

Chapter 14.30

FLOOD DAMAGE PREVENTION***Sections:**

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* Prior ordinance history: Ords. 885, 941 and 982.

14.30.010 Statutory authorization.

The Legislature of the state of Washington has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. (Ord. 1035 § 1.1, 1991)

14.30.020 Findings of fact.

(a) Flood hazard areas of Sumas are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss. (Ord. 1035 § 1.2, 1991)

14.30.030 Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money and costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions. (Ord. 1035 § 1.3, 1991)

14.30.040 Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes methods and provision for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or may increase flood hazards in other areas. (Ord. 1035 § 1.4, 1991)

14.30.050 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

"Appeal" means a request for a review of the Sumas utility superintendent's interpretation of any provision of this chapter.

"Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps will be marked with letter A or V.

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year. Also referred to as the "one-hundred year flood." Designation on maps always includes the letter A or V.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Critical facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations which produce, use, or store hazardous materials or hazardous waste.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

"Flood" or "flooding" means a general and temporary condition or partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Insurance Administration 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 Insurance Administration that included flood profiles, and the Flood Boundary Floodway Map, and the water surface elevation of the base flood.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonele-

vation design requirements of this chapter found at Section 14.30.130(1)(B).

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

"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.

"Recreational vehicle" means a vehicle:

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

"Special flood risk zone" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the one-hundred-year flood without cumulatively increasing the water surface elevation more than one foot. The map on file in the office of the city clerk-treasurer illustrates the special flood risk zone with noted exceptions.

"Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

"Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

Substantial Improvement.

(1) "Substantial improvement" means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either:

(A) Before the improvement or repair is started; or

(B) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structures.

(2) The term does not, however, include either:

(A) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

(B) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief from the requirement of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

"Water-dependent" means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. (Ord. 1399 § 1, 2004; Ord. 1216 § 1, 1997; Ord. 1176 § 13, 1996; Ord. 1035 § 2, 1991)

14.30.060 Lands to which this chapter applies.

This chapter addresses all lands within the city of Sumas. There shall be an area designated as "special flood hazard zone." (Ord. 1035 § 3.1, 1991)

14.30.070 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in flood insurance study number 53073CV000A entitled "Flood Insurance Study, Whatcom County, Washington (All Jurisdictions)" published May 30, 2003, and in the accompanying Flood Insurance Rate Maps with panel numbers 53073C0218D, 53073C0219D, 53073C0731D, and 53073C0732D are adopted by reference and declared to be a part of this chapter. The flood insurance study and accompanying maps are on file at 433 Cherry St., Sumas, Washington. (Ord. 1376 § 1, 2003; Ord. 1035 § 3.2, 1991)

14.30.080 Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted or altered without full com-

pliance with the terms of this chapter and other applicable regulations. Violation of the provisions of the chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than five hundred dollars or imprisoned for not more than ninety days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 1035 § 3.3, 1991)

14.30.090 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and other ordinances, easements, covenants, or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 1035 § 3.4, 1991)

14.30.100 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 1035 § 3.5, 1991)

14.30.110 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of Sumas, any officer or employee thereof, of the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. (Ord. 1035 § 3.6, 1991)

14.30.120 Flood hazard reduction—General standards.

In all areas of special flood hazards, the following standards are required:

(1) Anchoring.

(A) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(B) All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

(2) Construction Materials and Methods.

(A) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(B) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(C) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) Utilities.

(A) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(B) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discard from the systems into floodwaters; and

(C) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(4) Subdivision Proposals.

(A) All subdivision proposals shall be consistent with the need to minimize flood damage;

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

(D) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least fifty lots or five acres (whichever is less).

(5) Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source (Section

14.30.170(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates. (Ord. 1035 § 3.7, 1991)

14.30.130 Flood hazard reduction—Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 14.30.070, Basis for establishing the areas of special flood hazard, or Section 14.30.170(2), Use of Other Base Flood Data, the following provisions are required:

(1) Residential Construction.

(A) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to one or more feet above the base flood elevation.

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

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

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

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

(2) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of one or more feet above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

(A) Be floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water; to an elevation one or more feet above the base flood elevation;

(B) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(C) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/of review of the structural design, specifications and plans. Such certification shall be provided to the official as set forth in Section 14.30.170(3)(B).

(D) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (1)(B) of this section.

(E) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be

based on rates that are one foot below the floodproofed level, e.g., a building constructed to the base flood level will be rated as one foot below that level. (Ord. 1105 § 1, 1993; Ord. 1089 § 1, 1993; Ord. 1035 § 3.8, 1991)

14.30.140 Development permit.

(a) A development permit shall be obtained before construction or development begins within any area of special flood hazard established in section 14.30.070. The permit shall be for all structures including manufactured homes, as set forth in Section 14.30.050, and for all other development including fill and other activities, also as set forth in Section 14.30.050. The permit shall be processed as a Class I action pursuant to the provisions of Chapter 20.08 of this code.

