical area functions and values. For projects on or adjacent to geologically hazardous areas or areas subject to high floodwater depth or velocity, the mitigation shall additionally address the site, and other public and private properties, and both associated and unassociated nearby facilities and uses potentially affected;
- e. The dates, names, and qualifications of the persons preparing the report and documentation of analysis methods including any fieldwork performed on the site; and
- f. Additional reasonable information requested by the shoreline administrator or designee.
- 11. A critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site.
- 12. The shoreline administrator or designee may limit the geographic area of the critical area report as appropriate.
- 13. Compensatory Mitigation Plans. When compensatory mitigation, as described in subsection I of this section, is proposed for wetland areas or stream channels, the applicant shall submit a mitigation plan as part of the critical area report, which includes:
  - a. A written report identifying environmental goals and objectives of the proposed compensation including a description of:
    - i. The anticipated impacts to the critical areas;
    - ii. The mitigating actions proposed;
    - iii. The purpose of the compensation measures, including site selection criteria;
    - iv. The compensation goals and objectives;
    - v. The desired resource functions;
    - vi. Construction activities start and completion dates; and

- vii. Analysis of anticipated success of the compensation project;
- b. A review of the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern supporting the proposed mitigation;
- c. A description of the report and the author's experience to date in restoring or creating the type of critical area report proposed;
- d. Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating the goals and objectives to ensure the mitigation project has been successfully attained;
- e. Detailed Construction Documents. The mitigation documents shall include written specifications and plans describing the mitigation proposed, such as:
  - i. The proposed construction sequence, timing, and duration;
  - ii. Grading and excavation details;
  - iii. Erosion and sediment control features;
  - iv. A planting plan specifying plant species, quantities, locations, size, spacing, and density;
  - v. Measures to protect and maintain plants until established; and
  - vi. Documents should include scale drawings showing necessary information to convey both existing and proposed topographic data, slope, elevations, plants and project limits;
- f. Monitoring Program. The mitigation plan shall include:
  - i. A program for monitoring both construction of the compensatory project and its completion and survivability;
  - ii. A plan which details how the monitoring data will be evaluated to determine if the performance standards are being met;
  - iii. Reports as needed to document milestones, successes, problems, and contingency actions of the compensation project; and
  - iv. Monitoring for a period necessary to establish that performance standards have been met, but not for a period less than five years;
- g. Contingency Plan. Identification of the potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met;
- h. Financial Guarantees. A financial guarantee ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with subsection (R)(1) of this section.
- 14. Innovative Mitigation.
  - a. Advanced mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section. One or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:
    - i. Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
    - ii. The applicant demonstrates the organizational and fiscal capability to act cooperatively;
    - iii. The applicant demonstrates that long-term management of the habitat area will be provided;
    - iv. There is a clear potential for success of the proposed mitigation at the identified site;

- v. There is a clear likelihood for success of the proposed plan based on supporting scientific information and demonstrated experience in implementing similar plans;
- vi. The proposed project results in equal or greater protection and conservation of critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;
- vii. The plan is consistent with the general purpose and intent of this section;
- viii. The plan shall contain relevant management strategies which are within the scope of this section; and
- ix. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this section, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.
- b. Conducting mitigation as part of a cooperative process does not reduce or eliminate the required wetland replacement ratios.
- c. Projects that propose compensatory wetland mitigation shall also use the standards in YMC 17.09.040(E). For those situations where a mitigation bank may provide an opportunity for mitigation, the requirements in YMC 17.09.040(F) shall apply.
- Q. Supplemental Report Requirements for Specific Critical Areas.
  - 1. Fish and Wildlife Habitat Conservation Areas. When a critical areas report is required for a fish and wildlife habitat conservation area, it shall include the following:
    - a. A habitat and native vegetation conservation strategy that addresses methods to protect the functional properties listed in YMC 17.09.030(E);
    - b. Where proposed construction lies within an immediate zone of potential channel migration, a hydrologic analysis report may be required. The report shall assume the conditions of the one-hundred-year flood, include on-site investigative findings, and consider historical meander characteristics in addition to other pertinent facts and data: And
    - c. A discussion of any federal, state or local management recommendations which have been developed for the species or habitats in the area, and how they will be incorporated into the project.
  - 2. Wetlands. When a critical areas report is required for wetlands, it shall include the following:
    - a. The exact location of a wetland's boundary and wetland rating as determined through the performance of a field investigation by a qualified wetland professional applying the approved federal wetland delineation manual and applicable regional supplements and the Washington State Wetland Rating System for Eastern Washington, revised October 2014 (Ecology Publication Number 14-06-030, or as revised);
    - b. All delineated wetlands and required buffers within two hundred feet of the project area shall be shown on the site plan. Available information should include, but not be limited to, aerial photos, land based photos, soils maps, or topographic maps;
    - c. An analysis of the wetlands including the following site related information:
      - i. A statement specifying the accuracy of the report and all assumptions made and relied upon;
      - ii. Documentation of fieldwork performed on the site, including field data sheets for delineations, wetland rating forms, baseline hydrologic data, etc.;
      - iii. A description of the methodologies used to conduct the wetland delineations, or impact analyses including references; and
      - iv. Wetland category, including vegetative, faunal, and hydrologic characteristics;
    - d. For projects that will affect the wetland or buffer, provide the following:

- i. A habitat and native vegetation conservation strategy that addresses methods to protect or enhance on-site habitat and wetland functions and values listed in YMC 17.09.040(D)(1) and 17.09.030(E); and
- ii. Mitigation sequencing, pursuant to YMC 17.05.020(D) to avoid, minimize, and mitigate impacts shall result in "no net loss" of acreage or functional values of wetlands and shall follow the guidance provided in YMC 17.09.040(E).
- 3. Geologically Hazardous Areas. When a critical areas report is required for a geologically hazardous area, it shall include the following:
  - a. A description of the site features, including surface and subsurface geology;
  - b. A description of the geologic processes and hazards affecting the property, including a determination of the actual hazard types for any suspected and risk unknown hazards identified in the affirmative determination of hazard;
  - c. A description of the vulnerability of the site to seismic and other geologic processes and hazards; and
  - d. A description of any potential hazards that could be created or exacerbated as a result of site development;
  - e. For developments in or affecting landslide hazard areas the report shall also include:
    - i. Assessments and conclusions regarding slope stability including the potential types of landslide failure mechanisms (e.g., debris flow, rotational slump, translational slip, etc.) that may affect the site. The stability evaluation shall also consider dynamic earthquake loading and shall use a minimum horizontal acceleration as established by the current version of YMC Title 11 (Buildings);
    - ii. An analysis of slope recession rate shall be presented in those cases where stability is impacted by stream meandering or other forces acting on the toe of the slope; and
    - iii. Description of the run-out hazard of landslide debris to the proposed development that starts upslope and/or the impacts of landslide run-out on downslope properties and critical areas.
- 4. Critical Aquifer Recharge Areas. The approach of the City of Yakima critical area regulations is to require a level of study and analysis commensurate with potential risks to wellhead protection zones associated with particular sites and particular proposals. At a minimum, all applicants shall review the history of the site and conduct a surface reconnaissance. The purpose of a critical aquifer recharge area report is to evaluate the actual geologic conditions and determine the site's proximity to or location within a wellhead protection zone; evaluate the safety and appropriateness of proposed activities; and recommend appropriate construction practices, monitoring programs, and other mitigation measures required to ensure achievement of the purpose and intent of these regulations. The information required by this report should be coordinated with the study and reporting requirements for any other critical areas located on the site. A critical aquifer recharge area report shall be prepared by a qualified professional who is a hydrogeologist, geologist, or engineer who is licensed in the state of Washington and who has experience in preparing hydrogeologic assessments.
  - a. Level One Hydrological Assessment. At sites located within Wellhead Protection Zones 1 through 3, defined in YMC 17.09.060(C)(1), a critical aquifer recharge areas report shall contain a level one hydrological assessment which includes the following site- and proposal-related information at a minimum:
    - i. Information regarding geologic and hydrogeologic characteristics of the site, including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone based on existing data.
    - ii. Groundwater depth, flow direction, and gradient based on available information.
    - iii. Currently available data on wells and springs within one thousand three hundred feet of the project area.
    - iv. Location of other critical areas, including surface waters, within one thousand three hundred feet of the project site.
    - v. Available historic water quality data for the area to be affected by the proposed activity.

- vi. BMPs proposed to be utilized.
- b. Level Two Hydrogeologic Assessment.
  - i. A level two hydrogeologic assessment shall be required for any of the following proposed activities at sites located within Wellhead Protection Zones 1 through 3:
    - (a) Activities that result in five thousand square feet or more impervious site area.
    - (b) Activities that divert, alter, or reduce the flow of surface or groundwaters, including dewatering or otherwise reduce the recharging of the aquifer.
    - (c) The storage, handling, treatment, use, production, recycling, or disposal of deleterious substances or hazardous materials, other than household chemicals used according to the directions specified on the packaging for domestic applications.
    - (d) The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than fourteen thousand five hundred gallons of effluent per day and that are limited to a maximum density of one system per one acre.
    - (e) Any other activity determined by the director of community development likely to have an adverse impact on groundwater quality or quantity, or on the recharge of the aquifer.
  - ii. A level two hydrogeologic assessment shall include the following site and proposal-related information at a minimum, in addition to the requirements for a level one hydrogeological assessment:
    - (a) Historic water quality and elevation data for the area to be affected by the proposed activity compiled for at least the previous five-year period.
    - (b) Groundwater monitoring plan provisions.
    - (c) Discussion of the effects of the proposed project on the groundwater quality and quantity, including:
      - (a) Predictive evaluation of groundwater withdrawal effects on nearby wells and surface water features.
      - (b) Predictive evaluation of contaminant transport based on potential releases to groundwater.
    - (d) Identification of the type and quantities of any deleterious substances or hazardous materials that will be stored, handled, treated, used, produced, recycled, or disposed of on the site, including but not limited to materials, such as elevator lift/hydraulic fluid, hazardous materials used during construction, materials used by the building occupants, proposed storage and manufacturing uses, etc.
    - (e) Proposed methods of storing any of the above substances, including containment methods to be used during construction and/or use of the proposed facility.
    - (f) Proposed plan for implementing YMC 17.09.060(C)(3)(d)(vi), Protection Standards during Construction.
    - (g) A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment that could fail.
    - (h) A complete discussion of past environmental investigations, sampling, spills, or incidents that may have resulted in or contributed to contaminated soil or groundwater at the site. Attach copies of all historical and current reports, and sampling results.
- R. General Critical Areas Protective Measures. The standards below apply to all permits and reviews performed under this chapter.

- 1. Financial Guarantees. Financial guarantees may be required to ensure mitigation, maintenance, and monitoring:
  - a. When required mitigation pursuant to a development proposal is not completed prior to the City of Yakima's final permit approval, the shoreline administrator or designee may require the applicant to post a financial guarantee to ensure that the work will be completed.
  - b. If a development proposal is subject to compensatory mitigation, the applicant must post a financial guarantee to ensure mitigation is fully functional.
  - c. All financial guarantees shall be in the amount of one hundred and twenty-five percent of the estimated cost of the uncompleted actions and/or the estimated cost of restoring the functions and values of the critical area that are at risk.
  - d. The financial guarantee may be in the form of a surety bond, performance bond, assignment of savings account, irrevocable letter of credit guaranteed by an acceptable financial institution, or other form acceptable to the shoreline administrator or designee, with terms and conditions acceptable to the City of Yakima attorney.
  - e. The financial guarantee shall remain in effect until the shoreline administrator or designee determines that the standards bonded for have been met. Financial guarantees for wetland or stream compensatory mitigation shall be held for a minimum of five years after completion of the work to ensure that the required mitigation has been fully implemented and demonstrated to function.
  - f. If public funds have previously been committed for mitigation, maintenance, monitoring, or restoration, a financial guarantee will not be required.
  - g. Failure to satisfy critical area requirements shall constitute a default, and the shoreline administrator and his or her designee may demand payment of any financial guarantee.
  - h. Any funds recovered pursuant to this section shall be used to complete the required mitigation. Such funds shall be deposited in a separate account. The City of Yakima will use such funds to arrange for completion of the project or mitigation, and follow-up corrective actions.
  - i. Depletion, failure, or collection of financial guarantees shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.
- 2. Subdivision Standards. The following standards apply to all permits or reviews under the subdivision ordinance (YMC Title 14) that contain critical areas:
  - a. All subdivisions that contain critical areas shall be eligible for density bonuses or other development incentives, as provided in the subdivision ordinance (YMC Title 14) and zoning ordinance (YMC Title 15);
  - b. Critical areas shall be actively protected through the following:
    - i. Roads and utilities for the subdivision shall avoid critical areas and their buffers, as much as possible;
    - ii. When geologically hazardous areas (excluding erosion, over-steepened slopes of intermediate risk, stream undercutting, and earthquake hazards), FEMA floodway, channel migration zone (CMZ), streams, wetlands and/or vegetative buffers fall within the boundary of a subdivision;
      - (A) Said critical areas shall be protected by placing them entirely within a separate critical area tract or by including them entirely within one of the developable parcels. Other options, such as conservation easements and building envelopes, may be deemed appropriate by the shoreline administrator as meeting this provision when special circumstances obstruct the viability of this provision;
      - (B) For those new lots that do contain said critical areas, useable building envelopes (five thousand square feet or more for residential uses) shall be provided on the plat that lies outside said critical areas;

- iii. New lots partially within the floodplain shall provide a usable building envelope (five thousand square feet or more for residential uses) outside the floodplain;
- iv. New lots entirely within the floodplain shall be at least one acre in area;
- v. For new lots containing streams, wetlands, and/or vegetative buffers, outdoor use envelopes shall be provided on the plat that lies outside said critical areas;
- vi. Degraded vegetative buffers shall be restored or provided with protection measures that will allow them to recover:
- vii. Floodplains and critical areas shall be depicted on preliminary subdivision plats and relevant information about them disclosed on the final plat;
- viii. Lots or parcels that lie entirely within geologically hazardous areas (excluding erosion, over-steepened slopes of intermediate risk, stream undercutting, and earthquake hazards), FEMA floodway, channel migration zone (CMZ), stream, wetland, and/or vegetative buffers may not be further divided.

## 17.09.020 Flood hazard areas.

The flood hazard areas regulations in Part Four of Chapter 15.27 YMC apply within shoreline jurisdiction; however, the regulations, themselves, are not incorporated as part of this Shoreline Master Program.

#### 17.09.030 Fish and wildlife habitat conservation areas.

- A. Purpose and Intent. Policies and standards to help conserve and protect fish and wildlife habitat conservation areas are designed to accomplish the following:
  - 1. Meet the requirements of the Shoreline Management Act (Chapter 90.58 RCW) regarding the use of the most current, accurate and complete scientific and technical information that is applicable to the issues of concern:
  - 2. Require consideration of alternatives for necessary development, construction, and uses within fish and wildlife habitat conservation areas:
  - 3. Prevent decline in the quantity and quality of surface and subsurface waters;
  - 4. Conserve, restore, and protect fish and wildlife habitats, vegetation, and ecological relationships;
  - 5. Protect fish and wildlife habitat conservation areas from the potential negative effects of development through coordinated land use planning; and
  - 6. Protect fish and wildlife habitat conservation areas through voluntary agreements or government incentives.
- B. Protection Approach.

To maintain fish and wildlife habitat, there must be adequate environmental conditions for reproduction, foraging, resting, and dispersal of animals. Factors affecting both habitat and its quality include the presence of essential resources such as food, water, cover, and lack of disturbance and diseases. The City of Yakima protects fish and wildlife habitat through:

- 1. Designation of fish and wildlife habitat conservation areas; and
- 2. Application of development standards based on the most current, accurate and complete scientific and technical information to proposed activity and development in or near fish and wildlife habitat conservation areas.

# **DESIGNATION AND MAPPING**

- C. Designation. Fish and wildlife habitat conservation areas are those habitat areas that meet any of the criteria listed below:
  - 1. Areas with which state and federal endangered, threatened, and sensitive species have a primary association:

- 2. Habitats and species of local importance;
- 3. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat:
- 4. Waters of the state, including any required buffers and associated Federal Emergency Management Agency-mapped floodplains and floodways;
- 5. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and
- 6. State natural area preserves, natural resource conservation areas, and state wildlife areas.
- D. Habitat and Species of Local Importance.
  - 1. All species and habitats identified by WDFW's Priority Habitats and Species program that may be found in the City of Yakima are designated as fish and wildlife habitat conservation areas and afforded protection under this chapter.
  - 2. Species and habitats of local importance may be identified for protection under this chapter. State or local agencies, individuals or organizations may identify and nominate for consideration specific species and habitats, or a general habitat type, including streams, ponds or other features. Proponents shall have the burden of presenting evidence concerning the criteria set forth below. The nomination shall be processed once a year through the annual comprehensive plan amendment cycle.
    - a. The decision for changes to species and habitats of local importance shall consider:
      - i. Concern due to population status;
      - ii. Sensitivity to habitat manipulation;
      - iii. Importance to the local community; and
      - iv. Criteria used to identify state priority species, which include:
        - (A) State candidate species that are defined by WDFW Policy M-6001 to include fish and wildlife species that WDFW will review for possible listing as state endangered, threatened, or sensitive;
        - (B) Vulnerable aggregations, which includes those species or groups of animals susceptible to significant population declines, within a specific area, by virtue of their inclination to aggregate;
        - (C) Species of recreational, commercial, and/or tribal importance that are vulnerable; and
        - (D) The economic impact both positive and negative to the applicant's property or surrounding property. Economic impact is to be determined by a properly qualified individual or firm using industry standards.
    - b. Nominated habitats and habitats for species of local importance shall consider the following and must include maps to illustrate the proposal:
      - i. A seasonal range or habitat element which, if altered, may reduce the likelihood that the species will maintain or reproduce over the long term;
      - ii. Areas of high relative density or species richness, breeding habitat, winter range, and movement corridors;
      - iii. Habitat with limited availability or high vulnerability to alteration; and
      - iv. Whether these habitats are already identified and protected under the provisions of this or other local ordinances or state or federal law.
    - c. Habitat management recommendations shall be included for use in the administration of this section.

- 3. Development Standards. Projects located within habitats of local importance, or within two hundred feet of species of local importance, as designated in subsection (D)(1) of this section, shall comply with the applicable development standards in subsections H through O of this section. In addition, projects shall be designed using management recommendations established for the species or habitat by federal and state agencies, or those adopted for species and habitats of local importance by the City of Yakima. The department shall consider the extent such recommendations are used in its decision on the proposal, and may consider recommendations and advice from agencies with expertise.
- E. Functional Properties.
  - 1. Aquatic fish and wildlife habitat conservation areas require a sufficient riparian area to support one or more of the following functional properties:
    - a. Stabilizing banks;
    - b. Providing a sufficient shade canopy to maintain water temperatures that support fish and their habitat;
    - c. Moderating the impact of stormwater runoff;
    - d. Filtering solids, nutrients and harmful substances;
    - e. Preventing surface erosion;
    - f. Providing and maintaining migratory corridors for wildlife;
    - g. Providing food in the form of various insects and other benthic macroinvertebrates;
    - h. Supporting a diversity of wildlife habitats; or
    - i. Allowing for the natural occurrence of woody debris and organic matter to collect in the aquatic environment.
  - 2. Stream channels assist in one or more of the following functional properties:
    - a. Groundwater recharge and/or discharge;
    - b. Water transport;
    - c. Sediment transport and/or storage;
    - d. Biochemical functions;
    - e. Channel migration and the protection of habitats; or
    - f. Food and habitat.
  - 3. Lakes, ponds and wetlands generally provide similar functions and generally provide one or more of the following functional properties:
    - a. Biogeochemical functions that improve water quality;
    - b. Hydrologic functions maintaining the water regime in a watershed (flood flow attenuation, decreasing erosion, and groundwater recharge); or
    - c. Food and habitat.
  - 4. Floodplains generally provide one or more of the following functional properties:
    - a. Floodwater storage;
    - b. Floodwater passage and the movement of high-velocity waters;
    - c. Sediment storage and recruitment;

- d. Food and habitat:
- e. Nutrient sink and/or source; or
- f. Groundwater recharge and discharge.
- 5. Habitat for wildlife consists of the arrangement of food, water, cover, and space. Wildlife habitat generally includes one or more of the following functional properties:
  - a. Reproduction and/or nesting;
  - b. Resting and refuge;
  - c. Foraging for food; or
  - d. Dispersal and migration.
- 6. Some functions require larger areas, which may not be achievable due to existing development and construction constraints, especially in urban areas. In these instances, adjustments to the minimum standards to accommodate such constraints may be necessary. Where adjustments may be necessary, reductions of standards should be offset by enhancement, restoration or preservation measures which replace the lost functions or values or strengthen other functional values if replacement is not possible.
- F. Water Typing System. For purposes of this chapter, the City of Yakima hereby adopts a stream, lake and pond typing system, for those features designated as critical areas in subsection C of this section as follows:
  - 1. Type 1 waters are those waters, within their ordinary high water mark (OHWM), meeting the criteria as "shorelines of the state" and "shorelines of statewide significance" under Chapter 90.58 RCW. Other waters associated with Type 1 waters are not considered Type 1 waters;
  - 2. Type 2 waters are those perennial, salmonid-bearing surface water features which require protection due to the nature of their contributions to the functional properties listed in subsection E of this section and are considered "streams, lakes and/or ponds of local importance," as listed in Appendix A of this title;
  - 3. Type 3 waters include all perennial non-salmonid-bearing surface water features within the City of Yakima not classified as Type 1 or 2 (see YMC 17.01.090, "perennial stream");
  - 4. Type 4 waters are all intermittent surface water features within the City of Yakima not classified as Type 1, 2 or 3 (see YMC 17.01.090, "intermittent stream");
  - 5. Type 5 waters are all ephemeral surface water features within the City of Yakima not classified as Type 1, 2, 3 or 4. Type 5 streams are not regulated as fish and wildlife habitat conservation areas (see YMC 17.01.090, "ephemeral stream"); and
  - 6. Lakes and Ponds.
    - a. Lakes and ponds not designated as a shoreline that receive water from the OHWM of a Type 2, 3, or 4 stream shall have the same surface water type as the highest stream type from which the lake or pond receives water.
    - b. Natural lakes and ponds, not designated as a shoreline, that do not receive water from the OHWM of a Type 1, 2, 3, or 4 stream shall be Type 3 ponds.
- G. Maps. Certain fish and wildlife habitat conservation areas have been inventoried and are depicted on a series of paper and electronic maps. The maps do not officially define the extent or characteristics of specific critical areas, but rather the potential physical boundaries and characteristics. Maps may be both regulatory and nonregulatory in nature as described below:
  - 1. Regulatory maps include any floodway or floodplain identified as a special flood hazard area by the Federal Emergency Management Agency (FEMA) as identified in the flood insurance studies (FIRMs).
  - 2. Informational maps indicate the approximate presence, location and/or typing of the potential critical area. Informational maps include, but are not limited to, the following:

- a. Wetlands:
- b. Streams;
- c. Channel migration zone; and
- d. Species and habitats of local importance. Note: This map will be generated at such a time when the City of Yakima formally adopts a species or habitat of local importance.
- 3. Other nonregulatory information sources include maps or other data sources, but are not limited to:
  - a. Comprehensive flood hazard management plans;
  - b. Soil survey of the City of Yakima;
  - c. Surface geologic maps;
  - d. Historic and current aerial photo series; and
  - e. Geohydraulic studies—geologic cross-sections showing aquifers and confining units.