(b) Application for a development permit shall be made on forms furnished by the Sumas city utilities superintendent and may include but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the areas in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information required:

- (1) Elevation in relation to mean sea level, of the lowest floor (including the basement) of all structures;
- (2) Elevation in relation to mean sea level to which any structure has been;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 14.30.130(2); and
- (4) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development. (Ord. 1176 § 14, 1996; Ord. 1035 § 4.1, 1991)

14.30.150 Flood risk zone permit.

Development in the flood risk zone other than the following shall require a floodplain permit:

- (1) Minor structures and additions for which a building permit is not required and which create no new residence.
- (2) Fills of less than twelve cubic yards or which will not raise the level of the land above that of the surrounding area.
- (3) Normal maintenance, resurfacing and rebuilding, at comparable grade of streets, and accessways.
- (4) Underground improvements and excavations.
- (5) Maintenance and minor repair of existing improvements.
- (6) Improvements to structures listed on the National or State Register of Historic Places.

(7) Other minor developments which cause no significant impoundment or displacement of floodwaters, such as open fences, signs, and small unenclosed structures.

Application shall be made to the utilities superintendent utilizing a form substantially as appears in the back of this chapter. The application fee shall be as established in Chapter 20.108. (Ord. 1176 § 64, 1996; Ord. 1035 § 4.2, 1991)

14.30.160 Designation of the city utilities superintendent.

The Sumas city utilities superintendent is appointed as administrator of this chapter and is authorized to grant or deny development permit applications in accordance with its provisions. (Ord. 1176 § 15, 1996; Ord. 1035 § 4.3, 1991)

14.30.170 Duties and responsibilities of the city utilities superintendent.

Duties of the Sumas city utilities superintendent shall include, but not be limited to:

- (1) Permit Review.
 - (A) Review all development permits to determine that the permit requirements of this chapter have been satisfied.
 - (B) Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
 - (C) Review all development permits to determine if the proposed development is located in the special flood risk zone. If located in the special flood risk zone assure that encroachment provisions are met.
- (2) Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 14.30.070 Basis for establishing the areas of special flood hazard, the Sumas city utilities superintendent will obtain, review, and reasonably utilize any base flood elevation information.
 - (3) Information to be Obtained and Maintained.
 - (A) Where base flood elevation data is provided through the Flood Insurance Study or Required as in subsection (2) of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
 - (B) For all new or substantially improved flood-proofed structures:
 - (i) Verify and record the actual elevation (in relation to mean sea level) and

(ii) Maintain the floodproofing certifications required in Section 14.30.140(b)(3)

(C) Maintain for public inspection all records pertaining to the provisions of this ordinance.

(4) Alteration of Watercourses.

(A) Notify adjacent communities and the state of Washington, Department of Ecology, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

(B) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(5) Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 14.30.180. (Ord. 1035 § 4.4, 1991)

14.30.180 Appeal board.

(a) A request for a variance from the requirements of this chapter shall be processed as a Class III action pursuant to the provisions of Chapter 20.08 of this code.

(b) An appeal of any requirement, decision, or determination made by the utilities superintendent in the enforcement or administration of this chapter shall be processed pursuant to the provisions of Section 20.08.150 of this code.

(c) Those aggrieved by the decision of the Sumas city council, or any taxpayer, may appeal such decision to the Whatcom County superior court, as provided by law for the appeal of Sumas city council decisions.

(d) In passing upon such applications, the Sumas city council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

(1) The danger that materials may be swept on other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity to the facility of a waterfront location, where applicable;

(6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(9) The safety of access to the property in time of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, expected at the site; and

(11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(e) Upon consideration of the factors of subsection (d) of this section and the purpose of this chapter, the Sumas city council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(f) The Sumas city utilities superintendent shall maintain the records of all appeal actions and report and variances to the Federal Insurance Administration upon request. (Ord. 1176 § 16, 1996; Ord. 1035 § 4.5-1, 1991)

14.30.190 Conditions for variances.

(a) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acres or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in subsections (d)(1) through (11) of Section 14.30.180 have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.

(b) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth this section.

(c) Variances shall not be issued within the special flood risk zone if any increase in flood levels during the base flood damage would result.

(d) Variances shall only be issued upon a determination that the variance is the minimum necessary.

(e) Variances shall only be issued upon:

(1) A showing of good and sufficient cause;

(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant;

(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 14.30.180(d), or conflict with existing local laws or ordinances.

(f) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

(g) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection (a) of this section and otherwise complies with Section 14.30.120(1) and (2).

(h) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (Ord. 1176 § 17, 1996; Ord. 1035 § 4.5-2, 1991)

14.30.200 Special flood risk zone.

Development other than the following is prohibited in the special flood risk zone:

(1) Minor structures and additions for which a building permit is not required and which create no new residences;

(2) Minor fills and excavations of less than twelve cubic yards which will not raise the level of land above that of the surrounding area;

(3) Normal maintenance, resurfacing and rebuilding at comparable grade of bridges, streets and accessways;

(4) Underground improvements;

(5) Maintenance, repair, alterations and like replacement of existing improvement;

(6) Other minor development which causes no significant impoundment or displacement of floodwaters, such as open fences, signs and small unenclosed structures;

(7) Developments wherein any floodwater blockage effect is at least equally balanced by excavation or removal of structures elsewhere in the special flood risk zone such that, in the opinion of the city utility superintendent or his designee with such evidence as he shall require, the overall capacity to convey floodwaters is not reduced.

Such excavations or structures removed shall not then be eligible for replacement under subsection (5) of this section. Documentation of development in accordance with this part shall be retained by the city to demonstrate no net floodwater blockage increase.

The city utility superintendent or his/her designee may require that suitable notification be provided for any development undertaken pursuant to this subsection as a result of the excavation or removal of structures elsewhere in the special flood risk zone indicating that such excavations or structures removed are not eligible for replacement, including the recording thereof.

(8) Elevated structures which allow floodwaters to flow underneath and which meet the following criteria:

(A) All structures shall be elevated so that the lowest supporting member is located no lower than one foot above the one-hundred-year flood elevation, with all space below the lowest supporting member open so as not to impede the flow of water, except for breakaway walls as provided below.

(B) Breakaway walls are allowed below the base flood elevation provided they are not a part of the structural support of the building and are designed so as to break away in the event of flood without damage to the structural integrity of the building on which they are to be used. If breakaway walls are to be utilized, such enclosed space shall not be used for human habitation.

(C) All structures shall be securely anchored on piling, columns, or foundation walls oriented to the axis of the flow path as determined by the city superintendent. Said support elements shall be certified by a registered professional engineer or architect as capable of withstanding all applied loads of the one-hundred-year flood flow.

(D) There shall be no fill used for structural support.

If existing elevation can be shown to be higher than the base flood elevation then that area shall be considered outside (or exempt from) the special flood risk zone. (Ord. 1373 § 1, 2003; Ord. 1035 § 5.1, 1991)

14.30.205 Special flood corridor.

(a) Prohibited Development. Development other than the following is prohibited within a special flood corridor:

(1) Minor structures and additions for which a building permit is not required and which create no new residences;

(2) Normal maintenance, resurfacing, and rebuilding at comparable grade of bridges, streets and accessways;

(3) Underground improvements;

(4) Maintenance, repair, alteration, and like replacement of existing improvement;

(5) Other minor development which causes no significant impoundment or displacement of floodwaters, such

as open fences, signs, and small unenclosed structures. (Ord. 1216 § 2, 1997)

14.30.210 Critical facilities.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the base floodplain. Construction of new critical facilities shall be permissible within the base floodplain if no feasible alternative site is available. Critical facilities constructed within the base floodplain shall have the lowest floor elevated to three feet or more above the level of the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base floodplain shall be provided to all critical facilities to the extent possible. (Ord. 1035 § 5.2-2, 1991)

14.30.220 Manufactured homes.

All manufactured homes to be placed or substantially improved within Zones A1—30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot or more above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 14.30.120(1). (Ord. 1399 § 2, 2004; Ord. 1035 § 5.2-3, 1991)

14.30.230 Recreational vehicles.

Recreational vehicles placed on sites are required to either:

- (1) Be on the site for fewer than one hundred eighty consecutive days;
- (2) Be fully licensed and ready for highway use, on wheels or jacking system, attached to the site only by quick-disconnect type utilities and security devices, and have no permanently attached additions; or
- (3) Meet the requirements of Section 14.30.220 and the elevation and anchoring requirements for manufactured homes. (Ord. 1399 § 3, 2004)

14.30.240 Encroachments.

The cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point. (Ord. 1035 § 5.4, 1991)

Chapter 15.20**CRITICAL AREAS****Sections:**

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15.20.010 Authority.

This chapter is adopted under the authority of Chapters 36.70 and 36.70A RCW. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.020 Purpose and intent.

A. The intent of this chapter is to identify and define the types and qualities of certain critical areas within the Sumas community which contribute to or affect public health, safety and general welfare; and to protect those critical areas deemed important by the citizens of Sumas, the state of Washington, and the federal government. Critical areas addressed in this chapter include:

1. Geologically hazardous areas;
2. Upland wildlife habitat conservation areas; and
3. Aquifer recharge areas.

B. The purpose of this chapter is to provide understandable and reasonable requirements for the use and development of land in proximity to critical areas. The requirements set forth herein are adopted in order to:

1. Minimize development impacts and protect the beneficial uses, natural functions and values of critical areas;
2. Prevent erosion and loss of slope and soil stability caused by grading or alteration of earth surfaces and removal of trees, shrubs and root systems of vegetative cover;
3. Protect the public against potentially avoidable losses from landslide, subsidence, and erosion; and
4. Meet the requirements of the Washington Growth Management Act (Chapter 36.70A RCW) with respect to the protection of critical areas. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.030 Interpretation.

In the interpretation and application of this chapter, all provisions shall be considered to be the minimum necessary and shall be liberally construed to serve the purposes of this chapter. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.040 Relationship to other regulations.

A. The regulations contained in this chapter shall apply as an overlay to other regulations established by the city. In the event of any conflict between these regulations and any other regulations, the more restrictive shall apply.

B. Regulation of frequently flooded areas as required by Chapter 36.70A RCW and Chapter 365-190 WAC is provided through the flood damage prevention ordinance codified in Chapter 14.30.

C. Regulation of most wetlands is provided through the shoreline master program codified in Chapter 15.04.

D. Regulation of fish habitat conservation areas and of riparian wildlife habitat conservation areas is provided through the shoreline master program codified in Chapter 15.04. Only upland wildlife habitat conservation areas not subject to shoreline master program jurisdiction are regulated pursuant to this chapter.

E. Compliance with the provisions of this chapter shall not be construed as constituting compliance with any other applicable regulation.