## GENERAL DEVELOPMENT STANDARDS

- H. Prohibited Uses. The following uses and activities are prohibited within a designated fish and wildlife habitat conservation area:
  - 1. Storage, handling, and disposal of material or substances that are dangerous or hazardous with respect to water quality and life safety;
  - 2. The placement of mining tailings, spoilage, and mining waste materials, except for that associated with the mining of gravel;
  - 3. The draining or filling of a wetland, lake or pond, except as provided for in YMC 17.07.060(B);
  - 4. The removal and transport of material for fill outside of the stream corridor;
  - 5. Site runoff storage ponds, holding tanks and ponds, and other similar waste disposal facilities. Note: This provision does not include regional wastewater plant facilities, collection pipes, septic systems approved by a local or state agency, and other related facilities;
  - 6. Solid waste disposal sites;
  - 7. Automobile wrecking yards; and
  - 8. Fill for the sole purpose of increasing land area within the stream corridor.
- I. General Policies and Standards. The following policies and standards shall apply to any development, construction, or use carried out within a designated fish and wildlife habitat conservation area:
  - 1. The ordinary high water mark of a stream or lake, and the edge of a wetland, shall be marked on the ground before any development, construction, or use is initiated;
  - 2. Existing vegetation and any vegetative species pertinent to the critical area identified on the project site shall only be disturbed to the minimum extent possible;
  - 3. Nesting areas and other sensitive habitat identified within a fish and wildlife habitat conservation area shall be disturbed to the minimum extent possible;
  - 4. Projects within the fish and wildlife habitat conservation area shall be scheduled to occur at times and during seasons having the least impact to spawning, nesting, or other sensitive wildlife activities. Scheduling recommendations from the appropriate state and/or federal agency may be considered;

- 5. The following measures are incorporated into stormwater permits approved by a local, state or federal agency and transportation projects using the Stormwater Management Manual for Eastern Washington. Developments that do not require a stormwater permit shall also incorporate the following elements into project design:
  - a. Excavation, grading, cut/fills, compaction, and other modifications which contribute to erosion of soils shall be confined to the minimum necessary to complete the authorized work and avoid increased sediment load:
  - b. The removal of ground-cover vegetation, excavation, and grading shall be scheduled for periods when soils are the least vulnerable to erosion, compaction and movement unless suitable protective measures are used to prevent erosion;
  - c. Increases in impervious surface area, compaction of soil, changes in topography, and other modifications of land within a fish and wildlife habitat conservation area shall provide on-site facilities for detention, control, and filtration if potential increases have been identified to occur;
  - d. The discharge point for controlled stormwater runoff shall be designed and constructed to avoid erosion; and
  - e. Matting or approved temporary ground cover shall be used to control erosion until natural vegetative ground cover is successfully established;
- 6. Prior to the approval of development, construction, or uses within a designated fish and wildlife habitat conservation area, any existing source of biochemical or thermal degradation identified as originating on the project property shall be corrected;
- 7. Facilities which use fertilizers, pesticides or herbicides shall use landscaping, low-risk products, application schedules, and other protective methodology to minimize the surface and subsurface transfer of biochemical materials into the fish and wildlife habitat conservation area:
- 8. Modifications to natural channel gradient, channel morphology, drainage patterns, and other stream features shall not permanently alter or obstruct the natural volume or flow of surface waters;
- 9. Development, construction, or uses within the fish and wildlife habitat conservation area shall not alter or divert flood flows, cause channel shift, erosion, and increase or accelerate the flooding of upstream or downstream flood hazard areas:
- 10. Structures placed in close proximity to the outer edge of bends in stream channels shall be located to minimize the hazard from stream undercutting and stream bank erosion stemming from potential future stream migration;
- 11. The Department of Ecology and adjacent communities shall be notified prior to any alteration or relocation of a watercourse and evidence of such notification shall be submitted to the Federal Emergency Management Agency;
- 12. Maintenance shall be provided for the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
- 13. Development shall not obstruct, cut off, or isolate fish and wildlife habitat conservation area features;
- 14. Nothing in these regulations shall constitute authority of any person to trespass or in any way infringe upon the rights of private ownership; and
- 15. Any portion of the vegetative buffer temporarily damaged or disturbed as a result of construction activities (excluding approved permanent use areas) shall be repaired at the completion of construction using the reclamation found in subsection P of this section.

# WATER DEPENDENCY DEVELOPMENT STANDARDS AND BUFFER REQUIREMENTS

J. Use Classifications. For purposes of this section, the components of any development, construction, or use requiring a critical area development authorization shall be classified as provided below, and shall conform to the development standards applicable to the classification provided in subsections K through N of this section:

- 1. Water-oriented uses are one of the following three categories of uses, as defined in YMC 17.01.090: water-dependent, water-related, or water-enjoyment, or a combination of such uses.
- 2. Nonwater-oriented uses include any use not qualifying as uses in subsection (J)(1) of this section.
- K. Water-Dependent Uses. The following provisions shall apply to water-dependent uses:
  - 1. Structures shall be clustered at locations on the water's edge having the least impact to the surface water and shore.
  - 2. Use areas and structures which require direct shore locations shall be located and constructed to minimize impacts to the shore area and the vegetative buffer specified in subsection O of this section.
  - 3. Use areas and structures requiring direct shore locations shall minimize any obstruction or impairment of normal public navigation of the surface water.
- L. Water-Related Uses. The following provisions shall apply to water-related uses:
  - 1. Structures and use areas shall be located as far landward from the ordinary high water mark or wetland edge as is possible and still preserve the essential or necessary relationship with the surface water.
  - 2. Structures and use areas shall not be located within the vegetative buffer specified in subsection O of this section except where existing development or the requirements associated with the use make such a location unavoidable.
- M. Water-Enjoyment Uses. The following provisions shall apply to water-enjoyment uses:
  - 1. Structures and use areas shall be located as far landward from the ordinary high water mark or wetland edge as is possible and still preserve the essential or necessary relationship with the surface water.
  - 2. Structures and use areas may be located within the vegetative buffer specified in subsection O of this section; provided, that the location and construction shall be conducted to minimize impacts to the shore area and the vegetative buffer.
- N. Nonwater-Oriented Uses. The following provisions shall apply to nonwater-oriented uses:
  - 1. Structures and use areas shall be set back so as not to be located within the vegetative buffer specified in subsection O of this section.
  - 2. Construction abutting the vegetative buffer specified in subsection O of this section shall be designed and scheduled to ensure there will not be permanent damage or loss of the vegetative buffer.
- O. Vegetative Buffers. The establishment of a vegetative buffer system is necessary to protect the functions and values of streams, lakes, and ponds (Table 09.030-1). See YMC 17.09.040 for wetland buffer regulations.
  - 1. Vegetative buffers shall be measured from the ordinary high water mark for streams, lakes, and ponds. The width of the buffer shall be determined according to the water type.
  - 2. The adequacy of these standard buffer widths presumes the existence of a relatively intact native vegetative community within the buffer zone that is deemed adequate to protect the identified critical area.
    - a. If the vegetation is degraded, then revegetation may be considered with any adjustment to the buffer width.
    - b. Where the use is being intensified, a degraded buffer may be revegetated to maintain the standard width.

**Type 1** High Intensity:

Streams: 75' Lakes: 50'

Essential Public Facilities: 100'

Floodway/CMZ: 100' Shoreline Residential: Streams: 80' Lakes: 20'

Urban Conservancy: 100'

Type 2 100' Type 3 50' Type 4 25'

**Type 5** No buffer standards. Type 5 waters are not regulated as fish and wildlife

habitat conservation areas, but may be protected under geologically hazardous area, floodplain, stormwater, construction, grading or other

development regulations.

- 3. Where a legally established road or railway crosses a shoreline or critical area buffer, the shoreline administrator may approve a modification of the minimum required buffer width to the waterward edge of the improved road if a study submitted by the applicant and prepared by a qualified professional demonstrates that the part of the buffer on the upland side of the road sought to be reduced:
  - a. Does not provide additional protection of the shoreline waterbody or critical area; and
  - b. Provides insignificant biological, geological or hydrological buffer functions relating to the waterward portion of the buffer adjacent to the shoreline waterbody or critical area.

If the improved roadway corridor is wider than twenty feet, a study is not required.

- 4. Buffer averaging to improve stream, lake or pond protection may be permitted when all of the following conditions are met:
  - a. The stream or riparian corridor has significant differences in characteristics that affect its habitat functions.
  - b. The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the stream, lake or pond and decreased adjacent to the lower-functioning or less sensitive portion as demonstrated by a critical areas report from a qualified professional.
  - c. The total area of the buffer after averaging is equal to the area required without averaging.
  - d. The buffer at its narrowest point is never less than three-quarters of the required width.
- 5. Buffer averaging to allow reasonable use of a parcel may be permitted when all of the following are met:
  - a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.
  - b. The averaged buffer will not result in degradation of the stream or riparian corridor's functions and values as demonstrated by a critical areas report from a qualified professional.
  - c. The total buffer area after averaging is equal to the area required without averaging.
  - d. The buffer at its narrowest point is never less than three-quarters of the required width.
- 6. All other proposals to reduce a stream, lake or pond buffer width may only be approved through the shoreline variance process.
- P. Restoration. The following guidelines shall apply to the restoration of disturbed sites resulting from development activities within a designated fish and wildlife habitat conservation area:

- 1. Development, construction, or uses shall include the timely restoration of disturbed features to a natural condition or to a stabilized condition that prevents degradation;
- 2. Large-scale projects that extend over several months shall be phased to allow reclamation of areas where work or operations have been completed;
- 3. Restoration shall be scheduled to address precipitation, meltwater runoff, the growing season, and other seasonal variables that influence restoration and recovery;
- 4. Topography shall be finished to grades, elevations, and contours consistent with natural conditions in adjacent and surrounding areas;
- 5. Where existing development and construction prevent return of a site to its natural condition, sites may be finished to conditions comparable to surrounding properties provided suitable protective measures are used to prevent degradation of fish and wildlife habitat conservation areas;
- 6. Cut-and-fill slopes shall be stabilized at, or at less than, the normal angle of repose for the materials involved; and
- 7. For the replacement or enhancement of vegetation within fish and wildlife habitat conservation areas and their required vegetative buffers, native plant species shall be used unless a showing of good cause acceptable to the administrative official or designee is provided. Should good cause be shown, then self-maintaining or low-maintenance plant species compatible with the native vegetation shall be used in place of nonnative and high-maintenance species.

#### 17.09.040 Wetlands

A. Purpose and Intent. The purpose and intent of the provisions protecting wetland critical areas is equivalent to the purpose and intent for YMC 17.09.030.

- B. Designating and Mapping.
  - 1. Wetlands shall be delineated using the procedure outlined in the approved federal wetland delineation manual and applicable regional supplements.
  - 2. Wetlands are all areas meeting the definition for wetlands as defined in YMC 17.01.090 and are hereby designated critical areas which are subject to this chapter, except the following:
    - a. Irrigation systems that create an artificial wetlands; and
    - b. Areas where changes in irrigation practices have caused wetland areas to dry up.
  - 3. The approximate location and extent of wetlands are shown on maps maintained by the City of Yakima. These maps may include information from the National Wetlands Inventory produced by the U.S. Fish and Wildlife Service and are to be used as a guide for the City of Yakima.
- C. Protection Approach. Wetlands will be protected using the protection approach for fish and wildlife habitat conservation areas found in YMC 17.09.030(B). Wetlands and their functions will be protected using the standards found in this section and in YMC 17.09.030.
- D. Wetland Functions and Rating.
  - 1. Wetlands are unique landscape features that are the interface between the aquatic and terrestrial environments. Wetlands provide the following functions:
    - a. Biogeochemical functions, which improve water quality in the watershed (such as nutrient retention and transformation, sediment retention, metals, and toxics retention and transformation).
    - b. Hydrologic functions, which maintain the water regime in a watershed, such as: flood flow attenuation, decreasing erosion, and groundwater recharge.
    - c. Food and habitat functions, which include habitat for invertebrates, amphibians, anadromous fish, resident fish, birds, and mammals.

- 2. Wetlands shall be rated based on categories that reflect the functions and values of each wetland and shall be based on the criteria provided in the Washington State Wetland Rating System for Eastern Washington, revised October 2014 (Ecology Publication Number 14-06-030, or as revised) which are summarized below.
  - a. Category I wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace in a human lifetime; or 4) provide a high level of functions. Risk of any degradation to these wetlands must be avoided because their functions and values are too difficult to replace. Generally, these wetlands are not common and make up a small percentage of the wetlands in the region.
  - b. Category II wetlands are difficult but not impossible to replace and provide high levels of some functions. These wetlands occur more commonly than Category 1 wetlands, but still need a relatively high level of protection.
  - c. Category III wetlands are wetlands with a moderate level of functions and can often be adequately replaced with a well-planned mitigation project. These wetlands generally 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.
  - d. Category IV wetlands have the lowest levels of functions and are often heavily disturbed. These are wetlands that should be able to be replaced and, in some cases, 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.
- 3. Wetlands shall be rated as they exist on the day of project application submission. Information regarding the original condition of illegally modified wetlands that cannot be discerned from aerial photographs or other reliable information sources shall use the highest appropriate points value within each missing data field of the Washington State Wetland Rating System for Eastern Washington rating sheet to complete the rating.

## E. Wetland Buffers.

- 1. Buffer Requirements. The following buffer widths have been established in accordance with the most current, accurate and complete scientific and technical information. They are based on the category of wetland and the habitat score as determined by a qualified professional using the *Washington State Wetland Rating System for Eastern Washington: 2014 Update* (Ecology Publication #14-06-030, or as revised). The adjacent land use intensity is assumed to be high.
  - a. For wetlands that score five points or more for habitat function, the buffers in Table 09.040-1 can be used if both of the following criteria are met:
    - 1. A relatively undisturbed, vegetated corridor at least one hundred feet wide is protected between the wetland and any other priority habitats as defined by the Washington State Department of Fish and Wildlife (http://wdfw.wa.gov/hab/phshabs.htm).

The corridor must be protected for the entire distance between the wetland and the priority habitat by some type of legal protection such as a conservation easement.

Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available, Table 09.040-1 may be used with the required measures in Table 09.040-2 alone.

- 2. The measures in Table 09.040-2 are implemented, where applicable, to minimize the impacts of the adjacent land uses.
- b. For wetlands that score three to four habitat points, only the measures in Table 09.040-2 are required for the use of Table 09.040-1.
- c. If an applicant chooses not to apply the mitigation measures in Table 09.040-2, or is unable to provide a protected corridor where available, then Table 09.040-3 shall be used.
- d. The buffer widths in Tables 09.040-1 and 09.040-3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to

create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Table 09.040-1: Wetland Buffer Requirements if Table 09.040-2 Is Implemented and Corridor Provided

	Buffer Width (feet) based on habitat score		
Wetland Category	3—5	6—7	8—9
Category I: Based on total score	75	110	150
Category I: Forested	75	110	150
Category I: Bogs and wetlands of high conservation value		190	
Category I: Alkali	150		
Category II: Based on total score	75	110	150
Category II: Vernal pool		150	
Category II: Forested	75	110	150
Category III (all)	60	110	150
Category IV (all)	40		

Table 09.040-2: Required Measures to Minimize Impacts to Wetlands

Disturbance	Required Measures to Minimize Impacts		
Lights	Direct lights away from wetland		
Noise	Locate activity that generates noise away from wetland     If warranted, enhance existing buffer with native vegetation for 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 feet heavily vegetated buffer strip immediately adjacent to the outer wetland buffer.		
Toxic runoff	<ul> <li>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>Establish covenants limiting use of pesticides within 150 feet of wetland</li> <li>Apply integrated pest management</li> </ul>		
Stormwater runoff	<ul> <li>Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>Prevent channelized flow from lawns that directly enters the buffer</li> </ul>		

Disturbance	Required Measures to Minimize Impacts		
	Use low intensity development techniques		
Changes in water regime	<ul> <li>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns.</li> </ul>		
Pets and human disturbance	<ul> <li>Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</li> <li>Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>		
Dust	Use best management practices to control dust		

Table 09.040-3: Wetland Buffer Requirements if Table 09.040-2 Is NOT Implemented and Corridor NOT Provided

	Buffer Width (feet) based on habitat score		
Wetland Category	3—5	6—7	8—9
Category I: Based on total score	100	150	200
Category I: Forested	100	150	200
Category I: Bogs and wetlands of high conservation value	250		
Category I: Alkali	200		
Category II: Based on total score	100	150	200
Category II: Vernal pool	200		
Category II: Forested	100	150	200
Category III (all)	80	150	200
Category IV (all)	50		

- e. Increased Wetland Buffer Area Width. Buffer widths shall be increased on a case-by-case basis as determined by the administrative official when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. This documentation shall include, but not be limited to, the following criteria:
  - i. The wetland is used by a state or federally listed plant or animal species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
  - ii. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
  - iii. The adjacent land has minimal vegetative cover or slopes greater than thirty percent.

- f. Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:
  - i. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-rated" wetland with a Category I area adjacent to a lower-rated area.
  - ii. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.
  - iii. The total area of the buffer after averaging is equal to the area required without averaging.
  - iv. The buffer at its narrowest point is never less than either three-quarters of the required width or seventy-five feet for Categories I and II, fifty feet for Category III, and twenty-five feet for Category IV, whichever is greater.
- q. Averaging to allow reasonable use of a parcel may be permitted when all of the following are met:
  - i. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.
  - ii. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a critical areas report from a qualified wetland professional.
  - iii. The total buffer area of the buffer after averaging is equal to the area without averaging.
  - iv. The buffer at its narrowest point is never less than either three-quarters of the required width or seventy-five feet for Categories I and II, fifty feet for Category III, and twenty-five feet for Category IV, whichever is greater.
- 2. To facilitate long-range planning using a landscape approach, the administrative official may identify and preassess wetlands using the rating system and establish appropriate wetland buffer widths for such wetlands. The administrative official will prepare maps of wetlands that have been preassessed in this manner.
- 3. Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Buffers must be fully vegetated in order to be included in buffer area calculations. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.
- 4. Buffers on Mitigation Sites. All wetland mitigation sites shall have buffers consistent with the buffer requirements of this chapter. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.
- 5. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive nonnative weeds is required for the duration of the mitigation bond, YMC 17.07.040(F)(10)(b)(i)(10).
- 6. Impacts to Buffers. Requirements for the compensation for impacts to buffers are outlined in YMC 17.09.040(F).
- 7. Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.
- 8. Allowed Buffer Uses. The following uses may be allowed within a wetland buffer in accordance with the review procedures of this chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:
  - a. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

- b. Passive Recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:
  - 1. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width for pedestrian use only. Raised boardwalks utilizing nontreated pilings may be acceptable.
  - 2. Wildlife-viewing structures.
- c. Educational and scientific research activities.
- d. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.
- e. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
- f. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, provided that the drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column is disturbed.
- g. Enhancement of a wetland buffer through the removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate for that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
- h. Repair and maintenance of nonconforming uses or structures, where legally established within the buffer, provided they do not increase their degree of nonconformity.
- 9. Signs and Fencing of Wetlands and Buffers.
  - a. Temporary Markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the administrative official prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.
  - b. Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the administrative official may require the applicant to install permanent signs along the boundary of a wetland or buffer.
    - 1. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or other nontreated material of equal durability. Signs must be posted at an interval of one every fifty feet, or one per lot if the lot is less than fifty feet wide, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the administrative official:

Protected Wetland Area

Do Not Disturb

Contact the City of Yakima

Regarding Uses, Restrictions, and Opportunities for Stewardship

2. The provisions of subsection (E)(9)(a) may be modified as necessary to assure protection of sensitive features or wildlife.

#### c. Fencing.

- 1. The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.
- 2. Fencing installed as part of a proposed activity, or as required in this subsection, shall be designed so as not to interfere with species mitigation, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

#### F. Compensatory Mitigation.

- 1. Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference:
  - a. Avoid the impact altogether by not taking a certain action or parts of an action.
  - b. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
  - c. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
  - d. Reduce or eliminate the impact over time by preservation and maintenance operations.
  - e. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
  - f. Monitor the required compensation and take remedial or corrective measures when necessary.
- 2. Requirements for Compensatory Mitigation.
  - a. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State Part 2: Developing Mitigation Plans—Version 1 (Ecology Publication No. 06-06-011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Publication No. 10-06-07, November 2010).
  - b. Compensation ratios may also be determined using the credit/debit tool described in "Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Eastern Washington: Final Report" (Ecology Publication No. 11-06-015, August 2012), consistent with subsection (F)(9) of this section.
- 3. Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:
  - a. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or
  - b. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the City, such as replacement of historically diminished wetland types.
- 4. Approaches to Compensatory Mitigation. Mitigation for lost or diminished wetland and buffer functions shall rely on the approaches listed below.
  - a. Wetland Mitigation Banks. Credits from a certified wetland mitigation bank may be used to compensate for impacts consistent with the terms of the certified mitigation bank instrument. Use of credits from a wetland mitigation bank certified under Chapter 173-700 WAC is allowed if:

- i. The shoreline administrator determines that it would provide appropriate compensation for the proposed impacts;
- ii. The impact site is located in the service area of the bank or, if approved by Ecology, the bank's Interagency Bank Review Team, and the shoreline administrator, outside of the service area;
- iii. The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument; and
- iv. Compensation ratios for projects using bank credits is consistent with compensation ratios specified in the certified mitigation bank instrument.
- b. In-Lieu Fee Mitigation. Credits from an approved in-lieu-fee program may be used when all of the following apply:
  - i. The shoreline administrator determines that it would provide environmentally appropriate compensation for the proposed impacts.
  - ii. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.
  - iii. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument for the in-lieu-fee program.
  - iv. The impacts are located within the service area specified in the approved in-lieu-fee instrument.
- c. Permittee-Responsible Mitigation. In this situation, the permittee performs the mitigation after the permit is issued and is ultimately responsible for implementation and success of the mitigation. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same watershed. Permittee-responsible mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the approval authority's satisfaction that the proposed approach is ecologically preferable to use of a bank or ILF program, consistent with the criteria in this section.
- 5. Types of Compensatory Mitigation. Mitigation for lost or diminished wetland and buffer functions shall rely on a type listed below in order of preference. A lower-preference form of mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the approval authority's satisfaction that all higher-ranked types of mitigation are not viable, consistent with the criteria in this section.
  - 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. For the purpose of tracking net gains in wetland acres, restoration is divided into:
    - i. 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. Reestablishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.
    - ii. 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. 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. Establishment (Creation). The manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.
    - i. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland professional that:

- 1. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;
- 2. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and
- 3. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.
- c. 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, or repairing water control structures or fences. This term also includes activities commonly associated with the term "preservation." Preservation does not result in a gain of wetland acres. Preserving at-risk, high-quality wetlands as part of a compensatory mitigation plan may be allowed when all of the following numbered criteria are met:
  - i. The approval authority determines that the proposed preservation is the best mitigation option;
  - ii. The proposed preservation site is under demonstrable threat of destruction, adverse modification, or substantive degradation due to permitted, planned, or likely actions on- or off-site that will not be adequately mitigated under existing regulations;
  - iii. The area proposed for preservation is of high quality or critical for the health and ecological sustainability of the watershed or basin. Some of the following features may be indicative of high-quality sites:
    - 1. Category I or II wetland rating (using the current version of the Washington State Wetland Rating System for Eastern Washington). This includes Wetlands of High Conservation Value as identified by Washington Department of Natural Resources' Natural Heritage Program;
    - 2. Rare or irreplaceable wetland type (for example, peatlands, mature forested wetlands, vernal pools, alkali wetlands) or aquatic habitat that is a rare or a limited resource in the area;
    - 3. Habitat for threatened or endangered species (state and federal);
    - 4. Provides biological and/or hydrological connectivity;
    - 5. Of regional or watershed importance (e.g., listed as priority site in a watershed, salmon recovery, or basin plan);
    - 6. Large size with high species diversity (plants, animals, or both), high abundance of native species, or both; or
    - 7. A site that is continuous with the head of a watershed, or with a lake or pond in an upper watershed that significantly contributes to hydrologic processes and water quality.
  - iv. Permanent protection of the wetland and buffer will be provided through a conservation easement or tract held by an appropriate natural land resource manager, such as a land trust. The approval authority may approve other legal and administrative mechanisms in lieu of a conservation easement if it determines they are adequate to protect the site.
  - v. The site has adequate buffers to ensure that the preserved wetland will not be degraded over time. The buffer width and vegetative condition must be sufficient to protect the wetland and its functions from encroachment and degradation. Existing and potential future land uses (based on current zoning designations) dictate the width necessary for a buffer that is adequate to protect the wetland and its functions; see buffer widths in Chapter 6C in Wetland Mitigation in Washington State Part 1: Agency Policies and Guidance (Version 2), Ecology Publication #21-06-003, as revised.
- d. 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. 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 hydroperiods, or some combination of these activities. Applicants proposing to enhance wetlands or associated buffers shall demonstrate how the proposed enhancement will increase the wetland's/buffer's functions, how this increase in function will adequately compensate for the impacts, and how existing wetland functions at the mitigation site will be protected.

- 6. Location of Compensatory Mitigation. Compensatory mitigation actions 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. The following criteria will be evaluated when determining whether the proposal is ecologically preferable. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank, an in-lieu-fee program, or advance mitigation.
  - a. There are no reasonable opportunities on site or within the sub-drainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
  - b. On-site mitigation would require elimination of high-quality upland habitat.
  - c. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.
  - d. Off-site locations shall be in the same sub-drainage basin unless:
    - i. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site; or
    - ii. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument;
    - iii. Fees are paid to an approved in-lieu fee program to compensate for the impacts.
  - e. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland.
- 7. Timing of Compensatory Mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.
  - a. The administrator may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the City.
- 8. Wetland Compensation Ratios.

- a. The following ratios in Table 09.040-4 shall apply to permittee-responsible compensation that is inkind, is the same or higher category as the impacted wetland, is the same hydrogeomorphic class as the impacted wetland, is timed concurrent with alteration, and has a high probability of success.
- b. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases.
- c. These ratios do not apply to the use of credits from a state certified wetland mitigation bank, use of an ILF program, or advance mitigation implemented by the permittee. When credits from a certified bank or ILF program are used, compensation ratios should be consistent with the requirements of the bank's or program's certification. Ratios applicable to advance mitigation shall be determined on a case-by-case basis in consultation with state and/or federal agencies.
- d. The first number specifies the acreage of compensatory mitigation replacement wetlands and the second specifies the acreage of wetlands altered.
- e. When combining mitigation methods, compensation ratios may be adjusted consistent with Section 6B.4.2 in Wetland Mitigation in Washington State Part 1: Agency Policies and Guidance—Version 2 (Ecology Publication No. 21-06-003, Olympia, WA, April 2021 or as revised). See also subsection (F)(5)(c) of this section for more information on using preservation as compensation.
- f. Increased Compensation Ratios. The shoreline administrator may increase the ratios under the following circumstances:
  - i. Uncertainty exists as to the probable success of the proposed restoration or creation;
  - ii. A significant period of time will elapse between adverse impact and replication of wetland functions;
  - iii. Proposed compensatory mitigation will result in a lower category wetland or reduced functions relative to the wetland being adversely impacted; or
  - iv. The impact was an unauthorized impact.

Table 09.040-4: Standard Compensation Ratios.

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation	Preservation <sup>1,</sup>	Enhancement <sup>2</sup>
Category I	4:1	8:1	16:1	16:1
Category II	3:1	6:1	12:1	12:1
Category III	2:1	4:1	8:1	8:1
Category IV	1.5:1	3:1	6:1	6:1

<sup>1</sup> All proposed preservation sites shall meet the preservation criteria listed in subsection (I)(3). To the maximum extent practicable, preservation should be done in conjunction with wetland creation and re-establishment.

<sup>2</sup> Applicants proposing preservation only or enhancement only should provide a complete credit-debit analysis using Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Eastern Washington: Final Report (Ecology Publication No. 11-06-015, August 2012, or as revised. The ratios in the table above only apply when the credit-debit tool is not applicable.

- 9. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the compensation ratios found in subsection (F)(8) and Wetland Mitigation in Washington State Part 1 (Ecology Publication No. 21-06-003, Olympia, WA, April 2021 or as revised), the administrator may allow mitigation based on the "credit/debit" method developed by the Department of Ecology in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Eastern Washington: Final Report (Ecology Publication No. 11-06-015, August 2012, or as revised).
- 10. Compensatory Mitigation Plan. When a project involves wetland and/or buffer impacts, a compensatory mitigation plan prepared by a qualified professional shall be required, meeting the following minimum standards:

- a. Wetland Critical Area Report. A critical area report for wetlands must accompany or be included in the compensatory mitigation plan and include the minimum parameters described in YMC 17.09.010(P) and 17.09.010(Q)(2).
- b. Compensatory Mitigation Report. The report must include a written report and plan sheets that must contain, at a minimum, the following elements. Full guidance can be found in Wetland Mitigation in Washington State—Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication No. 06-06-011b, Olympia, WA, March 2006 or as revised).
  - i. The written report must contain, at a minimum:
    - 1. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
    - 2. Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.
    - 3. Description of the existing wetland and buffer areas proposed to be impacted. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding lands uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on wetland ratings, YMC 17.09.040(D).
    - 4. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. Estimate future conditions in this location if the compensation actions are not undertaken (i.e., how would this site progress through natural succession?).
    - 5. Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Include illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.
    - 6. A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands.
    - 7. A description of the proposed mitigation construction activities and timing of activities.
    - 8. Performance standards (measurable standards for years post-installation) for upland and wetland communities, a monitoring schedule, and a maintenance schedule and actions proposed by year.
    - 9. A discussion of ongoing management practices that will protect wetlands after the development project has been implemented, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).
    - 10. A bond estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring.
    - 11. Proof of establishment of notice on title for the wetlands and buffers on the project site, including the compensatory mitigation areas.
  - ii. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:
    - 1. Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.

- 2. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be impacted, and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation.
- 3. Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.
- 4. Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this chapter.
- 5. A planting plan for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, and timing of installation.
- 11. Buffer Compensation Ratios. Impacts to buffers shall be mitigated at a minimum one-to-one ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.
- 12. Protection of the Mitigation Site. The area where the mitigation occurred and any associated buffer shall be located in a critical area tract or a conservation easement consistent with YMC 17.09.040.
- 13. Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.
- 14. Advance Mitigation. Mitigation for projects with preidentified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations consistent with Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation (Ecology Publication No. 12-06-015, Olympia, WA, December 2012).
- 15. Alternative Mitigation Plans. The administrator may approve alternative wetland mitigation plans that are based on the most current, accurate and complete scientific and technical information, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals must provide an equivalent or better level of protection of wetland functions and values than would be provided by the strict application of this chapter. The administrative official shall consider the following for approval of an alternative mitigation proposal:
  - a. The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Ecology Publication No. 10-06-07, November 2010).
  - b. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.
  - c. Mitigation according to subsection (F)(5) of this section is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards.
  - d. There is clear potential for success of the proposed mitigation at the proposed mitigation site.
  - e. The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in subsection (F)(10) of this section.
  - f. The plan shall be reviewed and approved as part of overall approval of the proposed use.

- g. A wetland of a different type may be justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.
- h. Mitigation guarantees shall meet the minimum requirements as outlined in subsection (F)(10)(b)(i)(8) of this section.
- i. Qualified professionals in each of the critical areas addressed shall prepare the plan.
- j. The City may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.

#### 17.09.050 Geologically hazardous areas.

- A. Purpose and Intent.
  - 1. Geologically hazardous areas include those areas susceptible to erosion, sliding, earthquake, or other geological events. These areas pose a threat to the health and safety of the City of Yakima's citizens when incompatible development is sited in significantly hazardous areas. When mitigation is not feasible, development within geologically hazardous areas should be avoided.
  - 2. The purpose of this section is to:
    - a. Minimize risks to public health and safety and reduce the risk of property damage by regulating development within geologically hazardous areas;
    - b. Maintain natural geological processes while protecting new and existing development; and
    - c. Establish review procedures for development proposals in geologically hazardous areas.
  - 3. This section does not imply that land outside mapped geologically hazardous areas or uses permitted within such areas will be without risk. This section shall not create liability on the part of the City of Yakima, any officer, or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.
- B. Mapping and Designation.
  - 1. Geologically hazardous areas are areas that are susceptible to one or more of the following, based on WAC 365-190-120.
    - a. Erosion hazards;
    - b. Landslide hazards, which include:
      - i. Over steepened slopes;
      - ii. Alluvial fan/flash flooding;
      - iii. Avalanche; and
      - iv. Channel migration zones and stream undercutting.
    - c. Seismic hazards (referred to below as earthquake hazards); and
    - d. Volcanic hazards.
  - 2. The approximate location and extent of erosion hazard areas are shown on the City of Yakima's critical area map titled "Erosion Hazard Areas of the City of Yakima." Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas were identified by using the "Soil Survey of Yakima County Area, Washington" and the "Soil Survey of Yakima Indian Reservation Irrigated Area, Washington, Part of Yakima County."

- 3. The approximate location and extent of geologically hazardous areas are shown on the City's critical area map titled "Geologically Hazardous Areas of the City of Yakima." The following geologically hazardous areas have been mapped and classified using the criteria found in WAC 365-190-120:
  - a. Landslide Hazard Areas (LS). These include places where landslides, debris flows, or slumps have occurred.
    - i. High risk (LS3) is defined as areas that are presumed to have had a landslide, debris flow, or slump within ten thousand years or less.
    - ii. Intermediate risk (LS2) is defined as areas where landslides, debris flows, or slumps are older than ten thousand years, but are still capable of movement.
    - iii. Low risk areas are defined as areas unlikely to fail. These areas are unlabeled and combined with other low risk categories.
  - b. Over Steepened Slope Hazard Areas (OS). These include areas with slopes steep enough to create a potential problem.
    - i. High risk areas (OS3) are defined as having a high potential to fail, include slopes greater than forty percent, and consist of areas of rock fall, creep, and places underlain with unstable materials.
    - ii. Intermediate risk areas (OS2) are defined as areas less likely to fail but are still potentially hazardous. This category includes slopes between fifteen percent and forty percent.
    - iii. Low risk areas are defined as areas unlikely to fail. These areas are unlabeled and combined with other low risk categories.
  - c. Alluvial Fan/Flash Flooding Hazard Areas (AF). These areas include locations where flash floods can occur and are often associated with inundation by debris from flooding. These areas may include:
    - i. Alluvial fans;
    - ii. Canyons;
    - iii. Gullies; and
    - iv. Small streams where catastrophic flooding can occur.
  - d. Stream Undercutting Hazard Areas (SU). These areas are confined to banks near main streams and rivers where undercutting of soft materials may result.
    - i. High risk areas (SU3) include steep banks of soft material adjacent to present stream courses.
    - ii. Intermediate risk areas (SU2) are banks along the edge of a flood plain but away from the present river course.
    - iii. Low risk areas (SU1) are unlabeled and combined with other low risk areas on the maps.
  - e. Earthquake Activity Hazard Areas (EA). Recorded earthquake activity in the City of Yakima is mostly marked by low magnitude events and thus low seismic risk. The City of Yakima's low risk areas are unlabeled and combined with other low risk hazards.
  - f. Suspected Geologic Hazard Areas (SUS). These are areas for which detailed geologic mapping is deficient but preliminary data indicate a potential hazard may exist. No risk assessment (1, 2, 3) is given for these areas. Most are probably OS or LS hazards.
  - g. Risk Unknown Hazard Areas (UNK). This category is limited to areas where geologic mapping is lacking or is insufficient to make a determination. All of these areas are associated with other classified geologic hazards.
- 4. Volcanic hazard areas are not mapped, but are defined as areas subject to pyroclastic (formed by volcanic explosion) flows, lava flows, and inundation by debris flows, mudflows or related flooding resulting from volcanic

activity. Volcanic hazard areas in the City of Yakima are limited to pyroclastic (ash) deposits. No specific protection requirements are identified for volcanic hazard areas.

- C. Geologically Hazardous Areas Protection Approach. The geologically hazardous areas protection approach can be met by following the guidelines below and by implementing the appropriate sections of the building code as adopted in YMC Title 11.
  - 1. General.
    - a. New development and creation of new lots that would cause foreseeable risk from geological conditions during the life of the development or would require structural shoreline stabilization over the life of the development (except as allowed under YMC 17.07.130) is prohibited.
    - b. New stabilization structures for existing primary residential structures allowed only where no alternatives (including relocation or reconstruction of existing structures) are feasible, and less expensive than the proposed stabilization measure, and then only if no net loss of ecological functions will result.
  - 2. Erosion Hazard Areas. Protection measures for erosion hazard areas will be accomplished by implementing the regulatory standards for erosion and drainage control required under YMC Title 11, Buildings. YMC Title 11 requirements can be met by the application of the best management practices (BMPs) in the Stormwater Management Manual for Eastern Washington (WDOE Publication Number 04-10-076); equivalent manual adopted by the City of Yakima; or any other approved manual deemed appropriate by the building official.
  - 3. Landslide Hazard Areas. Protection measures for landslide hazard areas will be accomplished through the review process of subsection D of this section by implementing the development standards of subsection E of this section.
  - 4. Alluvial Fan/Flash Flooding Hazard Areas. Protection measures for alluvial fan/flash flooding hazard areas will be accomplished through the review process of subsection D of this section.
  - 5. Stream Undercutting Hazard Areas. Protection measures for stream undercutting hazard areas will be accomplished by critical areas review for flood hazards, streams, and shoreline jurisdiction.
  - 6. Oversteepened Slope Hazard Areas. Protection measures for oversteepened slope hazard areas will be accomplished through the review process of subsection D of this section, by implementing the development standards of subsection E of this section.
  - 7. Earthquake/Seismic Hazard Area Protection Standards. Protection measures for earthquake/seismic hazard areas will be accomplished by implementing the appropriate sections of the building code as adopted in YMC Title 11.
  - 8. Suspected Geologic Hazard Areas and Risk Unknown Hazard Areas. Protection measures for suspected geologic hazard areas and risk unknown hazard areas will be accomplished through the review process of subsection D of this section and by implementing the development standards of subsection E of this section.
- D. Development Review Procedure for Geologically Hazardous Areas.
  - 1. The shoreline administrator shall make a determination of hazard to confirm whether the development or its associated facilities (building site, access roads, limits of grading/excavation/filling, retaining walls, septic drainfields, landscaping, etc.) are located:
    - a. Within a mapped geologically hazardous area;
    - b. Adjacent to or abutting a mapped geologically hazardous area and may result in or contribute to an increase in hazard, or pose a risk to life and property on or off the site:
    - c. Within a distance from the base of an adjacent landslide hazard area equal to the vertical relief of said hazard area; or
    - d. Within the potential run-out path of a mapped avalanche hazard.

- 2. Developments that receive an affirmative determination of hazard by the shoreline administrator under subsection (D)(1) of this section must conduct a geologic hazard report as provided in YMC 17.09.010(Q), which may be part of a geotechnical report required below.
  - a. If the geologic hazard report determines that no hazard exists or that the project area lies outside the hazard, then no geologic hazard review is needed.
  - b. The shoreline administrator is authorized to waive further geologic hazard review for oversteepened slopes on the basis that the hazards identified by the geologic hazard report will be adequately mitigated through the issuance of a grading or construction permit.
- 3. Developments that receive an affirmative determination of hazard, but do not meet the provisions of subsection (D)(2)(a) or (D)(2)(b) of this section, must:
  - a. Obtain a critical areas development authorization under YMC 17.09.010;
  - b. Submit a geotechnical report that is suitable for obtaining grading and construction permits that will be required for development:
    - i. The geotechnical report shall incorporate a submitted assessment which includes the design of all facilities;
    - ii. A description and analysis of the risk associated with the measures proposed to mitigate the hazards; and
    - iii. Ensure the public safety, and protect property and other critical areas; and
  - c. Be consistent with subsection E of this section.
- E. General Protection Requirements.
  - 1. Grading, construction, and development and their associated facilities shall not be located in a geologically hazardous area, or any associated setback for the project recommended by the geotechnical report, unless the applicant demonstrates that the development is structurally safe from the potential hazard, and that the development will not increase the hazard risk on site or off site.
  - 2. Development shall be directed toward portions of parcels, or parcels under contiguous ownership, that are at the least risk of hazard in preference to lands with higher risk, unless determined to be infeasible in the geotechnical report.
  - 3. The geotechnical report shall incorporate methods to ensure that education about the hazard and any recommended buildable area for future landowners is provided.
  - 4. The applicable requirements of grading and construction permits for developments in hazardous areas must be included in the development proposal and geotechnical report.

#### 17.09.060 Critical aquifer recharge areas.

- A. Purpose and Intent.
  - 1. The Growth Management Act (Chapter 36.70A RCW) requires local jurisdictions to protect areas with a critical recharging effect on aquifers used for potable water or areas where drinking aquifers are vulnerable to contamination. These areas are referred to as critical aquifer recharge areas (CARA) in this section.
  - 2. Potable water is an essential life sustaining element and much of the City of Yakima's drinking water comes from groundwater supplies. Once groundwater is contaminated, it can be difficult and costly to clean. In some cases, the quality of groundwater in an aquifer is inextricably linked to its recharge area.
  - 3. The intent of this section is to:
    - a. Preserve, protect, and conserve the City of Yakima's CARA from contamination; and
    - b. Establish a protection approach that emphasizes the use of existing laws and regulations while minimizing the use of new regulations.