F. These regulations are additional to, and coordinate with, the Sumas comprehensive plan, the shoreline master program, the flood damage prevention ordinance, and other applicable regulations adopted by the city of Sumas. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.050 Applicability and jurisdiction.

This chapter shall apply to all land, all land uses and development, and all structures and facilities within the city of Sumas, except as specifically exempted under Section 15.20.090. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.070 Authorization required.

A. No development activity or alteration of land, water or vegetation within a critical area or its standard buffer, except as specifically allowed under Section 15.20.090, shall be allowed without prior authorization from the zoning administrator. Said authorization shall document compliance with the procedural and substantive requirements of this chapter.

B. The city of Sumas shall ensure that the provisions of this chapter are applied in conjunction with review of applications for the following permits and approvals:

1. Building permit;
2. Conditional use permit;
3. Fill and grade permit;
4. SEPA determination;
5. Shoreline conditional use permit;
6. Shoreline substantial development permit;
7. Shoreline variance;
8. Short subdivision;
9. Subdivision;
10. Zoning variance;
11. Zoning code amendment. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.080 Critical area review requirements.

A. Unless otherwise provided in this chapter, the city of Sumas shall complete a critical areas review prior to granting any permit or approval for a development activity or other alteration which is found likely to include, be adjacent to, or likely to affect the function of one or more critical areas.

B. As part of this review, the zoning administrator shall:

1. Verify the information provided by the applicant;
2. Confirm the nature, extent and type of any critical area identified;
3. Evaluate any required detailed studies;

4. Assess the impacts to critical areas likely to result from the proposed activity;

5. Determine whether the proposed activity is consistent with the purposes of this chapter;

6. Determine whether the proposed activity conforms to the applicable performance requirements included in this chapter; and

7. Determine whether the mitigation proposed by the applicant is sufficient to protect critical areas or adequately mitigate for potential impacts to critical area functions, and address public health, safety and welfare concerns consistent with the purpose and intent of this chapter.

C. Unless otherwise indicated, the applicant shall be responsible for the preparation, submission and expense of any required assessments, reconnaissances, studies, plans and all other work in support of the application.

D. Any proposed activity requiring critical area review shall be conditioned as necessary to mitigate impacts to critical areas and conform to the applicable performance requirements.

E. Any project that cannot adequately mitigate its impacts to critical areas shall be denied.

F. In circumstances where the protective provisions for more than one critical area apply to a specific location, the most restrictive regulations shall apply. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.090 Exemption from critical area review requirements.

A. Subject to the limitations established in subsections (B), (C), (D) and (E) of this section, the following developments, associated uses and activities shall be exempt from the critical area review procedures established in this chapter:

1. Emergency activities necessary to reduce or prevent an immediate threat to public health, safety and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this chapter. The person or agency undertaking such emergency action shall notify the zoning administrator within one working day or as soon as practical following commencement of the emergency activity. Following such notification, the zoning administrator shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the zoning administrator determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provisions of Section 15.20.460 shall apply. The approval of an exemption for an emergency activity does not eliminate the need for later mitigation to offset

the impacts of the activity. Once the immediate threat has been addressed, any adverse impacts on critical areas must be minimized and mitigated.

2. Existing activities defined as ongoing agriculture, including related development and activities which do not result in expansion into a critical area or its standard buffer.

3. Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, ponds, or public and private roads and driveways associated with existing residential or commercial development.

4. Normal maintenance, repair, or operation of existing structures, facilities, and improved areas accessory to a single-family residential use.

5. Modification of any existing residence that does not add to or alter the existing use and does not expand the building footprint or increase septic effluent.

6. Construction of a residential structure upon the following soil classifications is exempt from review as a geologically hazardous area; provided, that the structure is designed in accordance with the Sumas building code as adopted in Chapter 14.02: 107 Mt. Vernon fine sandy loam, 123 Puget silt loam, 22 Briscot silt loam, 115 Oridia silt loam, 162 Sumas silt loam.

7. Activities involving artificially created wetlands or artificial watercourses intentionally created from non-wetland sites, including, but not limited to, grass-lined swales, irrigation and drainage ditches, stormwater detention facilities, and landscape features, except those features which were created as mitigation pursuant to city, state, or federal regulations.

8. Outdoor recreational activities which do not adversely impact critical areas or their buffers.

9. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling soil, planting crops, or changing existing topography, water conditions or water sources.

10. The lawful operation and maintenance of public and private diking and drainage systems which protect life and property; provided, that the activity does not further drain wetlands or further encroach on critical areas or their buffer. Maintenance of agricultural ditches should be limited to removing sediment in existing ditches to a depth equal to the depth at date of last maintenance.

11. Education and scientific research activities which do not adversely impact critical areas or their buffers.

12. Site investigation work necessary for land use applications such as surveys, soil logs, percolation tests and other related activities which do not adversely impact critical areas or their buffers. In every case, critical area

impacts shall be minimized and disturbed areas shall be immediately restored.

13. Maintenance activities such as mowing and normal pruning; provided, that such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity.

14. Habitat enhancement activities not required as mitigation; provided, that the project is approved by the U.S. Department of Fish and Wildlife, the U.S. Army Corps of Engineers, the U.S. Department of Agriculture, the Washington State Department of Fish and Wildlife or the Washington State Department of Ecology.

B. Exemption from critical areas review shall not constitute exemption from any other applicable provision of the Sumas Municipal Code.