- 4. It is not the intent of this section to:
  - a. Regulate everyday activities (including the use of potentially hazardous substances that are used in accordance with state and federal regulations and label specifications);
  - b. Enforce or prevent illegal activities;
  - c. Regulate land uses that use or store small volumes of hazardous substances (including in-field agricultural chemical storage facilities, which do not require permits, or are already covered under existing state, federal, or county review processes and have detailed permit review);
  - d. Establish additional review for septic systems, which are covered under existing City of Yakima review processes;
  - e. Establish additional review for stormwater control, which is covered under existing review processes and has detailed permit review; or
  - f. Require review for uses that do not need building permits and/or zoning review.

The above items are deemed to have small risks of CARA contamination or are beyond the development review system's ability to control.

- B. Maps and reference documents.
  - 1. Mapping Methodology. The CARA is depicted in the map titled "Critical Aquifer Recharge Areas of the City of Yakima" located within the City of Yakima's 2017 Comprehensive Plan 2040. The CARA map was developed through a geographic information system (GIS) analysis using the methodology outlined in the Washington Department of Ecology "Critical Aquifer Recharge Areas Guidance Document" (Morgan, 2005). The approximate location and extent of critical aquifer recharge areas are depicted on the above-mentioned map, and are to be used solely as a guide for the City. The CARA map estimates areas of moderate, high, and extreme susceptibility to contamination, as well as wellhead protection areas. In characterizing the hydrogeologic susceptibility of these recharge areas with regard to contamination, the following physical characteristics were utilized:
    - a. Depth to ground water;
    - b. Soil (texture, permeability, and contaminant attenuation properties);
    - c. Geologic material permeability; and
    - d. Recharge (amount of water applied to the land surface, including precipitation and irrigation).
  - 2. Wellhead Protection Areas. The CARA map includes those wellhead protection areas for which the City of Yakima has maps. Wellhead protection areas are required for all Class A public water systems in the state of Washington. The determination of a wellhead protection area is based upon the time of travel of a water particle from its source to the well. Water purveyors collect site specific information to determine the susceptibility of the water source to surface sources of contamination. Water sources are ranked by the Washington State Department of Health with a high, moderate, or low susceptibility to surface contamination. Wellhead protection areas are defined by the boundaries of the ten-year time of groundwater travel, in accordance with WAC 246-290-135. For purposes of this chapter, all wellhead protection areas shall be considered highly susceptible.
  - 3. Guidance Documents. The latest guidance documents shall be consulted when updating CARA maps:
    - a. U.S. Department of Agriculture Soil Survey: http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx
    - b. Washington Department of Health Group A and B Maps: <a href="https://fortress.wa.gov/doh/eh/maps/SWAP/index.html">https://fortress.wa.gov/doh/eh/maps/SWAP/index.html</a>
    - c. Soil Survey of Yakima County Area, Washington (report only): <a href="http://nrcs.usda.gov/Internet/FSE">http://nrcs.usda.gov/Internet/FSE</a> MANUSCRIPTS/washington/yakimaWA1985/yakimaWA1985-I.pdf

- d. City of Yakima Wellhead Protection Plan: <a href="http://www.yakimacounty.us/669/City-of-Yakima-Wellhead-Protection-Plan">http://www.yakimacounty.us/669/City-of-Yakima-Wellhead-Protection-Plan</a>
- e. Hydrogeologic Framework of Sedimentary Deposits in Six Structural Basins, Yakima River Basin, Washington: http://pubs.usgs.gov/sir/2006/5116/pdf/sir20065116.pdf and Yakima Basin plate http://pubs.usgs.gov/sir/2006/5116/pdf/sir20065116 plate4.pdf.

#### C. Protection Approach

- 1. Classification and Rating of Critical Aquifer Recharge Areas. To promote consistent application of the standards and requirements of this section, critical aquifer recharge areas within the City shall be rated or classified according to their characteristics, function and value, and/or their sensitivity to disturbance.
  - a. Critical Aquifer Recharge Areas Classification. Critical aquifer recharge areas are those areas with a critical recharging effect on aquifers used for potable water. Wellhead protection involves the management of activities that have a potential to degrade the quality of groundwater produced by a supply well. The City is classified into four wellhead protection zones that are based on proximity to and travel time of groundwater to Group A and Group B water source wells within the City limits, and are designated using guidance from the Washington Department of Health Wellhead Protection Program pursuant to Chapter 246-290 WAC.
    - i. Wellhead Protection Zone 1 represents the land area overlying the six-month time-of-travel zone of any Group A water source well and/or land area overlying any Group B wellhead protection area.
    - ii. Wellhead Protection Zone 2 represents the land area that overlies the one-year time-of-travel zone of any Group A water source well, excluding the land area contained within Wellhead Protection Zone 1.
    - iii. Wellhead Protection Zone 3 represents the land area that overlies the five-year and ten-year time-of-travel zones of any Group A water source well, excluding the land area contained within Wellhead Protection Zone 1 or 2.
    - iv. Wellhead Protection Zone 4 represents all the remaining land area in the City not included in Wellhead Protection Zone 1, 2, or 3.
  - b. Classification of wellhead protection zones shall be determined in accordance with the City's Wellhead Protection Plan and the Washington State Department of Health, Office of Drinking Water, Source Water Assessment Program (SWAP) Mapping Application, which designates time of travel and wellhead protection zones that correspond to Zones 1 through 4, noted in subsection (A)(1) of this section.
- 2. Prohibited Activities in Wellhead Protection Zones.
  - a. Land uses or activities for new development or redevelopment that pose a significant hazard to the City's groundwater resources, resulting from storing, handling, treating, using, producing, recycling, or disposing of hazardous materials or other deleterious substances, shall be prohibited in Wellhead Protection Zones 1 and 2. These land uses and activities include, but are not limited to:
    - i. Large on-site sewage systems, as defined in WAC Chapter 246-272A;
    - ii. Hazardous liquid pipelines as defined in RCW Chapter 81.88;
    - iii. Solid waste landfills or transfer stations, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste;
    - iv. Liquid petroleum refining, reprocessing, and storage;
    - v. Bulk storage facilities;
    - vi. Hard rock and sand and gravel mining, unless located within the mineral resource designation;
    - vii. The storage or distribution of gasoline treated with the additive methyl tertiary butyl ether;
    - viii. Hazardous waste treatment, storage, and disposal facilities except those defined under permit by rule for industrial wastewater treatment processes per WAC 173-303-802(5)(a);

- ix. Chemical manufacturing, including but not limited to, organic and inorganic chemicals, plastics and resins, pharmaceuticals, cleaning compounds, paints and lacquers, and agricultural chemicals;
- x. Dry cleaning establishments using the solvent perchloroethylene or similarly toxic compounds;
- xi. Primary and secondary metal industries that manufacture, produce, smelt, or refine ferrous and nonferrous metals from molten materials;
- xii. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);
- xiii. Mobile fleet fueling operations;
- xiv. Class I, Class IV, and the following types of Class V wells: 5A7, 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 as regulated under RCW Chapter 90.48 and WAC Chapters 173-200 and 173-218, as amended;
- xv. Permanent dewatering of the aquifer for new projects and redevelopment;
- xvi. Facilities that store, process, or dispose of radioactive substances; and
- xvii. Irrigation with graywater or reclaimed water.
- b. Other land uses and activities that the City determines would pose a significant groundwater hazard to Group A and Group B groundwater supplies within the City limits, or would significantly reduce the recharge to aquifers currently or potentially used as a potable water source.
- 3. Wellhead Protection Zone Performance Standards.
  - a. Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.
  - b. Any uses or activities which involve storing, handling, treating, using, producing, recycling, or disposing of hazardous materials or other deleterious substances shall comply with the following standards that apply to the wellhead protection zone in which they are located. Residential uses of hazardous materials or deleterious substances are exempt from the following standards.
  - c. If a property is located in more than one wellhead protection zone, the director of community development shall determine which standards shall apply based on an assessment evaluation of the risk posed by the facility or activity. The assessment evaluation shall include, but not be limited to: (a) the location, type, and quantity of the hazardous materials or deleterious substances on the property; (b) the geographic and geologic characteristics of the site: and (c) the type and location of infiltration on the site.
  - d. Development within Wellhead Protection Zone 1 or 2, and any facility or activity existing as of adoption of this title within which hazardous materials or other deleterious substances are present, shall implement the following relevant performance standards:
    - i. Secondary Containment.
      - 1. The owner or operator of any facility or activity shall provide secondary containment for hazardous materials or other deleterious substances in aggregate quantities equal to or greater than twenty gallons liquid or two hundred pounds solid or in quantities specified in the Yakima fire code, YMC Chapter 10.05, whichever is smaller.
      - 2. Hazardous materials stored in tanks that are subject to regulation by the Washington State Department of Ecology (Ecology) under WAC Chapter 173-360, Underground Storage Tank Regulations, are exempt from the secondary containment requirements of this section, provided that documentation is provided to demonstrate compliance with those regulations.
    - ii. Vehicle Fueling, Maintenance, and Storage Areas. Fleet and automotive service station fueling, equipment maintenance, and vehicle washing areas shall have a containment system for collecting and treating all runoff from such areas and preventing release of fuels, oils, lubricants, and other automotive

fluids into soil, surface water, or groundwater. Appropriate emergency response equipment and spill kits shall be kept on-site during transfer, handling, treatment, use, production, recycling, or disposal of hazardous materials or other deleterious substances.

- iii. Loading and Unloading Areas. Secondary containment or equivalent best management practices (BMPs), as approved by the director of public works, shall be required at loading and unloading areas that store, handle, treat, use, produce, recycle, or dispose of hazardous materials or other deleterious substances in aggregate quantities equal to or greater than twenty gallons liquid or two hundred pounds solid.
- iv. Stormwater Infiltration Systems. Design and construction of new stormwater infiltration systems must address site-specific risks of releases posed by all hazardous materials on-site. These risks may be mitigated by physical design means or equivalent BMPs in accordance with an approved hazardous materials management plan. Design and construction of said stormwater infiltration systems shall also be in accordance with YMC Chapter 7.83 and the latest edition of the Stormwater Management Manual for Eastern Washington, approved local equivalent, or another technical stormwater manual approved by Ecology, and shall be certified for compliance with the requirements of this section by a professional engineer or engineering geologist registered in the state of Washington.
- v. The record and construction details of any well regulated under Chapter 173-160 WAC, Construction and Maintenance of Wells, and any well excluded per WAC 173-160-010(2) that is constructed or decommissioned in Zones 1 and 2 shall be provided to the department of community development within sixty days of well completion or decommissioning.
- vi. Protection Standards during Construction. The following standards shall apply to construction activities occurring where construction vehicles will be refueled on-site and/or the quantity of hazardous materials that will be stored, dispensed, used, or handled on the construction site is in aggregate quantities equal to or greater than twenty gallons liquid or two hundred pounds solid, exclusive of the quantity of hazardous materials contained in fuel or fluid reservoirs of construction vehicles. As part of the City's project permitting process, the City may require any or all of the following items:
  - 1. A development agreement;
  - 2. Detailed monitoring and construction standards;
  - 3. Designation of a person on-site during operating hours who is responsible for supervising the use, storage, and handling of hazardous materials and who has appropriate knowledge and training to take mitigating actions necessary in the event of fire or spill;
  - 4. Hazardous material storage, dispensing, refueling areas, and use and handling areas shall be provided with secondary containment adequate to contain the maximum release from the largest volume container of hazardous substances stored at the construction site;
  - 5. Practices and procedures to ensure that hazardous materials left on-site when the site is unsupervised are inaccessible to the public. Locked storage sheds, locked fencing, locked fuel tanks on construction vehicles, or other techniques may be used if they will preclude access;
  - 6. Practices and procedures to ensure that construction vehicles and stationary equipment that are found to be leaking fuel, hydraulic fluid, and/or other hazardous materials will be removed immediately or repaired on-site immediately. The vehicle or equipment may be repaired in place, provided the leakage is completely contained;
  - 7. Practices and procedures to ensure that storage and dispensing of flammable and combustible liquids from tanks, containers, and tank trucks into the fuel and fluid reservoirs of construction vehicles or stationary equipment on the construction site are in accordance with the Yakima fire code, YMC Chapter 10.05; and
  - 8. Practices and procedures, and/or on-site materials adequate to ensure the immediate containment and cleanup of any release of hazardous substances stored at the construction site. On-site cleanup materials may suffice for smaller spills whereas cleanup of larger spills may require a subcontract with a qualified cleanup contractor. Releases shall immediately be contained, cleaned up, and reported if required under state or federal law. Contaminated soil, water, and other materials shall be disposed of according to state and local requirements.

- vii. Fill Materials. Fill material shall comply with the standards in YMC Chapter 7.82 and the following:
  - 1. Fill material shall not contain concentrations of contaminants that exceed cleanup standards for soil specified in WAC 173-340-740, Model Toxics Control Act, regardless of whether all or part of the contamination is due to natural background levels at the fill source site. Where the detection limit (lower limit at which a chemical can be detected by a specified laboratory procedure) for a particular soil contaminant exceeds the cleanup standard for soil specified in WAC 173-340-740, the detection limit shall be the standard for fill material quality.
  - 2. Fill materials in quantities greater than ten cubic yards placed directly on or in the ground in excess of six months shall meet the following requirements:
    - (a) A fill material source statement shall be provided to the department of community development and shall be reviewed and accepted by the department prior to stockpiling or grading imported fill materials at the site. The source statement shall be issued by a professional engineer, geologist, engineering geologist or hydrogeologist licensed in the state of Washington demonstrating the source's compliance with standards of the Model Toxics Control Act. The source statement shall be required for each different source location from which fill will be obtained.
    - (b) Analytical results demonstrating that fill materials do not exceed cleanup standards specified in WAC 173-340-740 may be used in lieu of a fill material source statement, provided the regulated facility submits a sampling plan to, and which is approved by, the director of community development. The regulated facility must then adhere to the approved sampling plan, and maintain analytical data on-site and available for inspection for a minimum of five years from the date that the fill was accepted.
  - 3. The department of community development may accept a fill material source statement that does not include results of sampling and analysis of imported fill if it determines that adequate information is provided indicating that the source location is free of contamination. Such information may include, but is not limited to:
    - (a) Results of field testing of earth materials to be imported to the site with instruments capable of detecting the presence of contaminants; or
    - (b) Results of previous sampling and analysis of earth materials to be imported to the site.
  - 4. A fill material source statement is not required if documents confirm that imported fill will be obtained from a Washington State Department of Transportation approved source.
  - 5. The director of community development shall have the authority to require corrective measures regarding noncompliant fill materials, including independent sampling and analysis, if the property owner or operator fails to accomplish such measures in a timely manner. The property owner or operator shall be responsible for any costs incurred by the City in the conduct of such activities.
- viii. Cathodic Protection Wells. Cathodic protection wells shall be constructed such that the following do not occur:
  - 1. Vertical cross-connection of aquifers normally separated by confining units;
  - 2. Migration of contaminated surface water along improperly sealed well borings or casings;
  - 3. Introduction of electrolytes or related solutions into the subsurface; and
  - 4. Any of the above conditions caused by improperly abandoned cathodic protection wells that are no longer in use.
- ix. Underground Hydraulic Elevator Cylinders. All underground hydraulic elevator pressure cylinders shall be encased in an outer plastic casing constructed of Schedule 40 or thicker-wall polyethylene or polyvinyl chloride pipe, or equivalent. The plastic casing shall be capped at the bottom, and all joints shall be solvent- or heat-welded to ensure water tightness. The neck of the plastic casing shall provide a means of inspection to monitor the annulus between the pressurized hydraulic elevator cylinder and the protective plastic casing.

- x. Best Management Practices (BMPs). All development or redevelopment shall implement BMPs for water quality and quantity, as approved by the director of community development, such as biofiltration swales and use of oil-water separators, BMPs appropriate to the particular use proposed, clustered development, and limited impervious surfaces.
- e. Development within Wellhead Protection Zone 3 shall implement appropriate BMPs and comply with the performance standards for vehicle fueling, maintenance, and storage areas; loading and unloading areas; well construction and operation; fill materials; cathodic protection wells; and underground hydraulic elevator cylinders in applicable subsections in subsection (C)(4) of this section.
- f. Development within Wellhead Protection Zone 4 shall implement BMPs for water quality and quantity.
- g. An incremental environmental improvement to a system protective of groundwater shall not alter, expand, or intensify an existing legal nonconformance, but may proceed without having to meet the following City codes:
  - i. Restrictions associated with critical areas and critical area buffers, if the footprint of the original system protective of groundwater is located within the same critical area buffer, and it can be demonstrated through BAS that there will be no significant adverse impacts to the critical area and its buffer;
  - ii. Any requirement to bring all or any portion of the facility or the development it serves up to current building, fire, or land use codes that is triggered by the value or design of the incremental environmental improvement to a system protective of groundwater; and
- iii. The incremental improvement shall not qualify as a redevelopment that would otherwise be prohibited by Title 15 YMC. City

#### Chapter 17.11

#### **EXISTING USES, STRUCTURES AND LOTS**

Sections:	
17.11.005	Intent of provisions.
17.11.010	Nonconforming uses.
17.11.020	Nonconforming structures.
17.11.030	Nonconforming lots.
	Preexisting legal uses—Conforming residential structures
17.11.050	Additional requirements for certain uses.

#### 17.11.005 Intent of provisions.

Nonconforming uses or developments are shoreline uses or development which were lawfully constructed or established prior to the effective date of this master program, or approved amendments to the master program, but which do not conform to present regulations or standards of the master program. The intent of this chapter is to provide regulations regarding nonconforming uses, structures, and lots as well as to establish residences as preexisting legal uses, conforming to the master program as allowed by the Act.

#### 17.11.010 Nonconforming uses.

- A. Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded unless expressly allowed by subsection B of this section and YMC 17.11.040.
- B. Nonconforming single-family residential uses that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in YMC 17.01.090 upon approval of a shoreline conditional use permit by the Hearing Examiner.
- C. A legally established use, prior to the effective date of the master program, which is listed as a conditional use but for which a shoreline conditional use permit has not been obtained shall be considered a nonconforming use.
- D. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit by the Hearing Examiner. A conditional use permit may be approved only upon a finding that:
  - 1. No reasonable alternative conforming use is practical; and
  - 2. The proposed use will be at least as consistent with the policies and provisions of the Act and the master program and as compatible with the uses in the area as the preexisting use.

In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard. A use authorized pursuant to this subsection D shall be considered a conforming use for purposes of this section.

E. If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be required to conform to this title.

#### 17.11.020 Nonconforming structures.

- A. Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded; provided, that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.
- B. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.
- C. A nonconforming structure which is moved any distance must be brought into conformance with the master program and the Act.

D. If a nonconforming development/structure is damaged to an extent not exceeding fifty percent in flood hazard areas and seventy-five percent in the remainder of shoreline jurisdiction of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged; provided, that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.

#### 17.11.030 Nonconforming lots.

A. In any district, any permitted use or structure may be erected on any existing lot or parcel. This provision shall apply even though such lot fails to meet the minimum dimensional requirements of this SMP; provided, that such structure is allowed within the shoreline environment and all uses of the nonconforming lot shall comply with all other provisions of the SMP and underlying zoning requirements including setbacks, dimensional standards, and lot coverage requirements.

B. Structures and customary accessory buildings on nonconforming lots shall be set back from the OHWM to the greatest extent feasible. Development proposed inside required buffers shall go through mitigation sequencing, shall require a mitigation plan and shoreline variance, per YMC 17.13.080, when unable to meet the provisions of YMC 17.09.030.

#### 17.11.040 Preexisting legal uses—Conforming residential structures.

Notwithstanding YMC 17.11.010 to 17.11.030, the following shall apply to preexisting legal residential structures constructed prior to the effective date of this SMP:

- A. Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following shall be considered a conforming structure: setbacks, buffers, or yards; area; bulk; height; or density.
- B. The City shall allow redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the SMP, including requirements for no net loss of shoreline ecological functions.
- C. For purposes of this section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.
- D. Nothing in this section:
  - 1. Restricts the ability of this SMP to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or
  - 2. Affects the application of other federal, state, or City requirements to residential structures.

#### 17.11.050 Additional requirements for certain uses.

Nonconforming uses and structures not covered by RCW 90.58.270(5), 90.58.620, and not addressed by the SMP must comply with WAC 173-27-080.

#### Chapter 17.13

#### ADMINISTRATION AND ENFORCEMENT

Sections:	
17.13.010	Roles and responsibilities.
17.13.020	Interpretation.
17.13.030	Statutory noticing requirements.
17.13.040	Application requirements.
17.13.050	Exemptions from shoreline substantial development permits.
17.13.060	Shoreline substantial development permits.
17.13.070	Shoreline conditional use permits.
17.13.080	Shoreline variance permits.
17.13.090	Duration of permits.
17.13.100	Initiation of development.
17.13.110	Review process.
17.13.120	Appeals.
17.13.130	Amendments to permits.
17.13.140	SMP amendments.
17.13.150	Enforcement.
17.13.160	Monitoring.

#### 17.13.010 Roles and responsibilities.

The City shall administer the shoreline master program (SMP), collectively Title 17 and the associated goals and policies contained in Comprehensive Plan Chapter 10, Section 3, according to the following roles and responsibilities:

- A. Shoreline Administrator. The shoreline administrator in the City of Yakima is the community development director. The shoreline administrator shall have overall administrative responsibility of the SMP. The shoreline administrator or his/her designee is hereby vested with the authority to:
  - 1. Administrate this SMP.
  - 2. Make field inspections as needed, and prepare or require reports on shoreline permit applications.
  - 3. Grant or deny exemptions from shoreline substantial development permit requirements of this SMP.
  - 4. Authorize, approve or deny shoreline substantial development permits.
  - 5. Authorize, approve or deny shoreline conditional use permits except for those involving nonconforming uses, which shall be the responsibility of the Hearing Examiner.
  - 6. Make written recommendations to the Hearing Examiner, Planning Commission, or City Council as appropriate.
  - 7. Advise interested persons and prospective applicants as to the administrative procedures and related components of this SMP.
  - 8. Collect fees for all necessary permits as provided in City ordinances or resolutions. The determination of which fees are required shall be made by the City.
  - 9. Make administrative decisions and interpretations of the policies and regulations of this SMP and the Act in accordance with the Yakima Municipal Code.
- B. SEPA Official. The responsible SEPA official or his/her designee is authorized to conduct environmental review of all use and development activities subject to this SMP, pursuant to Chapter 197-11 WAC and Chapter 43.21C RCW. The responsible SEPA official is designated in accordance with the City's SEPA implementation ordinance.
- C. Hearing Examiner. The Hearing Examiner shall have the authority to:
  - 1. Decide on appeals from administrative decisions issued by the shoreline administrator of this SMP.
  - 2. Grant or deny variances from this SMP.

- 3. Grant or deny shoreline conditional use permits associated with nonconforming uses.
- 4. The Hearing Examiner may, at the request of the shoreline administrator, receive and examine available information, conduct public hearings and prepare records and reports thereof, and issue recommendations to the Council based upon findings and conclusions on applications for shoreline substantial development permits and conditional use permits.
- D. Planning Commission. The Planning Commission is vested with the responsibility to review the SMP as part of regular SMP updates required by RCW 90.58.080 as a major element of the City's planning and regulatory program, and make recommendations for amendments thereof to the City Council.
- E. City Council. The City Council is vested with authority to:
  - 1. Initiate an amendment to this SMP according to the procedures prescribed in WAC 173-26-100.
  - 2. Adopt all amendments to this SMP, after consideration of the recommendation of the Planning Commission, where established. Amendments shall become effective upon approval by Ecology.

#### 17.13.020 Interpretation.

- A. The City shall make administrative decisions and interpretations of the policies and regulations of this SMP and the Act in accordance with the Yakima Municipal Code.
- B. The City shall consult with Ecology to ensure that any formal written interpretations are consistent with the purpose and intent of Chapter 90.58 RCW and Chapter 173-26 WAC.
- C. The application of this SMP is intended to be consistent with constitutional and other legal limitations on the regulation of private property. The shoreline administrator shall give adequate consideration to mitigation measures and other possible methods to prevent undue or unreasonable hardships upon property owners.

#### 17.13.030 Statutory noticing requirements.

- A. Applicants shall follow the noticing requirements of the City. At a minimum, the City shall provide notice in accordance with WAC 173-27-110, and may provide for additional noticing requirements. Per WAC 173-27-120 the City shall comply with special procedures (public notice timelines, appeal periods, etc.) for limited utility extensions and bulkheads.
- B. The following subsections provide a summary of noticing days. The City shall consult the most current version of WAC 173-27-110 and 173-27-120 to confirm the days. In case of conflict, state statutes or rules shall control:
  - 1. Issuance of Notice of Application. Notice of application shall be provided within fourteen days after the determination of completeness of the application.
  - 2. Statement of Public Comment Period. The notice of application shall state the public comment period which shall be not less than thirty days following the date of notice of application, unless otherwise specified for limited utility extensions or single-family bulkheads below.
  - 3. Notice of Application Prior to Hearing. If an open record predecision hearing, as defined in RCW 36.70B.020, is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.
  - 4. Limited Utility Extension or Single-Family Bulkhead. An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to all of the requirements of this chapter except that the following time periods and procedures shall be used:
    - a. The public comment period shall be twenty days. The notice provided shall state the manner in which the public may obtain a copy of the City's decision on the application no later than two days following its issuance:
    - b. The City shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in subsection (B)(2) of this section; and
    - c. If there is an appeal of the decision to grant or deny the permit to the Hearing Examiner, the appeal shall be finally determined by the Hearing Examiner within thirty days.

#### 17.13.040 Application requirements.

- A. A complete application for a shoreline substantial development, shoreline conditional use, or shoreline variance permit shall contain, at a minimum, the information listed in WAC 173-27-180. In addition, the applicant, including those applying for exemption status, shall provide the following materials:
  - 1. An assessment of the existing ecological functions and/or processes provided by topographic, physical and vegetation characteristics of the site and any impacts to those functions and/or processes, to accompany development proposals; provided, that proposals for single-family residences, as long as they meet the exemption criteria, shall be exempt from this requirement if proposal is located outside required buffers. When the project results in adverse impacts to ecological function and/or processes, a mitigation plan must be provided that describes how proposed mitigation compensates for the lost function or process.
  - 2. Site plan or division of land depicting to scale the location of buildable areas, existing and proposed impervious surfaces (building(s), accessory structures, driveways), and allowed landscaping and yards (including proposed water access trails, view corridors, wildfire defensible space, if applicable), general location of utilities, well and septic system, if applicable, and location of storage and staging of materials and equipment during construction. Plans shall show area calculations of each feature.
  - 3. The location of any mapped channel migration zone floodplain, and/or floodway boundary and critical areas, if known, and respective setback/buffer areas on and within two hundred fifty feet of the vicinity of the project site and all applicable buffers.
  - 4. Where a view analysis is required per WAC 173-27-180, it shall address the following:
    - a. The analysis shall include vacant existing parcels of record as well as existing structures. Vacant parcels of record shall be assumed to be developed with structures complying with the applicable regulations of the City and the maximum height limitation allowed under the SMP.
    - b. The view corridor analysis shall include residential buildings or public properties located outside of the shoreline jurisdiction if it can be clearly demonstrated that the subject property has significant water views.
- B. The shoreline administrator may vary or waive these additional application requirements according to administrative application requirements on a case-by-case basis, but all applications for a substantial development, conditional use, or variance permit shall contain the information found in WAC 173-26-180.
- C. The shoreline administrator may require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other City requirements, and the provisions of this title.

#### 17.13.050 Exemptions from shoreline substantial development permits.

- A. The City shall exempt from the shoreline substantial development permit requirement the shoreline developments listed in WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355 and 90.58.515.
- B. Letters of exemption shall be issued when a letter of exemption is required by the provisions of WAC 173-27-050. Otherwise the exemption status shall be documented in the project application file.

#### 17.13.060 Shoreline substantial development permits.

- A. A shoreline substantial development permit shall be required for all development of shorelines, unless the proposal is specifically exempt per YMC 17.13.050.
- B. A shoreline substantial development permit shall be granted only when the development proposed is consistent with:
  - 1. The policies and procedures of the SMA;
  - 2. The provisions of Chapter 173-27 WAC;
  - 3. Chapter 10, Section 3 of the City of Yakima Comprehensive Plan; and
  - 4. This Title 17.

C. The City may attach conditions to the approval of permits as necessary to assure consistency of the project with the Act and this SMP. Additionally, nothing shall interfere with the City's ability to require compliance with all other applicable laws and plans.

#### 17.13.070 Shoreline conditional use permits.

- A. This section provides procedures and criteria guiding the review of shoreline conditional use permits, which require careful review to ensure the use can be properly installed and operated in a manner that meets the goals of the Act and this program in accordance with any needed performance standards. After a shoreline conditional use application has been approved by the City, the City shall submit the permit to Ecology for Ecology's approval, approval with conditions or denial. Ecology shall review the file, in accordance with WAC 173-27-200.
- B. Uses specifically classified or set forth in this shoreline master program as conditional uses shall be subject to review and condition by the City and by the Department of Ecology.
- C. Other uses which are not classified or listed or set forth in this SMP may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in this SMP.
- D. Uses which are specifically prohibited by this SMP may not be authorized as a conditional use.
- E. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized; provided, that the applicant demonstrates all of the following:
  - 1. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
  - 2. That the proposed use will not interfere with the normal public use of public shorelines;
  - 3. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and SMP;
  - 4. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
  - 5. That the public interest suffers no substantial detrimental effect.
- F. In the granting of all shoreline conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
- G. In authorizing a conditional use, special conditions may be attached to the permit by the City or Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the SMA and this SMP.
- H. Nothing shall interfere with the City's ability to require compliance with all other applicable plans and laws.

#### 17.13.080 Shoreline variance permits.

- A. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this shoreline master program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this shoreline master program would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of the SMP are prohibited.
- B. After a shoreline variance application has been approved by the City, the City shall submit the permit to Ecology for Ecology's approval, approval with conditions or denial. Ecology shall review the file in accordance with WAC 173-27-200.
  - 1. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

- 2. Variance permits for development and/or uses that will be located landward of the OHWM, as defined in YMC 17.01.090, and/or landward of any wetland as defined in YMC 17.01.090, may be authorized provided the applicant can demonstrate all of the following:
  - a. That the strict application of the bulk, dimensional or performance standards set forth in the SMP precludes, or significantly interferes with, reasonable use of the property;
  - b. That the hardship described in the criterion in subsection (B)(2)(a) of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the SMP, and not, for example, from deed restrictions or the applicant's own actions;
  - c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and SMP and will not cause adverse impacts to the shoreline environment:
  - d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area:
  - e. That the variance requested is the minimum necessary to afford relief; and
  - f. That the public interest will suffer no substantial detrimental effect.
- 3. Variance permits for development and/or uses that will be located waterward of the OHWM, as defined in YMC 17.01.090, or within any wetland as defined in YMC 17.01.090, may be authorized provided the applicant can demonstrate all of the following:
  - a. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property:
  - b. That the proposal is consistent with the criteria established under the regulation in subsection (B)(2) of this section; and
  - c. That the public rights of navigation and use of the shorelines will not be adversely affected.
- C. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

#### 17.13.090 Duration of permits.

Time duration requirements for shoreline substantial development, shoreline variance, and shoreline conditional use permits shall be consistent with the following provisions:

- A. General Provisions. The time requirements of this section shall apply to all shoreline substantial development permits and to any development authorized pursuant to a shoreline conditional use permit or shoreline variance authorized by this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of this SMP and this chapter, the City may adopt different time limits from those set forth in subsections B and C of this section as a part of an action on a shoreline substantial development permit.
- B. Commencement. Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance. Commencement means taking the action on the shoreline project for which the permit was granted shall begin. For example, beginning actual construction or entering into binding agreements or contractual obligations to undertake a program of actual construction. However, the City may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed with a complete extension application submittal before the expiration date and notice of the proposed extension is given to parties of record on the shoreline substantial development permit, shoreline conditional use permit, or shoreline variance and to Ecology.
- C. Termination. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance. However, the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for

extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the shoreline substantial development permit, shoreline conditional use permit, or shoreline variance, and to Ecology.

- D. Effective Date. The effective date of a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in subsections B and C of this section do not include the time during which a use or activity was not actually pursued due to pending administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals. The applicant shall be responsible for informing the City of the pendency of other permit applications filed with agencies other than the City and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given by the applicant to the City prior to the date of the last action by the City to grant permits and approvals necessary to authorize the development to proceed, including administrative and legal actions of the City, and actions under other City development regulations, the date of the last action by the City shall be the effective date.
- E. Revisions. Revisions to permits may be authorized after original permit authorization has expired; provided, that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.
- F. Notification to Ecology. The City shall notify Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by RCW 90.58.143 as amended shall require a new permit application.

#### 17.13.100 Initiation of development.

- A. Amortization To Begin Construction. Each permit for a substantial development, shoreline conditional use or shoreline variance issued by the City shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing with Ecology as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of filing of the decision. The date of filing for a substantial development permit means that date that Ecology received a final decision from the City. With regard to a permit for a shoreline variance or a shoreline conditional use, date of filing means the date the City or applicant receives the written decision of Ecology.
- B. Forms. Permits for substantial development, shoreline conditional use, or shoreline variance may be in any form prescribed and used by the City, including a combined permit application form. Such forms will be supplied by the City.
- C. Data Sheet. A permit data sheet shall be submitted to Ecology with each shoreline permit. The permit data sheet form shall be consistent with WAC 173-27-990.
- D. Construction Prior to Expiration of Appeal Deadline. Construction undertaken pursuant to a permit is at the applicant's own risk until the expiration of the appeals deadline.

#### 17.13.110 Review process.

- A. After the City's approval of a conditional use or variance permit, the City shall submit the permit to the department for Ecology's approval, approval with conditions, or denial. Ecology shall render and transmit to the City and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by the City pursuant to WAC 173-27-110.
- B. Ecology shall review the complete file submitted by the City on conditional use and variance permits and any other information submitted or available that is relevant to the application. Ecology shall base its determination to approve, approve with conditions or deny a shoreline conditional use permit or shoreline variance on consistency with the policy and provisions of the SMA and, except as provided in WAC 173-27-210, the criteria in WAC 173-27-160 and 173-27-170.
- C. The City shall provide appropriate notification of Ecology's final decision to those interested persons having requested notification from local government pursuant to WAC 173-27-130.

#### 17.13.115 Special procedures for WSDOT projects.

A. Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the Legislature established a target of 90 days review time for local governments.

B. Optional process allowing construction to commence twenty-one days after date of filing. Pursuant to RCW 90.58.140, Washington State Department of Transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

#### 17.13.120 Appeals.

- A. Administrative review decisions by the administrator, based on a provision of this SMP, may be the subject of an appeal to the Hearing Examiner by any aggrieved person. Such appeals shall be an open record hearing before the Hearing Examiner.
- B. Appeals of exemptions are allowed only for exemptions where a letter is required pursuant to YMC 17.13.050.
- C. Appeals must be submitted within fourteen calendar days after the date of decision or written interpretation together with the applicable appeal fee. Appeals submitted by the applicant or aggrieved person shall contain:
  - 1. The decision or interpretation being appealed, including the file number reference and the specific objections in the decision document;
  - 2. The name and address of the appellant and his/her interest(s) in the application or proposed development;
  - 3. The specific reasons why the appellant believes the decision or interpretation to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision or interpretation is erroneous;
  - 4. The specific relief sought by the appellant; and
  - 5. The appeal fee established by the City.
- D. Per WAC 173-27-120, the City shall comply with special procedures for limited utility extensions and bulkheads. If there is an appeal of the decision to grant or deny the permit to the Hearing Examiner, the appeal shall be finally determined by the Hearing Examiner within thirty days.
- E. Appeals to the shoreline hearings board of a final decision on a shoreline substantial development permit, shoreline conditional use permit, shoreline variance, or a decision on an appeal of an administrative action may be filed by the applicant or any aggrieved party pursuant to RCW 90.58.180 within twenty-one days of filing of the final decision by the City or by Ecology as provided for in RCW 90.58.140(6).

## 17.13.130 Amendments to permits.

- A. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this SMP, and/or the policies and provisions of Chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision.
- B. When an applicant seeks to revise a permit, the City shall request from the applicant detailed plans and text describing the proposed changes. Proposed changes must be within the scope and intent of the original permit, otherwise a new permit may be required.
- C. If the City determines that the proposed changes are within the scope and intent of the original permit, and are consistent with this SMP and the Act, the City may approve a revision.
- D. "Within the scope and intent of the original permit" means all of the following:
  - 1. No additional over-water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
  - 2. Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
  - 3. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of this SMP except as authorized under a shoreline variance granted as the original permit or a part thereof;

- 4. Additional or revised landscaping is consistent with any conditions attached to the original permit and with this SMP:
- 5. The use authorized pursuant to the original permit is not changed; and
- 6. No adverse environmental impact will be caused by the project revision.
- E. The revision approval, including the revised site plans and text clearly indicating the authorized changes, and the final ruling on consistency with this section shall be filed with Ecology. In addition, the City shall notify parties of record of their action.
- F. If the revision to the original permit involves a shoreline conditional use permit or shoreline variance, the City shall submit the revision to Ecology for approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. Ecology shall render and transmit to the City and the applicant its final decision within fifteen days of the date of Ecology's receipt of the submittal from the City. The City shall notify parties of record of Ecology's final decision.
- G. The revised permit is effective immediately upon final decision by the City or, when appropriate per subsection F of this section, upon final action by Ecology. Construction undertaken pursuant to a permit is at the applicant's own risk until the expiration of the appeals deadline.
  - 1. Filing. Appeals of a revised permit shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of filing of the City's action by Ecology or, when appropriate under shoreline variances or conditional uses, the date Ecology's final decision is transmitted to the City and the applicant.
  - 2. Basis of Appeals. Appeals shall be based only upon contentions of noncompliance with the provisions of subsections A and B of this section. Appeals shall be based on the revised portion of the permit.
  - 3. Risk. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline.
  - 4. Scope of Decision. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

#### 17.13.140 SMP amendments.

- A. This shoreline master program carries out the policies of the Shoreline Management Act for the City. It shall be reviewed and amended as appropriate in accordance with the review periods required in the Act and in order to:
  - 1. Assure that the master program complies with applicable law and guidelines in effect at the time of the review; and
  - 2. Assure consistency of the master program with the City's comprehensive plan and development regulations adopted under Chapter 36.70A RCW, if applicable, and other local requirements.
- B. This SMP and all amendments thereto shall become effective fourteen days from the date of Ecology's written notice of final approval.
- C. The SMP may be amended annually or more frequently as needed pursuant to the Growth Management Act.
- D. Initiation. Future amendments to this shoreline management plan may be initiated either by any person, resident, property owner, business owner, governmental or nongovernmental agency, shoreline administrator, Planning Commission, or City Council as appropriate.
- E. Application. Applications for shoreline master program amendments shall specify the changes requested and any and all reasons therefor. Applications shall be made on forms specified by the City. Such applications shall contain information specified in the City's procedures for comprehensive plan and development regulation amendments pursuant to Chapter 36.70A RCW, the Growth Management Act, and information necessary to meet minimum public review procedures in subsection F of this section.
- F. Public Review Process—Minimum Requirements. The City shall accomplish the amendments in accordance with the procedures of the Shoreline Management Act, Growth Management Act, and implementing rules including, but not limited to, RCW 90.58.080, WAC 173-26-090, WAC 173-26-100, WAC 173-26-104, RCW 36.70A.106 and 36.70A.130, and Part Six. Chapter 365-196 WAC.

- G. Roles and Responsibilities. Proposals for amendment of the shoreline management plan shall be heard by the Planning Commission. After conducting a hearing and evaluating testimony regarding the application, including a recommendation from the shoreline administrator, the Planning Commission shall submit its recommendation to the City Council, who shall approve or deny the proposed amendment.
- H. Finding. Prior to approval, the City shall make a finding that the amendment would accomplish subsections (H)(1) or (2) of this section, and must accomplish subsection (H)(3) of this section:
  - 1. The proposed amendment would make this program more consistent with the Act and/or any applicable Department of Ecology Guidelines;
  - 2. The proposed amendment would make this program more equitable in its application to persons or property due to changed conditions in an area;
  - 3. This program and any future amendment hereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of the effective date of this SMP.
- I. After approval or disapproval of a program amendment by the Department of Ecology as provided in RCW 90.58.090, Ecology shall publish a notice that the program amendment has been approved or disapproved by Ecology pursuant to the notice publication requirements of RCW 36.70A.290.

#### 17.13.150 Enforcement.

The City shall apply Chapter 173-27 WAC, Part II, Shoreline Management Act Enforcement, to enforce the provisions of this SMP whenever a person has violated any provision of the Act, this SMP, or other regulation promulgated under the Act.

#### 17.13.160 Monitoring.

- A. The City will track all shoreline permits and exemption activities to evaluate whether the SMP is achieving no net loss of shoreline ecological functions. Activities to be tracked using the City's permit system include development, conservation, restoration and mitigation, such as:
  - 1. New shoreline development.
  - 2. Shoreline variances and the nature of the variance.
  - 3. Compliance issues.
  - 4. Net changes in impervious surface areas, including associated stormwater management.
  - 5. Net changes in fill or armoring.
  - 6. Net change in linear feet of flood hazard structures.
  - 7. Net changes in vegetation (area, character).
- B. Using the information collected per subsection A of this section, a no net loss report shall be prepared every eight years as part of the City's shoreline master program evaluation or comprehensive plan amendment process. Should the no net loss report show degradation of the baseline condition documented in the City's shoreline analysis report, changes to the SMP and/or shoreline restoration plan shall be proposed at the time of the eight-year update to prevent further degradation and address the loss in ecological functions.

#### APPENDIX A: DESIGNATED TYPE 2 STREAM CORRIDORS

The following stream reaches within Yakima County are designated critical areas under the City of Yakima's Critical Areas in Shoreline Jurisdiction (YMC Chapter 17.09) or the City of Yakima's Critical Areas Ordinance (YMC Ch. 15.27):

1. Bachelor Creek: From source at Ahtanum Creek (SEC13-TWP12N-RGE16 EWM) downstream to its mouth at Ahtanum Creek (SEC1-TWP12N-RGE18E).

- 2. Cottonwood Canyon Creek: From the south line of SEC32-TWP13N-RGE17E, downstream to mouth at Wide Hollow Creek (SEC36-TWP13N-RGE17E).
- 3. Hatton Creek: From its source at Ahtanum Creek (SEC18-TWP12N-RGE17) downstream to its confluence with Ahtanum Creek (SEC18-TWP12N-RGE18E).
- 4. Wide Hollow Creek: From the east line of the SW1/4 of the NW1/4 (SEC28-TWP13N-RGE17E) downstream to the mouth at the Yakima River.
- 5. Cowiche Creek: that portion which is not designated Type 1.
- 6. Spring Creek and associated tributaries.



# BUSINESS OF THE CITY COUNCIL YAKIMA, WASHINGTON AGENDA STATEMENT

Item No. 9.

For Meeting of: August 2, 2021

ITEM TITLE: Ordinance amending the 2021 Budget for the City of Yakima; and

increasing the Convention Center Fund 170 revenue budget with a \$500,000 allocation from the American Rescue Plan Act (ARPA)

Fiscal Recovery Funds (First Reading)

**SUBMITTED BY:** Jennifer Ferrer Santa Ines, Director of Finance and Budget

Kimberly Domine, Finance Division Manager Jennifer Morris, Financial Services Officer

#### **SUMMARY EXPLANATION:**

The Convention Center Fund 170 actual year to date revenues are less than anticipated or projected in the budget. Revenue from Hotel Motel Tax to date total \$367,000 and revenue from Yakima Center operations has brought in \$96,000. The annual budget for these revenue sources were \$682,000 and \$875,000, respectively.