C. Exempt activities shall use reasonable methods or accepted best management practices to reduce potential impacts to critical areas and/or to restore impacted critical areas to the extent feasible following completion of exempt activities. To be exempt does not give permission to destroy a critical area or critical area buffer or to ignore risk from a natural hazard.

D. If a nondevelopment activity (not otherwise requiring a development permit or approval) meets any of the exemption criteria listed under subsection (A) of this section and adheres to the requirements established under subsection (C) of this section, then critical area review shall not be required and the activity may proceed without action by the zoning administrator.

E. If a proposed development activity meets any of the listed exemption criteria, then exemption from critical areas review shall be established through the following procedure:

1. The applicant shall submit an exemption request to the zoning administrator. The request shall describe the proposed project in writing and state the criteria listed in this section which apply.

2. The zoning administrator shall review the exemption request for compliance with this chapter and make a determination, in writing, either certifying or rejecting the exemption.

3. A copy of the exemption request and subsequent determination shall be included in the file for the proposed development activity. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.100 Waiver for subsequent approvals.

A. Critical area review requirements may be waived in conjunction with review of a building permit application when all of the following conditions are met:

1. The provisions of this chapter have been addressed fully through previous critical areas review of a development approval (such as a subdivision, conditional use, or other permit identified under Section 15.20.070(B));

2. The subsequent construction activity complies fully with the conditions established as part of the initial land use approval; and

3. No substantial changes in the nature or extent of the approved activity have been made.

B. Requests for such waivers shall be submitted in writing to the zoning administrator and shall include the following:

1. Description of the proposed activity and citation of the previous approval;

2. Identification of any changes in the nature or extent of the proposed activity subsequent to the previous approval; and

3. Documentation of compliance or substantiation of plans for compliance with all critical areas conditions imposed as part of the previous approval.

C. The zoning administrator shall review the waiver request and shall certify or reject the request based on demonstration of compliance with this chapter.

D. A copy of the waiver request and subsequent determination shall be included in the file for the proposed construction activity. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.105 Critical area maps.

A. In conjunction with adoption of this chapter, the city council shall adopt maps indicating the locations of known or potential aquifer protection areas, geologically hazardous areas, and upland wildlife habitat conservation areas within the city of Sumas. These maps shall be based on the best available scientific information and shall include natural resource information gathered through field inventory, as well as information prepared by state and federal natural resource agencies. These maps shall be hereafter referred to as the "critical area maps" of the city of Sumas. These maps shall be updated periodically to reflect new information and shall be made available to the public upon request.

B. The critical area maps shall be utilized as a source of generalized information and shall not be considered as absolute regulatory standards or as substitutes for site-specific assessment. The actual type, extent and boundaries of critical areas shall be determined by a qualified consultant on a site-specific basis according to the provisions established in this chapter. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.180 Application and fees.

For any proposed activity not found to be exempt pursuant to Section 15.20.090, the applicant shall provide critical areas information in conjunction with an application for any of the permits or approvals identified under Section 15.20.070(B). Such information shall be submitted on forms provided by the city. Minimum fees for processing of critical areas review and other services provided pursuant to this chapter shall be as established in Chapter 20.108. In addition to the established minimum fees, the applicant shall pay any cost incurred by the city for services provided by a qualified consultant retained by the city to perform critical areas review. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.190 Threshold determination.

A. Upon receipt and review of a properly completed application, the zoning administrator shall visit the subject property and make a threshold determination.

B. If the zoning administrator finds either that the project site includes or is adjacent to a known or potential critical area, or that the project could affect a critical area or critical area buffer, then the zoning administrator shall issue a written determination that a detailed study is required for each of the critical areas indicated.

C. If the zoning administrator finds substantial evidence that:

1. There will be no alteration of a critical area or its standard buffer; and

2. The development proposal and its likely impacts are consistent with the purpose, intent and requirements of this chapter; and

3. The performance requirements established by this chapter will be met;

then the zoning administrator may issue a written determination, including substantiating findings, that no detailed study is required. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.200 Detailed study.

A. If a detailed study is determined to be necessary, the applicant shall be responsible for making arrangements for preparation of the study by a qualified consultant for the type of critical area(s) involved.

B. The detailed study shall include a thorough investigation of the identified critical area(s), resulting in the submission of a report which, at a minimum, shall include the following:

1. Complete description of the proposed development;

2. Site plan of existing conditions at the project site, drawn accurately to scale, showing the type, location, boundary, and extent of critical areas and critical area

buffers (the plan must show property boundaries, north arrow, topography, and the environs within two hundred feet of the project parcel);

3. Description of the surrounding properties and uses;

4. Detailed description of each critical area, its functions, values and/or associated hazard;

5. Discussion of the impacts likely to result from the project, including probable impact on the function, value or hazard associated with the critical area resulting from the proposal;

6. Proposed mitigation measures or a mitigation plan consistent with Section 15.20.230(B); and

7. Site plan of proposed conditions at the project site, using the existing-conditions plan described above as a base map;

8. Qualifications of consultant(s) who prepared the study along with a description of the methods used.

C. The zoning administrator may approve modifications to the content requirements of the study where more or less information is deemed necessary to adequately address the critical area, the project's potential impacts, and proposed mitigation. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.210 Final determination.