The Convention Center Fund has a net decrease of \$243,000 to date. In order to cover decreased revenues and anticipated expenditures for the year, Staff is recommending the use of American Rescue Plan Act (ARPA) Fiscal Recovery Funds to mitigate COVID-19 related negative impacts affecting the tourism, travel, and hospitality industry. Per the Interim U.S. Department of Treasury guidelines, this is an eligible use of fiscal recovery funds.

ITEM BUDGETED: NA

STRATEGIC PRIORITY: Public Trust and Accountability

# APPROVED FOR SUBMITTAL BY THE CITY MANAGER

#### RECOMMENDATION:

First reading of Ordinance.

### **ATTACHMENTS:**

	Description	Upload Date	Туре		
	Ordinance	7/29/2021	Ordinance		
D	Memo	7/29/2021	Cover Memo		

# ORDINANCE NO. 2021-\_\_\_\_

#### AN ORDINANCE

Effective Date:

amending the 2021 Budget for the City of Yakima; and increasing the Convention Center Fund 170 revenue budget with a \$500,000 allocation from the American Rescue Plan Act (ARPA) Fiscal Recovery Funds.

**WHEREAS**, the ARPA Fiscal Recovery Funds provides for economic impacts for hard hit industries such as tourism, travel, and hospitality; and

**WHEREAS**, at the time of the adoption of the 2021 budget it could not reasonably have been foreseen to anticipate continued and sustained negative economic impacts to the tourism, travel, and hospitality industries, and

**WHEREAS** this transfer of ARPA Fiscal Recovery Funds allocation would mitigate the revenue loss in The Convention Center Fund 170 as a result of the COVID-19 pandemic; now, therefore,

#### BE IT ORDAINED BY THE CITY OF YAKIMA:

<u>Section 1.</u> A revenue transfer allocation totaling \$500,000 is hereby made, for Convention Center Fund 170, from ARPA Fiscal Recovery Funds as specified in the Schedule 1 attached hereto and incorporated herein.

<u>Section 2.</u> This ordinance is making a transfer of revenue from ARPA Fiscal Recovery Funds to Convention Center Fund 170 and shall take effect immediately upon its passage, approval and publication as provided by law and by the City Charter.

**PASSED BY THE CITY COUNCIL**, signed and approved this 17th day of August, 2021.

	Patricia Byers, Mayor
ATTEST:	
Sonya Claar Tee, City Clerk	
First Reading: August 2, 2021	
Publication Date:	



**FINANCE** 

TO: Mayor and City Council

FROM: Jennifer Ferrer-Santa Ines, Director of Finance and Budget

DATE: July 29, 2021

RE: 2021 Budget Amendment Ordinance

This budget ordinance affects course corrections based on new information for the 2021 Budget year that was not known at the time of budget adoption.

Staff requests approval of adjustments and corrections to the 2021 budget for a need that is now known that was not known at the time of adoption.

The Convention Center Fund 170 actual year to date revenues are less than anticipated or projected in the budget. Revenue from Hotel Motel Tax to date total \$367,000 and revenue from Yakima Center operations has brought in \$96,000. The annual budget for these revenue sources were \$682,000 and \$875,000, respectively.

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City of Yakima							П				
2021 Budget Amendment					SCHEDULE I						
August 2021 Budget Amendr	ment										
From Fund			To Fund				From Dr (Cr)		To Dr (Cr)		
Fund		Account #	Name	Fund	Account	Name	П	\$		\$	
Increase Revenue Budget											
General Fund	1	8953119	American Rescue	170	8953119	Convention Center		\$ 500,000.00	\$	(500,000.00)	
							П				
								\$ 500,000.00	\$	(500,000.00)	



# BUSINESS OF THE CITY COUNCIL YAKIMA, WASHINGTON AGENDA STATEMENT

Item No. 10.

For Meeting of: August 2, 2021

**ITEM TITLE:** 2020 City of Yakima Transportation Benefit District Annual Report

SUBMITTED BY: Scott Schafer, Public Works Director - (509) 576-6411

#### SUMMARY EXPLANATION:

The City of Yakima (City) established a Transportation Benefit District (TBD) on January 10, 2017 for the purpose of acquiring, constructing, improving, providing and funding transportation improvements within the TBD. Funding is provided by a \$20.00 car tab fee and generates approximately \$1.6M per year. The funding is to address the transportation improvements identified in the approved 20-year project list.

Enclosed is the 2020 City of Yakima Transportation Benefit District Annual Report. It indicates all of the TBD activities that were conducted in 2020 and the expeditures. The report also indicates the proposed projects planned for 2021.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Public Trust and Accountability

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

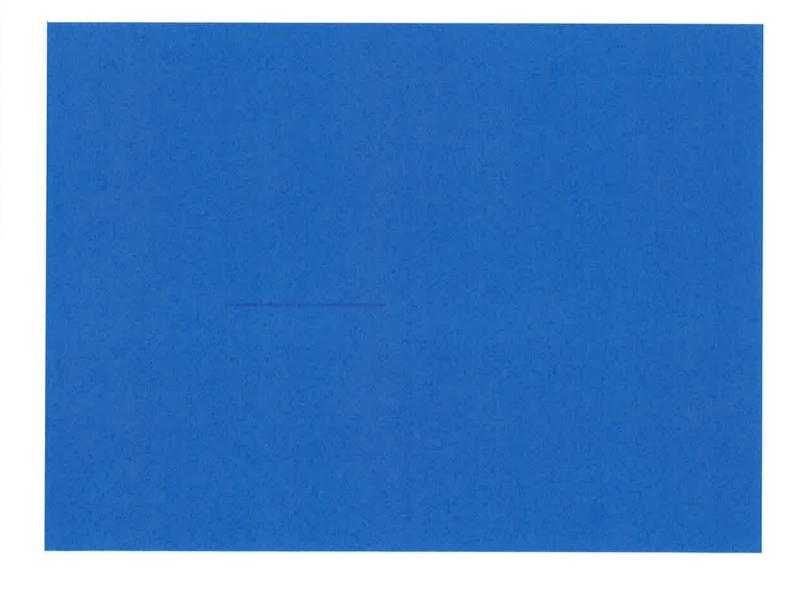
**RECOMMENDATION:** 

Accept Report

ATTACHMENTS:

DescriptionUpload DateType2020 TBD Annual Report7/19/2021Presentation

# 2020 CITY OF YAKIMA TRANSPORTATION BENEFIT DISTRICT ANNUAL REPORT



# **Transportation Benefit District**

RCW 35.21.225 authorizes the legislative authority of a city to establish a transportation benefit district (TBD) for the purpose of acquiring, constructing, improving, providing, and funding transportation improvements within the TBD, subject to the provisions of Chapter 36.73 RCW. On January 10, 2017, the Yakima City Council passed Ordinance No. 2017-002 which created a TBD with boundaries coterminous with the boundaries of the City of Yakima (City) in accordance with Chapter 36.73 RCW.

The TBD is governed by the members of the City Council, acting as District Board of Directors. With the passage of Ordinance No. 2017-002, the City Council assumed the rights, powers, immunities, functions and obligations of a TBD in accordance with RCW 36.74.010.

# **Funding**

The City Council passed Ordinance No. 2017-033 on December 5, 2017 establishing an annual vehicle fee in the amount of twenty dollars (\$20.00) for the purpose preserving, maintaining, operating, construction, or reconstructing the transportation infrastructure and funding transportation improvements that have been identified in the approved 20-year project list.

# 20 Year Project List (2017)

Street Projects	District	Est. Cost	Est. Start Construction
River Rd. 34th to 40th (SEID Loan Payment)	5	\$750,000	Completed
N. 1st St. Revitalization (20 yr. Bond)	1,4,5	\$10,802,260	2022
1st St./Washington Ave. Intersection	3	\$2,000,000	2022
Powerhouse Rd./Englewood Intersection	5	\$728,000	2023
Nob Hill/Fair Ave. Intersection	2	\$256,000	2024
6 <sup>th</sup> Ave. Roadway	1,5	\$5,591,760	2025
			Est. Start
Sidewalk Projects	<u>District</u>	Est. Cost	Construction
Naches Ave – Walnut to Pacific	2	\$330,000	Completed
4 <sup>th</sup> St. – Walnut to Pacific	2	\$315,000	Active
Browne Ave. – 7 <sup>th</sup> Ave. to 16 <sup>th</sup> Ave.	5	\$336,000	2021
Mead Ave. – 27 <sup>th</sup> Ave. to 28 <sup>th</sup> Ave.	3	\$17,000	Active
Fair Ave. – Pacific to Nob Hill	2	\$370,000	2022
Pacific Ave Fair Ave. to Jail Property	2	\$300,000	2022
88th Ave. – Summitview to Tieton	6	\$650,000	2023
N. 16th Ave. – SR-12 to River Rd.	5	\$250,000	2023
Nob Hill Blvd. – 12 St. to 14th St.	2	\$130,000	2023
3 <sup>rd</sup> Ave. – Nob Hill to Walnut	4	\$480,000	2024
Mead Ave. Pedestrian Signal at 10th Ave.	3	\$300,000	2024
44th Ave. – Viola to Randall Park	7	\$275,000	2026
Chestnut Ave 56th Ave. to 70th Ave.	6	\$448,200	2027

Note: Estimated costs were generated in 2017 and do not account for inflation. In addition, the annual revenue generated from the \$20 Car Tab Fee exceeds just over \$1.6M. The Project List was originally determined based on receiving an estimated annual revenue of \$1.5M.

# 2020 Financial Report

2020 Financial Summary of the TBD activity for the City of Yakima:

Beginning Fund Balance	\$ 2,178,084
2020 Revenue	\$ 1,686,603
Professional Services	\$ 218,628
Capital Outlay	\$ 53,248
Transfer Out*	\$ 62,800
Total Expenditure	\$ 334,676

<sup>\*</sup>Debt Service - River Rd. 34th to 40th (SEID Loan Payment)

# 2020 Projects

#### Sidewalk Projects

- **Mead Ave. Sidewalk Project (27**<sup>th</sup> **Ave. to 28**<sup>th</sup> **Ave.)** Sidewalks are needed along Mead Ave. from 27<sup>th</sup> Ave. to 28<sup>th</sup> Ave. This project will provide one-half block of new sidewalks for the neighborhood. Work is already underway in the acquisition of the necessary right-of-way required of the project by the Engineering Division. This project remains active.
- 4<sup>th</sup> Street Sidewalk Project (Walnut to Pacific) The project consists of the removal of problematic trees that were disrupting sidewalks, replanting of acceptable trees, repair sidewalks and add ADA ramps. This project remains active.





Completed sidewalks with ADA ramps on 4th St.

## **2021 Scheduled Projects**

#### **Street Project**

• N. 1<sup>st</sup> St. Revitalization Phase 2 – Estimated cost = \$3.1M (\$2.3M TBD) - The original N. 1<sup>st</sup> St. Revitalization Phase 2 consisted of improvements from N St. to MLK Jr. Blvd. This project has since been divided into Phase 2 (N St. to J St.) and Phase 3 (J St. to MLK Jr. Blvd.). Phase 2 will consist of upgrading the water mains to ensure proper fire suppression while meeting water usage demands, addition of necessary stormwater drainage system, sidewalk, curb, gutter, ADA ramps, grind & overlay of roadway, including the upgrade/addition of street and pedestrian lighting. The project is to be funded by Water and Stormwater Capital Funds and approximately \$2.3M of TBD funds.

#### Sidewalk Projects

- 4<sup>th</sup> Street Sidewalk Project (Walnut to Pacific) It is anticipated that this project will be completed in 2021.
- Browne Ave. (7<sup>th</sup> Ave. to 16<sup>th</sup> Ave.) Estimated cost = \$336,000 This project will consist of replacing and installing approximately 8,700 square feet of new sidewalk, 880 linear feet of curb and gutter, installation of 10 ADA ramps and repair approximately 3,030 square feet of driveway approaches.









Deteriorated sidewalks along Browne Ave.

• **Mead Ave. (27<sup>th</sup> Ave. to 28<sup>th</sup> Ave.)** – Work will continue to provide the installation of sidewalks from 27<sup>th</sup> Ave. to 28<sup>th</sup> Ave. It is anticipated that this project will be completed in 2021.

Report prepared by:

Scott Schafer Public Works Director July 1, 2021



Item No. 11.

For Meeting of: August 2, 2021

ITEM TITLE: Yakima Police Department red light camera report

SUBMITTED BY: Shawn Boyle, Captain

Jim Moore, Lieutenant

#### **SUMMARY EXPLANATION:**

Council requested additional information on the red light cameras proposed by the Yakima Police Department.

ITEM BUDGETED: NA
STRATEGIC PRIORITY: NA

#### APPROVED FOR SUBMITTAL BY THE CITY MANAGER

**RECOMMENDATION:** 

**ATTACHMENTS:** 

Description Upload Date Type

Red Light Camera 7/28/2021 Backup Material

# Police Department

200 S. 3<sup>rd</sup> Street Yakima, Washington 98901

Matthew Murray, Chief of Police

Telephone (509) 575-6200 Fax (509) 575-6007



# Memorandum

7/28/2021

To:

Chief Murray

From:

Lieutenant Moore

Subject:

Photo Enforcement Camera Research

In researching photo enforcement options at the request of council I have been able to speak to two different companies, Verra Mobility and Navoa Global. Both provide photo enforcement services in Washington State and are familiar with the laws that govern their use. We discussed the options of both red-light cameras as well as speed cameras. The following are the primary take away points of them.

- Red light cameras are restricted to intersections of two or more arterials per state law (RCW 46.63.170(1)(b). At a minimum, all of our top 10 collision intersections would fit this description.
- Speed cameras are limited to being placed within school zones only if you are a city east of the Cascade mountains per state law (RCW 46.63.170(1)(c). Due to this restriction, I would not expect to see an impact on "street racing" by implementing this program.
- Fines are set by the Municipality and are capped as the most expensive parking ticket (\$450). Most cities follow the standard bail schedule as if an officer stopped the car, which is \$139 for a red-light violation. School zone violations are on a sliding scale depending on the amount of speed over the limit. Since they are treated as non-moving violations 100% of the funds collected are kept by the issuing agency.
- All violations must be reviewed and approved by a commissioned law enforcement officer prior to issuing. Spokane PD has a full-time officer position managing their 22 cameras.
- All citations are issued to and mailed to the registered owner of the vehicle which may not be the driver. The violation is treated as a non-moving violation for driver's history so there is no impact to driving records. The penalty may not be used to suspend a driver license, but failing to pay will result in the suspension of license tabs.
- Washington State averages 30% of the fines go unpaid.
- Both companies contacted will allow their fees to be rolled over to future months until the program becomes profitable.
- Each camera monitors only one direction of traffic flow. To lease the equipment, it is approximately \$4,500 per month/ \$54,000 annually per camera. One of the companies requires a 5-year lease term, while the other will consider a month by month contract.

- A virtual study based on our published traffic flow patterns estimates 18 months after implementing a red-light camera program, most of our top 10 collision intersections will average between 3 and 4 violations per direction of traffic 24-hour period. This would be the same as saying \$417-\$556 billed per day/ \$12,500-\$16,680 per month/ \$150,000 \$200,160 annually per camera. Please note, this is the amount billed and is not the amount collected. For reference, Spokane City averages above 6 violations daily per camera and consistently averages between 25%-30% non-payment of violations.
- Additional expenses that are incurred to maintain a camera enforcement-based program is the time of a fully commissioned law enforcement officer to maintain and review all violations, the increased amount of work for the Municipal Courts regarding collection of fines and scheduling of contested or mitigations hearings, as well as Municipal prosecutors and Municipal judges/commissioners to perform any hearings.
- Finally, an unintended consequence that has happened in most cities that implemented red light cameras is that minor damage rear end collisions greatly increase due to the motoring public being concerned about receiving a violation for not completely stopping. Also, a substantial back up of traffic due to drivers not wanting to make free right turns because they are concerned of tripping the system is normally seen.

Approved:

Captain Shawn Boyle

Chief Matthew Murray

Lieutenant James Moore



Item No. 12.

For Meeting of: August 2, 2021

ITEM TITLE: Requested Charter change language that would prohibit a local

income tax

SUBMITTED BY: Sara Watkins, City Attorney

**SUMMARY EXPLANATION:** 

At its July 20, 2021, regular council meeting, the City Council placed on the agenda a discussion of a charter amendment which would prohibit the Council from enacting a local income tax.

The Charter currently contains language that requires that any new councilmanic tax must be adopted only by a minimum affirmative vote of five members of the City Council (Article VII, Section 2). As such, a super majority is currently necessary before any new tax can be imposed.

ITEM BUDGETED: NA

STRATEGIC PRIORITY: Public Trust and Accountability

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

ATTACHMENTS:

DescriptionUpload DateTypeResolution - Prop.3.income.tax7/22/2021Resolution

#### **RESOLUTION NO. R-2021-**

#### **A RESOLUTION**

providing for the submission to the qualified electors of the City of Yakima at an election to be held on November 2, 2021, of a Proposition on whether Articles VII of the Charter of the City of Yakima should be amended to add new Section 7 establishing that there shall be no local income tax on residents within the City of Yakima, with exceptions; and requesting the Yakima County Auditor to submit the Proposition to the voters on the regular municipal general election to be held November 2, 2021.

**WHEREAS**, Chapter 35.22 of the Revised Code of Washington (RCW) authorizes first class cities of the State of Washington to amend and revise their charters upon approval by a majority of qualified voters of the city voting in a general election called for that purpose; and

**WHEREAS**, the City of Yakima Charter provides that the Charter may be amended in the manner provided by the laws of the State of Washington and any proposed amendment may be called by the City Council; and

**WHEREAS,** the City Council desires to call the proposed amendment of Article VII, which would add to the Charter a provision specifically indicating that there shall be no local income tax assessed within the City of Yakima; and

WHEREAS, the City Council desires to hold an election in the City of Yakima on the regular municipal general election date of November 2, 2021, for the purpose of submitting to the qualified voters of the City the proposition of whether the City of Yakima should amend Article VII to add Section 7, as described above, all as set forth in the proposed amended Charter language below; and

**WHEREAS**, the City Council finds and determines that the best interests and general welfare of the City of Yakima would be served by submitting to the qualified voters in the City the proposition of whether the City of Yakima should amend Article VII of the Charter to add a provision prohibiting a local income tax, as set forth herein, now, therefore,

#### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

<u>Section 1</u>. Consistent with Section 2 of this Resolution, the City requests that the Yakima County Auditor call and conduct an election in the City in conjunction with the state general election to be held on November 2, 2021, for the purpose of submitting to the qualified electors of the City for their approval, the following proposed amendment of the Yakima City Charter: the addition of Section 7 to Article VII (Limitation of Taxation). Underlining indicates additions, and strike-outs indicate deletions, to the relevant City Charter provisions.

#### Article VII, Section 7 of the Charter is hereby added to read as follows:

ARTICLE VII, SECTION 7. (To Be Added As A New Section)

The City Council may not impose an income tax on the residents of the City on wages, salaries, investments, or the sale of goods or services. Nothing in this section shall prohibit the imposition of a tax on real property, or the increase of a tax on real property

through a levy lid lift procedure or other lawful procedure.

<u>Section 2</u>. The City Council desires to place a Proposition before the qualified electors with regards to the proposed City Charter amendments contained in Section 1 of this ordinance. The ballot title for the Charter amendments to be submitted to the qualified electors in accordance with Section 1 of this ordinance, to be submitted at the November 2, 2021, regular municipal general election, shall be substantially as follows, and in such final form of concise statement as may be prepared by the City Attorney consistent with RCW 29A.36.071:

# PROPOSITION NO. 3 ADOPTION OF AMENDMENT TO ARTICLE VII OF THE YAKIMA CITY CHARTER

PROPOSITION NO. 3 concerns an amendment to the City of Yakima Charter. This measure amends Article VII (Limitation of Taxation) of the Yakima City Charter to add a provision stating the City Council may not enact a local income tax on residents of the City, with exceptions. Should this proposition be approved?

YES	 	
NO	 	

<u>Section 3</u>. The City Manager and City Attorney are authorized to make such minor adjustments to the wording of such proposition as may be recommended by the Yakima County Auditor, provided the intent of the proposition remains clear and consistent with the intent of this resolution.

<u>Section 4. Local Voters' Pamphlet Authorized.</u> The preparation and distribution of a local voters' pamphlet providing information on the foregoing ballot measure is hereby authorized. The pamphlet shall include arguments advocating approval and disapproval of the ballot measure. In accordance with RCW 29A.32.280, the arguments advocating approval and rejection of the ballot measure shall be prepared by committees appointed by the City Council by resolution not later than forty-five days before the publication of the pamphlet. Each committee shall be composed of not more than three persons, however, a committee may seek the advice of any person or persons. The committee advocating approval shall be composed of persons known to favor the ballot measure, and the committee advocating rejection shall be composed of persons known to oppose the ballot measure.

<u>Section 5.</u> Corrections by City Clerk. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this resolution, including the correction of clerical errors, references to other local, state or federal laws, codes, rules, or regulations, or resolution numbering and section/subsection numbering.

<u>Section 6.</u> <u>Severability.</u> If any one or more sections, subsections or sentences of this resolution are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this resolution and the same shall remain in full force and effect.

**Section 7.** Effective Date. This resolution shall become effective immediately after its adoption.

Section 8. The City Clerk is authorized and directed to file a certified copy of this

resolution with the Yakima County Auditor.

# **ADOPTED BY THE CITY COUNCIL** this 2<sup>nd</sup> day of August, 2021.

ATTEOT	Patricia Byers, Mayor
ATTEST:	
Sonya Claar Tee, City Clerk	



Item No. 13.