A. Following submission of a detailed study that is both complete and accurate, the zoning administrator shall make a final written determination. The determination shall address the adequacy of the project, as proposed, to mitigate potential effects on the critical areas in question and to comply with applicable performance requirements. The determination shall be either favorable or unfavorable.

B. A favorable determination shall be issued only if the proposed project is found to adequately mitigate its impacts on the critical areas and to comply with applicable performance requirements.

C. An unfavorable determination shall be issued if it is found that the proposed project does not adequately mitigate its impacts to critical areas and/or does not comply with applicable performance requirements. The determination shall indicate the reasons for the finding and the areas of noncompliance. This determination may (at the zoning administrator's discretion) include recommendations for bringing the proposal into compliance. In response to an unfavorable determination, the applicant may request reconsideration of a revised mitigation plan. If the revisions are found to be substantial and relevant to the critical area review, the zoning administrator may reopen the review and make a new determination.

D. If at any time prior to issuance by the city of an associated permit or approval, the zoning administrator

receives reliable new information that a critical area may be impacted by the proposed activity, then the critical area review process shall be reopened pursuant to this chapter.

E. Once all associated permits and approvals have been issued by the city, the final determination may not be reopened by the city and shall be considered final unless appealed pursuant to Section 20.08.150. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.230 Critical area mitigation—Generally.

A. All proposed critical area alterations shall include mitigation: (a) necessary to prevent or reduce risk from a hazard posed by a critical area; or (b) sufficient to maintain the functions and values of the critical area or compensate for the lost functions and values. Mitigation shall include avoiding, minimizing, and/or compensating for adverse impacts to regulated critical areas through the following methods, and in the following order of priority:

1. Avoiding the impact altogether by not taking a certain action;

2. Minimizing the impacts by limiting the degree or magnitude of an action or by otherwise adjusting the action so as to reduce or avoid impacts;

3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area to the conditions in existence prior to the start of the project;

4. Reducing or eliminating the impact over time through preservation and/or maintenance through the course of the action; and

5. Compensating for the impact by replacing impacted areas, or by creating or enhancing substitute resources including city-approved mitigation banks.

B. All proposed mitigation shall be contained in a proposed mitigation plan which shall be included as part of the detailed study. The mitigation plan shall describe the following:

1. The mitigation being proposed;

2. How the proposed mitigation will either maintain the functions and values of the critical area or compensate for any losses to critical area functions and values, or reduce potential risks posed by the critical area;

3. Monitoring and/or inspections that are deemed necessary to ensure the adequacy of the proposed mitigation;

4. Remedial measures that may be necessary based on the results of monitoring and/or inspection;

5. Professional expertise necessary to install, maintain, monitor or inspect proposed mitigation measures; and

6. Any bonding deemed necessary to ensure performance and/or maintenance of the proposed mitigation. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.240 Bonding.

A. The zoning administrator shall have the authority to require a bond in cases where components of the mitigation plan, such as restoration, monitoring or maintenance, are likely to take place after issuance of the associated permit or approval by the city.

B. The bond shall be in the form of either a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney.

C. The bond shall be in the amount of one hundred twenty-five percent of either the estimated cost of the uncompleted mitigation measures, or the estimated cost of restoring the functions and values of the critical areas at risk, whichever is greater.

D. The period of the bond shall be three years, or until the additional activity or construction has been completed and passed the necessary inspections, whichever is longer. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.320 Upland wildlife habitat conservation areas designation.

Upland wildlife habitat conservation areas (HCA) shall be designated based on meeting any one of the following criteria:

A. Areas with which endangered, threatened, and sensitive species have a primary association;

B. Habitats and species of local importance that have been designated by the city at the time of application;

C. State Natural Area Preserves and Natural Resource Conservation Areas. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.340 Upland wildlife HCA indicators.

The zoning administrator shall use the following as indicators of the need for a wildlife HCA detailed study:

A. The site is located within an area listed as a wildlife HCA in the city critical areas inventory and critical area maps;

B. Documentation through any public resource information source that a wildlife HCA exists on or adjacent to the site;

C. A finding by a qualified wildlife biologist that the presence of a wildlife HCA is likely;

D. A reasonable belief by the zoning administrator based on local information that a wildlife HCA may exist on or adjacent to the site. Such a belief shall be supported through consultation with a qualified consultant. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.350 Upland wildlife HCA detailed study requirements.

A wildlife HCA detailed study, if required, shall be prepared by a qualified wildlife biologist and shall include the following, in addition to the minimum requirements established in Section 15.20.200(B):

A. Description of the biotic and abiotic conditions of the entire parcel and its environs that includes, at a minimum, a description of soils, vegetation and hydrology.

B. A description and an assessment of the functions and values of the habitat area, including a discussion of the following:

1. The species in question and the related plant and animal species and habitat;
2. Soils;
3. Hydrology;
4. Buffer size and function;
5. Enhancement potential;
6. Presence of sensitive, threatened or endangered plants or animals;
7. Uniqueness of the habitat to the area or in general;
8. Water quality functions;
9. Habitat diversity;
10. Wildlife corridors and linkages to other habitats;
11. Aesthetics or other appropriate functions.

C. A regulatory analysis, including a discussion of any federal, state, tribal and/or local requirements or management recommendations that have been developed for the species and/or habitats in question. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.360 Upland wildlife HCA performance requirements.

At the time of adoption of the ordinance codified in this chapter, no regulated upland wildlife HCAs have been identified within the city of Sumas or its urban growth area. Should such an area be identified at some time in the future, the applicable performance requirements shall be as follows:

A. Bald Eagle Habitat. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). A habitat management plan shall be developed whenever a project is proposed near a verified nest territory or communal roost.

B. Performance requirements for all other upland wildlife habitats shall be established at the time such habitats are identified within the city of Sumas. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.380 Geologically hazardous areas classification and designation.

Geologic hazard areas shall be classified as steep slopes, earthquake-sensitive areas and volcanic debris flow areas based on the following criteria:

A. Steep Slopes. Steep slopes shall include all areas with a slope inclination greater than or equal to thirty-five percent with a vertical relief of ten or more feet.

B. Earthquake-Sensitive Areas. Earthquake-sensitive areas shall include all areas underlain by the following soil types, as defined in the Soil Conservation Service's 1992 Soil Survey of Whatcom County Area, Washington: 144 Shalcar soil, 116 Pangborn muck, 107 Mt. Vernon fine sandy loam, 123 Puget silt loam, 22 Briscot silt loam, 115 Oridia silt loam, 162 Sumas silt loam.

C. Volcanic Debris Flow Areas. Volcanic debris flow areas shall include all areas within the one-hundred-year floodplain as designated in Chapter 14.30, Flood Damage Prevention. Due to the relatively low frequency of catastrophic volcanic debris flow events, the protective measures contained in Chapter 14.30 are deemed sufficient to reduce potential risks from such events to acceptable levels.

Areas that meet any of the classification criteria established above shall be designated as geologic hazard areas and shall be subject to the provisions of this chapter. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.390 Geologically hazardous areas indicators.

The zoning administrator shall use the following as indicators of the need for a geologically hazardous area detailed study:

A. The site is located within forty feet of an area shown as steep slope or as an earthquake-sensitive area on the city critical area maps. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.400 Geologically hazardous areas detailed study requirements.

A geologically hazardous area detailed study shall be prepared by a registered geologist or geotechnical engineer and shall include the following, in addition to the minimum requirements established in Section 15.20.200(B):

A. An assessment of the geologic and engineering characteristics of the proposed site.

B. A geotechnical analysis of the project in relation to the proposed site, including discussion of potential impacts on the hazard area, the project site and adjacent properties. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.410 Geologically hazardous areas performance requirements.

Alteration of a steep slope or earthquake-sensitive area or a site within fifty feet of such area shall only be permitted if the detailed study indicates that the project has been designed such that the risks associated with the hazard area have been reduced to within acceptable levels. Such mitigation of risks shall be certified by a geotechnical engineer. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.420 Aquifer recharge area designation.

Aquifer recharge areas shall be designated based on meeting any one of the following criteria:

A. Wellhead protection areas designated per Chapter 246-290 WAC;

B. Sole source aquifers designated by the U.S. EPA per the Federal Safe Drinking Water Act;

C. Areas designated for special protection as part of a groundwater management program per Chapter 90.44, 90.48 or 90.58 RCW or Chapter 173-100 or 173-200 WAC. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.430 Aquifer recharge area detailed study requirements.

All proposals that require SEPA review and are located within a designated aquifer recharge area shall be reviewed by the zoning administrator to determine the potential for adverse impacts to groundwater resources. If the potential for significant adverse impacts is present, then the zoning administrator shall require preparation of an aquifer recharge area detailed study. The detailed study shall be prepared by a qualified consultant with experience in preparing hydrogeologic site assessments. Evidence of these qualifications shall be included within the study. The detailed study shall include the following, in addition to the minimum requirements established in Section 15.20.200(B):

A. A description of the existing hydrogeologic conditions of the project site and the proposed activity's potential to result in contamination of groundwater resources. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.440 Aquifer recharge area performance requirements.

Activities requiring preparation of an aquifer recharge area detailed study shall only be permitted if the detailed study indicates that the activity does not pose a significant threat to the underlying aquifer system. The zoning administrator shall establish mitigating conditions necessary to ensure protection of groundwater resources. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.450 Reasonable use exceptions.

A. An exception from the provisions of this chapter may be granted by the city council. An application for an exception shall be processed as a Class III action pursuant to the provisions of Chapter 20.08. A filing fee as established in Chapter 20.108 shall be paid to the city clerk-treasurer at the time of application.

B. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision on the application will be made. The city council shall grant such an exception only when the applicant demonstrates that the requested exception is consistent with all of the following criteria:

1. Special circumstances and conditions exist which are peculiar to the land or lot, and which are not applicable to other lands or lots;

2. The special conditions or circumstances are not the result of actions taken by the applicant;

3. Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties under the terms of this chapter;

4. The granting of the exception requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances;

5. The granting of the exception is consistent with the general purpose and intent of this chapter and will not create significant adverse impacts to the identified critical areas or otherwise be detrimental to public health, safety, or welfare.

C. In granting any exception, the city council may prescribe such conditions and safeguards as are deemed necessary to secure adequate protection of critical areas, public health, safety and welfare, and to ensure conformity with this chapter.