For Meeting of: August 2, 2021

**ITEM TITLE:** Appointment of Members to Pro/Con Committees

**SUBMITTED BY:** Sara Watkins, City Attorney

#### SUMMARY EXPLANATION:

At its July 20, 2021, regular council meeting, the City Council approved two Charter Amendments to go to the voters. Additionally, the City Council is considering a third Charter Amendment at its August 2, 2021 meeting.

Pursuant to RCW 29A.32.280:

For each measure from a unit of local government that is included in a local voters' pamphlet, the legislative authority of that jurisdiction shall, not later than the resolution deadline, formally appoint a committee to prepare arguments advocating voters' approval of the measure and shall formally appoint a committee to prepare arguments advocating voters' rejection of the measure. The authority shall appoint persons known to favor the measure to serve on the committee advocating approval and shall, whenever possible, appoint persons known to oppose the measure to serve on the committee advocating rejection. Each committee shall have not more than three members, however, a committee may seek the advice of any person or persons. If the legislative authority of a unit of local government fails to make such appointments by the prescribed deadline, the county auditor shall whenever possible make the appointments.

Separate committees must be formed for each measure.

ITEM BUDGETED: NA

STRATEGIC PRIORITY: Public Trust and Accountability

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:



Item No. 14.A.

For Meeting of: August 2, 2021

ITEM TITLE: Executive session to consider acquisition of real estate under

RCW 42.30.110(1)(b)

**SUBMITTED BY:** 

**SUMMARY EXPLANATION:** 

**ITEM BUDGETED:** 

**STRATEGIC PRIORITY:** 

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

**RECOMMENDATION:** 



Item No. 16.A.

For Meeting of: August 2, 2021

ITEM TITLE: Council General Information

SUBMITTED BY: Sonya Claar Tee, City Clerk

#### **SUMMARY EXPLANATION:**

- 1. Thank you letter
- 2. Preliminary Council Agendas

**ITEM BUDGETED:** 

STRATEGIC PRIORITY:

#### APPROVED FOR SUBMITTAL BY THE CITY MANAGER

**RECOMMENDATION:** 

**ATTACHMENTS:** 

DescriptionUpload DateType□ thank you7/22/2021Cover Memo□ draft agenda7/29/2021Cover Memo

ECEIVED CITY OF YAKIMA

JUL 15 2021

OFFICE OF CITY COUNCIL

Brian Prestwich

8301 Tieton Drive #6 Yakima WA 98908

509 388 8307

Mr A M Mathews

**Neighborhood Development Services** 

112S 8th Street

Yakima , WA 98901

cc. City of Yakima Council Members

C/O City Managers Office

Sir I am writing this to thank you and your team for the way you delt with my request for help with the heating and cooling problems I was having with my home, the speedy way you put into action the plan to remedy my problems was nothing short of fantastic and has made my day to day living so much better I no longer have to put up with excessive heat or cold or the worries of electricity bills beyond my budget, I would also like to thank your team for putting me at ease when I called to your offices as I found it extremely hard to ask for help, they were so kind and helpful.

**Yours Sincerely** 





# AGENDA YAKIMA CITY COUNCIL

August 17, 2021 City Hall -- Council Chambers

4 p.m. Executive Session; 5:30 p.m. Regular meeting

#### **EXECUTIVE SESSION**

- 1. Executive Session to review the performance of a public employee
- 1. Roll Call
- 2. Pledge of Allegiance
- 3. Interpreter Services
- 4. Open Discussion for the Good of the Order
  - A. Presentations / Recognitions / Introductions
    - i. Recognition of Scott Schafer for 25 years of service
- 5. Council Reports
  - A. Discussion about special events
- 6. Consent Agenda

Items listed are considered routine by the City Council and will be enacted by one motion without discussion. A Council member may request to remove an item from the Consent Agenda and, if approved, it will be placed on the regular agenda for discussion and consideration.

- A. Approval of minutes from the August 2, 2021 City Council regular meeting
- B. Approve payment of disbursements for the period July 1 31, 2021.
- C. 2021 2nd Quarter Financial Report
- D. July 2021 Investment Transactions Report
- E. Set Date of September 7, 2021 to review the Planning Commission's Recommendation on amendments to the Critical Areas Ordinance, YMC Ch. 15.27
- F. Project Completion and Contract Acceptance for Beech Street Lift Station Odor Control Improvements Project 2511
- G. Resolution accepting and approving 2nd Quarter 2021 Claim Report
- H. Resolution authorizing the sole source purchase of an Electrode with Tube Assembly from De Nora Water Tech, LLC for the City of Yakima Water Treatment Plant disinfection system
- I. Resolution authorizing an Agreement with Washington State Recreation and Conservation Office for a grant of \$4,134,000 for Nelson Dam Removal: Water Supply,

Riverine Process and Fish Passage Improvements.

- J. Resolution authorizing a Memorandum of Understanding and Engagement with the Mid Columbia Fisheries Enhancement Group
- K. Resolution authorizing a contract with XXXX for the Northside Alley Paver Project 2530
- L. Resolution authorizing an Agreement with Landau Associates to perform the design and remediation for the environmental cleanup of the former Tiger Oil site at 1808 North First Street
- M. Resolution authorizing Yakima School District School Resource Officer contract
- N. Resolution authorizing a Memorandum of Understanding with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
- O. Resolution authorizing a Memorandum of Understanding with Homeland Security Investigations
- P. Resolution authorizing a Right-of-Way Use Permit for a gate at the north end of the alley between N Front Street and N 1st St at Staff Sgt. Pendleton Way.
- Q. Ordinance amending the 2021 Budget for the City of Yakima; and increasing the Convention Center Fund 170 revenue budget with a \$500,000 allocation from the American Rescue Plan Act (ARPA) Fiscal Recovery Funds (Second Reading)

#### 7. Public Comment

Community members are invited to address items listed on the meeting agenda. There will be 35 minutes allotted for public comment with two and a half (2.5) minutes per speaker in order to allow as much opportunity as possible for audience participation. Written communication and e-mail messages are strongly encouraged.

#### DEPARTMENT ITEMS

- 8. POLICE PLACEHOLDER: Update on SWAT in regard to community wide cost sharing and utilization of our SWAT throughout the County
- 9. Report on Engineering Project Updates
- 10. Ordinance changing park rules to address drug use in parks
- 11. Ordinance relating to making it unlawful to sit or lie in specific areas of the City

#### **CITY MANAGER UPDATE**

- 12. Prioritization of Performance Measures
- 13. Other Business
- 14. Adjournment

#### 15. Council General Information

- A. Council General Information
- B. Code Administration Division Report Monthly Building Permits Issued July 2021
- Carrotte Council Packet Distribution for Critical Areas Ordinance amendments

Any invocation that may be offered before the official start of the Council meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.



Item No. 16.B.

For Meeting of: August 2, 2021

ITEM TITLE: Report on Planning Commission Structure

**SUBMITTED BY:** Sonya Claar Tee, City Clerk

Joseph Calhoun, Planning Manager

#### SUMMARY EXPLANATION:

The Council Nominating Committee recommends appointments of Planning Commission members to the City Council after reviewing applications and possibly interviewing candidates. The members are appointed by the Mayor and confirmed by the City Council. The Commission is made up of seven members who serve four-year terms and must be a City resident or an owner of a business or real property located within the City. Candidates are required to fill out an application and resume. Attached are the ordinances establishing the Planning Commission, which are codified in YMC Ch. 1.42.

ITEM BUDGETED: NA

STRATEGIC PRIORITY:

#### APPROVED FOR SUBMITTAL BY THE CITY MANAGER

#### **RECOMMENDATION:**

#### ATTACHMENTS:

	Description	Upload Date	Type
D	ORD. NO. 2010-022 establish	7/9/2021	Cover Memo
D	ORD. NO. 2012-055 residency	7/9/2021	Cover Memo
D	ORD. NO. 2017-018 terms	7/9/2021	Cover Memo
D	YMC Ch. 1.42	7/22/2021	Cover Memo

#### **ORDINANCE NO. 2010-22**

#### **AN ORDINANCE**

relating to establishing the "City of Yakima Planning Commission" to replace the Yakima Urban Area Planning Commission, deleting references to it and to the Urban Yakima Area Regional Planning Agreement; and specifically amending Yakima Municipal Code Title 1, Chapter 1.42, Planning Commission, sections 1.42.005, 1.42.010, 1.42.020, 1.42.025, 1.42.026, 1.42.027, 1.42.030, 1.42.050 and 1.42.070; Title 1, Chapter 1.43, Hearing Examiner, section 1.43.180; Title 14, Chapter 14.05, General Provisions, section 14.05.070; Title 15, Chapter 15.20, Administration, sections 15.20.030, 15.20.050 and 15.20.060; Title 15, Chapter 23, Amendments and Rezones, sections 15.23.020 and 15.23.030; Title 15, Chapter 15.31, Institutional Overlay, section 15.31.030; Title 16, Chapter 16.03, Project Permit Applications, section 16.03.010; Title 16, Chapter 16.10, Comprehensive Plan Amendment Procedures, sections 16.10.030, 16.10.070, 16.10.080, 16.10.090 and 16.10.100.

#### BE IT ORDAINED BY THE CITY OF YAKIMA:

<u>Section 1.</u> Section 1.42 of Chapter 1 of the City of Yakima Municipal Code is hereby amended to read as follows:

#### 1.42.010 Planning commission—Authority.

The City of Yakima Planning Commission shall have the full authority and jurisdiction to perform all acts, duties and functions which are either required of or imparted or conferred on a Planning Commission by law or ordinance. Provided, any duties or functions of the Planning Commission which are conferred on the office of hearing examiner shall be performed by such examiner.

#### 1.42.020 Organization and procedures.

The Commission shall perform its duties and functions as the Planning Commission of the City of Yakima under the provisions and procedures of RCW Chapter 35.63.

#### 1.42.025 Membership - Appointment - Terms.

- A. The City Planning Commission shall consist of seven members appointed by the mayor and confirmed by the City Council. The term of office for the first appointive members appointed to the City Planning Commission shall be designated from one to six years in such a manner as to provide the fewest possible terms will expire in any one year. Thereafter the term of office for each appointive member shall be six years.
- B. Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired term. Members may be removed, after public hearing, by the mayor, with the approval of the City Council, for inefficiency, neglect of duty or malfeasance in office.
- C. The members of the City Planning Commission shall be selected without respect to political affiliation and they shall serve without compensation.
- D. No person shall serve more than two consecutive terms, provided a person appointed to fill unexpired terms of less than two years is eligible to serve two successive six-year terms, and provided further, a person who is ineligible to

serve for having served two consecutive terms may again serve after two years have elapsed from the end of the second such term.

#### 1.42.026 Residence of members.

No person shall hold the office of member of the City Planning Commission unless that person is a resident of the City. The office of member of the City Planning Commission shall become vacant upon such member ceasing to reside in the City.

#### 1.42.027 Vacancy filling – Unexpired terms.

Vacancies occurring other than through the expiration of terms shall be filled by appointment as provided in YMC 1.42.025.

#### 1.42.030 Duties.

The duties of the City Planning Commission shall be as set forth in RCW Chapter35.63.060, by City ordinance, or as may be assigned or requested from time to time by the City Council. Such duties include, but are not limited to:

- 1. Serving as the long-range planning body for the City of Yakima;
- 2. Monitor the growth and development of the City and continually reevaluate and recommend to the City Council revisions to the comprehensive plan and zoning ordinance for the City;
- 3. Develop and recommend to the City Council a subdivision ordinance for the City and revisions thereto;
- 4. Investigate and make recommendations on other land use matters as may be requested by the City Council or on its own initiative;
- 5. Study and report on all proposed text changes to land use ordinances;
- 6. Advise the City Council on land use matters;
- 7. Monitor the hearings of the hearing examiner in order to remain informed on development activities, public concerns and the decisions of the hearing examiner;
- 8. Such other planning functions as authorized or required by law or ordinance or as requested or assigned by the City Council.

# 1.42.070 Yakima urban area comprehensive plan—Adoption and amendment procedures.

- A. Plan Adoption. The 2006 Yakima Urban Area Comprehensive Plan ("the plan") as adopted by City Council Resolution 2006-62, including subsequent amendments, shall be the official Comprehensive Plan for the City of Yakima. The Comprehensive Plan and its elements, including those incorporated by reference, are hereby adopted as the official comprehensive land use plan for the City of Yakima as required by RCW Chapter 36.70A.
- B. Plan Amendments. Requests for amendments to the Yakima urban area comprehensive plan may be submitted in accord with YMC 16.10.030, and will be docketed for review and acted upon once per year as required by RCW 36.70A.130. Proposed amendments shall be considered concurrently to ascertain the cumulative effect of the various proposals. Initial adoption of subarea plans and the adoption or amendment of a shoreline master program are not subject to the docketing requirement, and may be considered independently of the annual amendment process. Amendments to the plan may also be considered whenever an emergency exists, or to resolve an appeal of the

plan filed with the Eastern Washington Growth Management Hearings Board, following appropriate public participation.

- C. Amendment Review Process. Proposed amendments to the plan shall be submitted to the City of Yakima Department of Community and Economic Development, along with the required application fee, for review by the City Planning Commission. The City Planning Commission shall hold at least one public hearing to receive public testimony on proposed amendments, and shall forward its recommendation regarding proposed amendments to the City Council. The City Council shall hold at least one public hearing on the City Planning Commission's recommendation. The City Council may refer any proposed amendment back to the City Planning Commission for further consideration and recommendation. The City Council may amend the plan or reject any proposed amendments subsequent to the City Council public hearing.
- D. Existing Land Use Regulatory Ordinances Remain in Effect. All existing land use regulatory ordinances and land use controls shall remain in effect, including Title 15, Yakima Urban Area Zoning Ordinance; City of Yakima official zoning map; Title 14, Subdivisions; YMC Chapter 6.88, Environmental Policy; and YMC Chapter 11.58, Flood Damage Prevention, until such time that these ordinances are amended. Future land use decisions shall be based upon these ordinances, as periodically amended.
- E. Severability. If any section, sentence, clause or phrase of the adopted Yakima urban area comprehensive plan should be held to be invalid or unconstitutional by any body or court with authority and jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of the adopted Yakima urban area comprehensive plan.
- F. Revival of 1997 Plan Upon Invalidation. In the event that the 2006 Yakima urban area comprehensive plan, or any portion thereof, is invalidated by the Eastern Washington Growth Management Hearings Board, or any other body or court with authority and jurisdiction, the 1997 Yakima urban area comprehensive plan, or the relevant portions thereof, shall be revived and shall be in effect until a new comprehensive plan, or new relevant portions, are established.

Section 2. Section 1.43.180 of the City of Yakima Municipal Code is amended to read as follows:

#### **1.43.180 Annual report.**

The examiner shall report in writing to and meet with the City Planning Commission and City Council at least annually for the purpose of reviewing the administration of the City's land use policies and regulating ordinances. The report shall include a summary of the hearing examiner's decisions since the prior report.

Section 3. Section 14.05.070 of the City of Yakima Municipal Code is amended to read as follows:

#### 14.05.070 Amendments.

- A. The City Planning Commission shall consider in public hearing any proposed amendments to, or the repeal of, this title and submit a recommendation thereon to the City Council. Public notice of the hearing before the City Planning Commission shall be provided in the following manner:
- 1. By publication of at least one notice not less than ten calendar days prior to the public hearing in the official city newspaper.

- 2. Additional notice shall be given to individuals and organizations which have submitted written requests for notice by mailing of a notice not less than ten calendar days prior to the public hearing.
- B. The City Council shall consider in public hearing any proposed amendments to, or repeal of, this title along with the recommendation of the City Planning Commission thereon. Public notice of the hearing before the City Council shall be given in the same manner as for the City Planning Commission hearing.

Section 4. Section 15.20.030 of the Yakima Municipal Code is amended to read as follows:

#### 15.20.030 Planning department--Duties and powers.

- A. The planning department shall have the following powers and responsibilities:
- 1. Issue certificates of zoning review under the provisions of this title;
- 2. Receive, record and file all applications for permits, approvals or other action, including class (2) and (3) review, and applications for appeals, interpretations, variances and rezones;
- 3. Review and decide modifications to approved class (2) and (3) uses and existing class (1), (2) and (3) uses under the provisions of Chapter 15.17;
- 4. Provide staff support to the City Planning Commission on all long range planning matters and proposed ordinance amendments;
- 5. Immediately change the official zoning map to accurately reflect any amendments made by official action of the legislative body;
- 6. Provide staff support to the hearing examiner, and legislative body;
- 7. Perform any other act or duty authorized or assigned to it under the provisions of this title;
- 8. Maintain the official index of all permits and approvals under this title.

<u>Section 5.</u> Section 15.20.050 of the Yakima Municipal Code is amended to read as follows:

#### 15.20.050 Hearing examiner--Duties and powers.

- A. Office. The office of hearing examiner, herein referred to as hearing examiner, is hereby recognized. The hearing examiner shall perform the duties and functions established by this or any other title. Unless the context requires otherwise, the term hearing examiner as used herein shall include deputy examiners and examiners pro tem. The hearing examiner shall be jointly hired and appointed by the City of Yakima and Yakima County.
- B. Authority and Duties. The examiner shall receive and examine available information, conduct public hearings and keep a record thereof, and enter decisions as provided for herein.
- C. Effect of Decisions.
- (1) The decision of the hearing examiner on the following matters shall be final unless such decision is appealed to the legislative body pursuant to section 15.16.040:
- a. Class (3) review decisions;
- b. Variance requests;
- c. Home occupations;
- d. Revocation proceedings under Chapter 15.24 of this title;
- e. Nonconforming uses;
- f. Appeals of decisions by the building official or administrative official; and,
- g. Any other authorized decision not expressly listed in subsection C2 of this section.

(2) The decision of the hearing examiner on rezone applications shall constitute a recommendation to the legislative body. Provided, that rezone applications initiated by the City or county to implement a newly adopted or amended comprehensive plan or which are of broad general applicability shall be heard by the City Planning Commission.

Section 6. Section 15.20.060 of the Yakima Municipal Code is amended to read as follows:

#### 15.20.060 City of Yakima Planning Commission.

- A. Establishment and Jurisdiction.. The City Planning Commission is organized under RCW Chapter 35.63 and serves as a citizen advisory group to the legislative bodies on long range planning matters.
- B. Authority and Duties.
- 1. As the long-range planning body for the City of Yakima, the City Planning Commission shall monitor the growth and development of the City of Yakima and continually reevaluate and recommend revisions to the City of Yakima comprehensive plan and this title;
- 2. Investigate and make recommendations on other land use matters either requested by the elected officials or upon its own initiative;
- 3. Study and report on all proposed text amendments to this title;
- 4. Review and report to the joint board at least once every five years commencing on the date of enactment of this title. This five year report shall:
- a. Analyze the extent to which development has actually occurred in the City of Yakima and evaluate this title in terms of its ability to guide growth in conformance with the City of Yakima comprehensive plan,
- b. Recommend any changes in the zoning map which may be required in order to accommodate expected residential, commercial and industrial development in the Yakima urban area over the next 20 years,
- c. Analyze the need for any other regulations imposed by this title in terms of changed conditions since the last review,
- 5. Advise the legislative body on land use matters,
- 6. Monitor the hearings of the hearing examiner in order to stay informed on development activities, the concerns of the public, and the decisions of the hearing examiner.
- 7. Perform any other function authorized by law.

Section 7. Section 15.23.020 of the Yakima Municipal Code is amended to read as follows:

#### 15.23.020 Text amendments.

- A. Initiation. An amendment to the text, standards, procedures or other provisions of this title may be initiated by action of the legislative body with jurisdiction or the City Planning Commission.
- B. Action by the Legislative Body. Any amendments in this title shall be by action of the legislative body with jurisdiction after a recommendation thereon from the City Planning Commission. Such action shall occur in accordance with the procedures set forth in RCW Chapter 35.63 as it now exists or is hereafter amended.
- Section 8. Section 15.23.030 of the Yakima Municipal Code is amended to read as follows:

#### 15.23.030 Rezones--Zoning map amendments.

- A. Initiation. An amendment to the zoning map may be initiated by:
- 1. Resolution of the legislative body with jurisdiction or the City Planning Commission; or
- 2. A rezone application filed by the property owner(s).
- B. Application. All rezone applications shall be filed with the planning department. The planning department shall process the application under the provisions of Section 15.11.080. The application shall include the information required in Section 15.11.030 and the signature of the owner(s) of the property.
- C. Public Hearing by the Hearing Examiner. Upon receipt of a complete application for a rezone, the planning department shall forward the application to the hearing examiner for public hearing and review. Provided, that rezone applications initiated by the City or county to implement a newly adopted or amended comprehensive plan, or which are of broad general applicability shall be heard by the City Planning Commission under the provisions of RCW Chapter 35.63. The public hearing shall be held and notice provided under the provisions of Chapter 15.11.090. The applicant shall appear in person or by agent or attorney. Failure to do so shall constitute sufficient cause for continuance or denial of the requested action. Other parties may appear in person or by agent or attorney, or may submit written comments.
- D. Recommendation by the City Planning Commission. The City Planning Commission, may if requested by the hearing examiner, submit a recommendation on the proposed rezone to the hearing examiner prior to the issuance of his decision. The recommendation of the City Planning Commission shall in no way be binding on the hearing examiner.
- E. Decision by the Hearing Examiner. Within ten days of the conclusion of the hearing, unless a longer period is agreed to in writing by the applicant, the examiner shall issue a written recommendation to approve, approve with conditions or deny the proposed rezone. The recommendation shall include the following considerations:
- 1. The testimony at the public hearing;
- 2. The suitability of the property in question for uses permitted under the proposed zoning;
- 3. The recommendation from interested agencies and departments;
- 4. The extent to which the proposed amendments are in compliance with and/or deviate from the goals and policies as adopted in the Yakima urban area comprehensive plan and the intent of this title;
- 5. The adequacy of public facilities, such as roads, sewer, water and other required public services;
- 6. The compatibility of the proposed zone change and associated uses with neighboring land uses; and,
- 7. The public need for the proposed change.
- Notice of the hearing examiner's recommendation shall be mailed to the applicant at the address provided on the application form. The decision of the hearing examiner on rezone applications shall constitute a recommendation to the legislative body.
- F. Action by the Legislative Body. Upon receipt of the hearing examiner's recommendation on a proposed rezone, the legislative body shall hold a public meeting and affirm or reject the hearing examiner's decision.

The legislative body shall conduct its own public hearing when it rejects the recommendation of the hearing examiner or desires additional public testimony. Notice of the public hearing shall be given in the manner set forth in Section

- 15.11.090. In either case, the findings of the legislative body shall include the considerations established in subsection (E) of this section.
- G. Time Limit and Notification. Proposed amendments shall be decided by the legislative body as soon as practicable and the applicant shall be notified in writing whether the rezone has been granted or denied.

Section 9. Section 15.31.030 of the Yakima Municipal Code is amended to read as follows:

#### 15.31.030 Review process.

The institutional overlay zone and master development plan shall be reviewed using the review process described in YMC 15.23.030, and as further specified herein. Upon filing of a valid rezone application and completion of the required environmental review process, the planning department shall forward the rezone application, together with its recommendation, to the hearing examiner to conduct a public hearing and review in conformity with YMC 15.23.030. Prior to said hearing a recommendation will be obtained from the City Planning Commission. The decision of the hearing examiner shall be in the form of a written recommendation to the legislative body pursuant to YMC 15.23.030(E).

Section 10. Section 16.03.010 of the Yakima Municipal Code is amended to read as follows:

#### 16.03.010 Determination of review procedure.

- A. Determination by Director. The director or his/her designee shall determine whether any proposed project is exempt from the procedures of this title, should any clarification be necessary.
- B. Master Application Process. An application that involves two or more procedures including SEPA compliance may be consolidated and processed simultaneously, including combined notices, staff reports and hearings if necessary.
- C. The applicant may determine whether such an application shall be consolidated or processed separately.
- D. Decision-maker(s). Applications processed in accordance with subsection B of this section shall be consolidated for hearing by the highest level decision-maker(s). City of Yakima decision-makers are ranked as follows: the City Council is the highest, followed by the hearing examiner or the City Planning Commission as applicable, and then the director or his/her designee.

Section 11. Section 16.10.030 of the Yakima Municipal Code is amended to read as follows:

#### 16.10.030 Procedures.

- (1) Annually, the City Council shall open the comprehensive plan amendment process and the City Planning Commission shall hold a public meeting in February to announce that the comprehensive plan amendment process is open to accept applications. At that time, the City Planning Commission will invite public comments and suggestions regarding proposed changes to the comprehensive plan.
- (2) All comprehensive plan amendments shall be considered legislative actions and subject to the procedures in this chapter.
- (3) Applications must comply with YMC Section 16.10.040 and be submitted by the last business day in April in order for a proposed amendment to be included in that year's process.

- (4) Future land use map changes may be initiated by the subject property owner(s), or by planning staff, by using the appropriate application forms. The City Planning Commission shall docket all future land use map amendment requests for further review and consideration if the amendment application is deemed complete as provided for herein.
- (5) Other plan policy map and/or text amendments may be initiated by any person, including planning staff, by using the appropriate application forms. The City Planning Commission shall docket all such amendments for further review and consideration if the amendment application is deemed complete as provided for herein.
- (6) After completion of the amendment docketing process, the City Planning Commission shall invite public comment regarding docketed amendment(s) concurrently with the notice announcing the City Planning Commission public hearing at which proposed amendments will be reviewed.
- (7) Additional documentation may be needed to address public facilities and services elements that may be necessary for a proposed amendment. Examples of such services may include water, sewer, storm drainage, transportation, police and fire protection, and schools. Planning staff will assist applicants in identifying additional documentation necessary to enable appropriate review.
- (8) After proposed amendments are docketed:
- (a) The planning staff will review the docketed comprehensive plan amendments together with such review as may be required under the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and Chapter 6.88 YMC.
- (b) The City Planning Commission shall set dates for work sessions on docketed item(s) prior to setting the City Planning Commission public hearing date(s).
- (9) No comprehensive plan amendment applications shall be docketed after the last business day in April, unless directed by the City Council.

Section 12. Section 16.10.070 of the Yakima Municipal Code is amended to read as follows:

#### 16.10.070 Comprehensive Plan Amendment procedures

Public process and notice on proposed comprehensive plan amendment.

To provide for the opportunity of citizens, interested parties and reviewing agencies to suggest and make comments on proposed comprehensive plan amendments, the planning staff will provide for broad dissemination of information regarding the amendment process. Notice shall be reasonably calculated to give interested parties, the general public, and government agencies a meaningful opportunity to be apprised of, and participate in, the comprehensive plan amendment process. The planning staff shall identify and follow a procedure reasonably calculated to address public comments regarding proposed amendments.

- (1) Except for instances where specific notice requirements are provided for elsewhere in this chapter, in which event the specific notice requirements shall control, examples of types of notice which the planning staff may utilize, as appropriate, include the following:
- (a) A general mailing to interested parties;
- (b) Posting on the City of Yakima's web site;
- (c) Posting the property with signage, for which a future land use map amendment has been submitted and docketed;

- (d) Notice in the local newspaper of general circulation at least twenty days prior to any public hearing and as may be otherwise required by RCW Section 36.70A.035, or as the same may be hereafter amended;
- (e) Announcements on Yakima public affairs channel (YPAC) of scheduled public hearings;
- (f) Press releases to the local media;
- (g) Posting of information at the Planning and Code Administration Division and City Clerk's offices, in addition to other City Clerk designated locations;
- (h) Notice by general mailing to property owners located within five hundred feet of external property line boundaries designated in a particular amendment application;
- (i) Notification to reviewing agencies as may be established by Washington State Department of Community Trade and Economic Development pursuant to RCW Section 36.70A.035.
- (2) Additional public notification may be undertaken by planning staff if it determines that it is in the public interest to do so.
- (3) Elements to be contained in any general mailing notice regarding docketed comprehensive plan amendments shall include:
- (a) Identification of amendment by address, if available, if the proposed amendment requests a change to the future land use map or other plan policy map;
- (b) Vicinity map created from the City's GIS mapping system indicating the location of proposed future land use map or other plan policy map amendment(s), if applicable;
- (c) Notice of the time, place and purpose for any City Planning Commission public hearing pertaining to a proposed amendment;
- (d) Cover letter from planning staff generally describing the proposed comprehensive plan amendment and giving the name and phone number of a planning staff person who can answer additional questions;
- (e) City Planning Commission meeting agenda, if applicable;
- (f) The applicant's written narrative, as supplied pursuant to YMC Section 16.10.050;
- (g) An eight and one-half inch by eleven-inch black and white area map indicating the current future land use designation, if applicable; and,
- (h) An eight and one-half inch by eleven-inch black and white area map indicating the proposed future land use designation, if applicable.

Section 13. Section 16.10.080 of the Yakima Municipal Code is amended to read as follows:

#### 16.10.080 City of Yakima Planning Commission recommendation(s).

To provide for the opportunity of citizens, interested parties and reviewing agencies to review the recommendation of the City Planning Commission to the joint meeting of the City Council and Yakima County commissioners regarding comprehensive plan amendments, the following procedures shall apply:

- (1) The City Planning Commission shall provide a recommendation on each docketed amendment proposal with findings of fact to support each recommendation based on the approval criteria set forth in YMC Section 16.10.040; and,
- (2) The planning staff shall notify the public of the City Planning Commission recommendation by the following process:

- (a) Not later than twenty days prior to the joint City Council and Yakima County commissioners' public hearing date, a legal and display ad notice will be placed in the local newspaper of general circulation announcing the joint City Council and Yakima County commissioners' public hearing;
- (b) An announcement will run on Yakima public affairs channel (YPAC) electronic bulletin board not later than fourteen days before the joint City Council and Yakima County commissioners' public hearing date until the date of the joint City Council and Yakima County commissioners' public hearing;
- (c) The planning staff will notify local media outlets regarding joint City Council and Yakima County commissioners' public hearing through a prepared press release; and,
- (d) The planning staff will place the joint City Council and Yakima County commissioners' public hearing notice on the City of Yakima's web site.

Section 14. Section 16.10.090 of the Yakima Municipal Code is amended to read as follows:

# 16.10.090 Joint City Council and Yakima County commissioners public hearing.

At a joint meeting of the City Council and Yakima County commissioners, the two elected bodies will review the City Planning Commission recommendations regarding any docketed comprehensive plan amendments and hold a public hearing to provide citizens, interested parties and reviewing agencies an opportunity to comment on the recommendations.

- (1) The notice of the joint public hearing of the City Council and Yakima County commissioners on the recommendations of the City Planning Commission will be promulgated by the City Clerk pursuant to the process for regular business meetings of the City Council, and will include the following:
- (a) The time, location, and date of the joint City Council and Yakima County commissioners' public hearing;
- (b) A copy of the agenda item; and,
- (c) A list of all comprehensive plan amendments to be considered at the hearing.
- (2) An open record public hearing will be conducted by the joint City Council and Yakima County commissioners to hear testimony regarding each amendment under consideration.
- (3) At the conclusion of the hearing, the City Council shall direct planning staff to prepare legislation to approve, approve with conditions, or deny each amendment under consideration and shall identify findings of fact to support each decision based on the approval criteria set forth in YMC Section 16.10.040.
- (4) At a subsequent City Council meeting, the City Council shall enact an ordinance adopting their decision reached at the joint City Council and Yakima County commissioner's public hearing. Following City Council action, notification of the ordinance shall be accomplished in the following manner:
- (a) The planning staff shall provide a complete and accurate copy of the adopted comprehensive plan amendment(s) to the Washington State Department of Community Trade and Economic Development within ten days after final adoption; and,
- (b) The City Clerk shall have the approved comprehensive plan amendment ordinance published in the local newspaper of general circulation.
- (c) The City Clerk shall post the ordinance to the City's web site as an ordinance amending the Yakima Municipal Code. In addition, the planning staff shall post

the comprehensive plan amendments on the City's web site in accordance with this chapter.

Section 15. Section 16.10.100 of the Yakima Municipal Code is amended to read as follows:

# 16.10.100 Implementation and application of comprehensive plan amendment procedures for the year 2004.

Upon the passage, approval, and publication of the ordinance codified in this chapter, and for calendar year 2004 only, the amendment process shall be deemed open for all pending applications and for all applications received by the last business day in April, 2004, without otherwise requiring announcement from the regional planning commission as contemplated in YMC Section 16.10.030 and YMC Section 16.10.060. Publication of the ordinance codified in this chapter shall be deemed sufficient notice to the public that the amendment process for calendar year 2004 is open. All other notice obligations required by this chapter shall remain in full force and effect during the 2004 amendment cycle.

<u>Section 16.</u> If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

<u>Section 17.</u> This ordinance shall be in full force and effect 90 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this 4th day of May, 2010.

		/s/ Micah Cawley
		Micah Cawley, Mayor
ATTEST:		
<u>/s/ Deborah Kloster</u> City Cle	erk	
Publication Date:	May 7, 2010	
Effective Date:	August 5, 2010	

### **ORDINANCE NO. 2012-55**

#### AN ORDINANCE

relating to City Council Committees and Commissions, amending the residency requirements for the City of Yakima Planning Commission members to allow non-residents of the City that own and/or operate businesses and properties that are located within the City to be members of the Commission; and specifically amending Section 1.46.026 of the Yakima Municipal Code.

#### BE IT ORDAINED BY THE CITY OF YAKIMA:

**Section 1.** Section 1.42.026 of the City of Yakima Municipal Code is hereby amended to read as follows:

#### 1.42.026 Residence of members.

No person shall hold the office of member of the City Planning Commission unless that person is either 1) a resident of the City of Yakima, or 2) an owner of a business or of real property that is located within the City of Yakima. The office of member of the City Planning Commission shall become vacant upon such member ceasing to meet the requirements of either 1 or 2, or both, as described in this Section.

**Section 2.** This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this 11<sup>th</sup> day of December, 2012.

	/s/ Micah Cawley Micah Cawley, Mayor	
ST:		

ATTEST:

<u>/s/ Sonya Claar Tee</u> City Clerk

Publication Date: December 14, 2012

Effective Date: January 13, 2013

#### **ORDINANCE NO. 2017-018**

#### AN ORDINANCE

amending the City of Yakima Municipal Code, Section 1.42.025: Membership—Appointment—Terms to change the term of a Planning Commission member from a 6 year term to a 4 year term.

**WHEREAS,** Yakima Municipal Code section 1.42.025 provides for six year terms for Planning Commission members; and

**WHEREAS,** RCW 35.63.030 provides that planning commission members may serve either a six year or a four year term, to be determined by the city council; and

**WHEREAS**, the City Council of the City of Yakima finds it is in the best interest of the City and its residents to reduce the term of a City of Yakima Planning Commission member from six years to four years; now, therefore,

#### BE IT ORDAINED BY THE CITY OF YAKIMA:

**Section 1.** Section 1.42.025 of the City of Yakima Municipal Code shall be amended to read as follows:

#### 1.42.025 Membership—Appointment—Terms

- A. The city planning commission shall consist of seven members appointed by the mayor and confirmed by the city council. The term of office for the first appointive members appointed to the city planning commission shall be designated from one to six years in such a manner as to provide the fewest possible terms will expire in any one year. Thereafter the term of office for each appointive member shall be four years.
- B. Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired term. Members may be removed, after public hearing, by the mayor, with the approval of the city council, for inefficiency, neglect of duty or malfeasance in office.
- C. The members of the city planning commission shall be selected without respect to political affiliation and they shall serve without compensation.
- D. No person shall serve more than two consecutive terms, provided a person appointed to fill unexpired terms of less than two years is eligible to serve two successive four-year terms; and provided further, a person who is ineligible to serve for having served two consecutive terms may again serve after two years have elapsed from the end of the second such term.

**Section 2.** This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

/s/ Kathy Coffey	
Kathy Coffey, Mayor	

ATTEST:

<u>/s/ Sonya Claar Tee</u> Sonya Claar Tee, City Clerk

Publication Date: June 23, 2017

Effective Date: July 23, 2017

# Chapter 1.42 PLANNING COMMISSION\*

#### Sections:

- 1.42.010 Planning commission—Authority.
- 1.42.020 Organization and procedures.
- 1.42.025 Membership—Appointment—Terms.
- 1.42.026 Residence of members.
- 1.42.027 Vacancy filling—Unexpired terms.
- 1.42.030 Duties.
- 1.42.070 Yakima urban area comprehensive plan—Adoption and amendment procedures.
- \* See Charter Article VIII, Section 1, Zoning—See Title <u>15</u> of this code.

# 1.42.010 Planning commission—Authority. SHARE

The city of Yakima planning commission shall have the full authority and jurisdiction to perform all acts, duties and functions which are either required of or imparted or conferred on a planning commission by law or ordinance. Provided, any duties or functions of the planning commission which are conferred on the office of hearing examiner shall be performed by such examiner. (Ord. 2010-22 § 1 (part), 2010: Ord. 2948 § 3 (part), 1986).

# 1.42.020 Organization and procedures. SHARE

The commission shall perform its duties and functions as the planning commission of the city of Yakima under the provisions and procedures of RCW Chapter 35.63. (Ord. 2010-22 § 1 (part), 2010: Ord. 2948 § 3 (part), 1986).

# 1.42.025 Membership—Appointment—Terms. ☐ SHARE

- A. The city planning commission shall consist of seven members appointed by the mayor and confirmed by the city council. The term of office for the first appointive members appointed to the city planning commission shall be designated from one to six years in such a manner as to provide the fewest possible terms will expire in any one year. Thereafter the term of office for each appointive member shall be four years.
- B. Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired term. Members may be removed, after public hearing, by the mayor, with the approval of the city council, for inefficiency, neglect of duty or malfeasance in office.
- C. The members of the city planning commission shall be selected without respect to political affiliation and they shall serve without compensation.
- D. No person shall serve more than two consecutive terms, provided a person appointed to fill unexpired terms of less than two years is eligible to serve two successive four-year terms; and provided further, a person who is ineligible to serve for having served two consecutive terms may again serve after two years have elapsed from the end of the second such term. (Ord. 2017-018 § 1, 2017: Ord. 2010-22 § 1 (part), 2010).

# 1.42.026 Residence of members. SHARE

No person shall hold the office of member of the city planning commission unless that person is either (1) a resident of the city of Yakima, or (2) an owner of a business or of real property that is located within the city of Yakima. The office of member of the city planning commission shall become vacant upon such member ceasing to meet the requirements of either subsection 1 or 2, or both, as described in this section. (Ord. 2012-55 § 1, 2012: Ord. 2010-22 § 1 (part), 2010).

# 1.42.027 Vacancy filling—Unexpired terms. SHARE

Vacancies occurring other than through the expiration of terms shall be filled by appointment as provided in YMC 1.42.025. (Ord. 2010-22 § 1 (part), 2010).

# 1.42.030 Duties. SHARE

The duties of the city planning commission shall be as set forth in RCW <u>35.63.060</u>, by city ordinance, or as may be assigned or requested from time to time by the city council. Such duties include, but are not limited to:

- 1. Serving as the long-range planning body for the city of Yakima;
- 2. Monitor the growth and development of the city and continually reevaluate and recommend to the city council revisions to the comprehensive plan and zoning ordinance for the city;
- 3. Develop and recommend to the city council a subdivision ordinance for the city and revisions thereto:
- 4. Investigate and make recommendations on other land use matters as may be requested by the city council or on its own initiative;
- 5. Study and report on all proposed text changes to land use ordinances;
- 6. Advise the city council on land use matters;
- 7. Monitor the hearings of the hearing examiner in order to remain informed on development activities, public concerns and the decisions of the hearing examiner;
- 8. Such other planning functions as authorized or required by law or ordinance or as requested or assigned by the city council. (Ord. 2010-22 § 1 (part), 2010: Ord. 2948 § 3 (part), 1986).

# 1.42.070 Yakima urban area comprehensive plan—Adoption and amendment procedures. SHARE

A. Plan Adoption. The Yakima urban area comprehensive plan ("the plan") shall consist of Yakima Urban Area Comprehensive Plan 2025, adopted by Ordinance No. 2006-62 on December 15, 2006, the Terrace Heights Neighborhood Plan adopted on June 4, 1999, and the West Valley Neighborhood Plan, as adopted. The plan and its elements and plans including those incorporated

by reference are hereby adopted as the official comprehensive land use plan for the city of Yakima, as required by Chapter <u>36.70A</u> RCW.

- B. Plan Amendments. Requests for amendments to the Yakima urban area comprehensive plan may be submitted in accord with YMC 16.10.030, and will be docketed for review and acted upon as provided in RCW 36.70A.130. Proposed amendments shall be considered concurrently to ascertain the cumulative effect of the various proposals. Initial adoption of subarea plans and the adoption or amendment of a shoreline master program are not subject to the docketing requirement, and may be considered independently of the annual amendment process. Amendments to the plan may also be considered whenever an emergency exists, or to resolve an appeal of the plan filed with the Eastern Washington Growth Management Hearings Board, following appropriate public participation.
- C. Amendment Review Process. Proposed amendments to the plan shall be submitted to the city of Yakima department of community and economic development, along with the required application fee, for review by the city planning commission. The city planning commission shall hold at least one public hearing to receive public testimony on proposed amendments, and shall forward its recommendation regarding proposed amendments to the city council. The city council shall hold at least one public hearing on the city planning commission's recommendation. The city council may refer any proposed amendment back to the city planning commission for further consideration and recommendation. The city council may amend the plan or reject any proposed amendments subsequent to the city council public hearing.
- D. Existing Land Use Regulatory Ordinances Remain in Effect. All existing land use regulatory ordinances and land use controls shall remain in effect, including Title 15, Yakima Urban Area Zoning Ordinance; city of Yakima official zoning map; Title 14, Subdivisions; YMC Chapter 6.88, Environmental Policy; and YMC Chapter 15.27, Critical Areas, until such time that these ordinances are amended. Future land use decisions shall be based upon these ordinances, as periodically amended.
- E. Severability. If any section, sentence, clause or phrase of the adopted Yakima urban area comprehensive plan should be held to be invalid or unconstitutional by any body or court with authority and jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of the adopted Yakima urban area comprehensive plan.
- F. Revival of 1997 Plan upon Invalidation. In the event that the 2006 Yakima urban area comprehensive plan, or any portion thereof, is invalidated by the Eastern Washington Growth Management Hearings Board, or any other body or court with authority and jurisdiction, the 1997 Yakima urban area comprehensive plan, or the relevant portions thereof, shall be revived and shall be in effect until a new comprehensive plan or new relevant portions are established. (Ord. 2013-021 § 1 (Exh. A), 2013: Ord. 2011-10 § 2, 2011; Ord. 2010-22 § 1 (part), 2010: Ord. 99-33 § 1, 1999; Ord. 97-22 § 2, 1997: Ord. 2579 § 1, 1981: Ord. 972 § 1, 1967: Ord. 779 §§ 1, 2, 1966).



Item No. 17.A.

For Meeting of: August 2, 2021

ITEM TITLE:	Confidential	
SUBMITTED BY:		
SUMMARY EXPLANATIO	N:	
ITEM BUDGETED:		
STRATEGIC PRIORITY:		
ADDDOVED FOR SUDMIT	TAL DYTHE CITYMANACED	
APPROVED FOR SUBMITTAL BY THE CITY MANAGER		
RECOMMENDATION:		
ATTACUMENTS.		
ATTACHMENTS:		
Description	Upload Date	Tvpe