D. If the city council decides to grant the exception, the city council shall make a finding that the reasons set forth by the applicant justify the granting of the exception, and that the exception granted is the minimum necessary to allow reasonable use of land, buildings or structures.

E. In granting any exception, the city council may prescribe time limits within which the action for which the exception is requested shall commence or be completed or both. Failure to conform to any such time limits shall void the exception. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.460 Enforcement.

The zoning administrator is authorized to make site inspections and take such actions as necessary to administer and enforce this chapter. City representatives shall make a reasonable effort to contact the property owner

before entering onto private property. Activities found to be not in compliance with this chapter or any applicable performance requirements or any conditions established through the critical areas review and approval process, such as required mitigation, shall be subject to enforcement actions necessary to bring the activity into compliance. The city shall have the authority to require restoration, rehabilitation or replacement measures to compensate for violations of this chapter which result in destruction, degradation, or reduction in function of critical areas or required buffer areas. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.470 Violations and penalty.

A. Violation—Penalty. Each day that a violation of this chapter continues shall constitute a separate offense and be punishable as such. Any violation of this chapter shall be punished as follows:

1. First Offense. The first offense shall be punished by a penalty of not more than two hundred fifty dollars, including all costs and assessments, and not less than one hundred fifty dollars, which minimum amount shall not be suspended or deferred.

2. Second Offense. The second offense within a five-year period shall be punished by a penalty of not more than five hundred dollars, including all costs and assessments, and not less than two hundred dollars, which minimum amount shall not be suspended or deferred.

3. Third or Subsequent Offense. A person committing a third or subsequent offense within a five-year period shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one thousand dollars or imprisonment in jail not to exceed ninety days or by both such fine and imprisonment. The minimum sentence shall be two hundred fifty dollars, which amount shall not be suspended or deferred.

Law enforcement officers commissioned by the city are authorized to issue a notice of infraction upon certification that the officer has probable cause to believe, and does believe, that a person has committed an infraction contrary to the provisions of this chapter. The infraction need not have been committed in the issuing officer's presence except as otherwise provided by law.

B. Additional Remedies. In addition to the penalties provided in this section and any other remedy allowed by law, the city may bring an action to enjoin a violation of any provision of this chapter. In any action or suit brought under this section, the city, if it prevails, shall recover reasonable attorney's fees to be set by the court, in addition to its costs and disbursements. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.480 Definitions.

"Adjacent" or "adjacent to" generally means within a distance of fifty feet from a critical area or, in some circumstances involving upland wildlife habitat conservation areas, within a greater distance within which the project is likely to impact the critical area.

"Agriculture" or "agricultural activities" means those activities directly pertaining to the production of crops or livestock including but not limited to cultivation, harvest, grazing, animal waste storage and disposal, fertilization, the operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems and canals, and normal maintenance, operation and repair of existing serviceable structures, facilities, or improved areas.

"Aquifer" means any geologic formation capable of yielding a significant amount of ground water to a well, spring or other withdrawal works in sufficient quantity for beneficial use.

"Aquifer recharge areas" means areas where the prevailing geologic conditions allow infiltration rates which contribute significantly to the replacement of groundwater and which create a high potential for contamination of groundwater resources that serve as a source of potable water supplies.

"Artificial watercourse" means ditches and other water conveyance systems, not constructed from natural watercourses, which are artificially constructed and actively maintained for irrigation and drainage. Artificial watercourses include lateral field ditches used to drain farmland where the ditch did not replace a natural watercourse.

"Biologist" means a person having specific relevant expertise who has a minimum of a Bachelor of Science degree in biological sciences or a related field from an accredited college or university or equivalent relevant training in wildlife biology and substantial demonstrated experience as a practicing biologist.

"Buffer" or "buffer area" means a naturally vegetated, undisturbed or revegetated zone immediately adjacent to a critical area that helps protect the critical area from adverse impacts to its functions and values or that helps provide the margin of safety necessary to minimize risk to the public.

"Critical areas" means the following areas as defined and regulated in this chapter: wetlands not subject to shoreline master program jurisdiction, geologically hazardous areas, upland wildlife habitat conservation areas not subject to shoreline master program jurisdiction, and aquifer recharge areas.

"Endangered species" means a species, native to the state of Washington, that is designated by the responsible state or federal fish or wildlife agency as endangered.

"Geologically hazardous areas" means areas that, because of their susceptibility to erosion, sliding, earth-

quake, or other geologic events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

"Geologist" means a person who has received a degree in geology from an accredited college or university, or a person who has equivalent education and training and substantial demonstrated experience as a practicing geologist.

"Geotechnical engineer" means a person who is licensed as a civil engineer with the state of Washington and who has recent, related experience as a professional geotechnical engineer.

"Groundwater" means all waters that exist beneath the land surface or beneath the bed of any body of surface water, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.

"Habitats of local importance" means a seasonal range or habitat element with which a designated species of local importance has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

"Native vegetation" means plant species which are indigenous to the area.

"Natural watercourse" means any stream in existence prior to settlement that originated from a natural source.

"Ongoing agriculture" means the continuation of any existing agricultural activity as defined in this section, including crop rotations.

"Primary association" means habitat used by a plant or animal species that is necessary for survival, but does not include incidental use areas.

"Zoning administrator" means the Sumas zoning administrator and/or their duly authorized agent. (Ord. 1400 § 1 (Exh. A) (part), 2004)