



# Documents from County Council Update, May 14, 2020

*Click on the text below to quickly access that section of the document. Please note that there is no back button in the PDF to return to this page. You will need to scroll back to return.*

## Contents

Memo to Council and Interim County Manager.....	2
Comment summary.....	4
Comments.....	23
Draft proposed amendments.....	75
Emails accompanying update.....	160

TO: Clark County Council  
Interim County Manager

FROM: Oliver Orjiako, Director  
PRPARED BY: Jenna Kay, Planner II

DATE: May 14, 2020

SUBJECT: Shoreline Master Program Periodic Review Update

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### Purpose of this update

Shortly before the COVID-19 stay at home order went into effect, Community Planning had requested a work session with Council to provide an update on the Shoreline Master Program (SMP) Periodic Review project. The SMP periodic review project is moving forward based on Department of Ecology (Ecology) guidance. In lieu of a work session, the following is an update on the SMP periodic review project and a proposal for next steps.

### Project background

Clark County is undertaking a periodic review of its Shoreline Master Program (SMP), as required by the Washington State Shoreline Management Act (SMA), [RCW 90.58.080\(4\)](#). The SMA requires each SMP be reviewed and revised, if needed, on an eight-year schedule established by the Legislature. The review ensures the SMP stays current with changes in laws and rules, remains consistent with other Clark County plans and regulations, and is responsive to changed circumstances, new information and improved data.

### Project timing

The county needs to submit to Ecology SMP amendments and periodic review documents by June 30, 2021.<sup>1</sup> The county is on track to meet the new 2021 due date. The original project schedule anticipated a June 30, 2020 completion date and Community Planning is adjusting the project schedule around the new COVID-19 requirements. The project is ready for Planning Commission work session and hearings. As soon as the restriction is lifted on holding Planning Commission hearings, the project will move forward. It is highly likely the project will conclude in 2020; expending all grant funds from Ecology during the 2020 county budget cycle, as originally planned.

### Comment summary

The project [Public Participation Plan](#) outlines the public outreach and engagement planned throughout this project. The county collected informal feedback in fall 2019 through community outreach activities and developed a revised draft proposal for public review in early 2020. A public 30-day comment period on the revised draft was held January 28 – February 27, 2020. Additional public comment will be collected as part of a joint Planning Commission and Department of Ecology hearing and a County Council hearing later this year.

<sup>1</sup> [RCW 90.58.080\(4\)\(b\)](#) provides that the county submit its periodic review by June 30, 2020. However, Ecology has published a policy statement regarding the periodic review statutory deadlines under [RCW 34.05.230](#) and published in the State Register on 8/14/2019 ([WSR 19-17-055](#)). Ecology's interpretation is that all jurisdictions with a June 30, 2020 SMA statutory deadline will have until June 30, 2021 to complete their periodic review work, consistent with the biennial funding provided by Ecology and under [RCW 90.58.080\(6\)\(a\)](#) "grants to local governments for developing and amending master programs pursuant to the schedule established by this section shall be provided at least two years before the adoption dates specified in [the Act]."



During the 30-day public comment period, comments were received from ten (10) individuals and organizations. A summary of each comment received is attached in **Exhibit A**. Copies of the comments are provided in **Exhibit B**.

The comments have been reviewed and an initial response and/or proposal on how to address each comment are provided. Unlike other planning projects, Ecology requires the county's SMP submission satisfactorily address public comments received. The comments can be categorized in a few different ways. In regards to how the comments connect to additional amendments to the SMP, the comments have been grouped into the following four buckets:

Category	Description
1	There are inquiries about the county's SMP and/or proposed changes. The question and response do not lend themselves to any changes in the SMP.
2	The feedback would require a change in state law in order for local governments to implement the idea. These suggestions will be shared with County Council and Department of Ecology for policy consideration. No SMP amendments are proposed at this time due to current state statutes.
3	The feedback needs to be addressed in the SMP and is consistent with Ecology guidelines and the SMA. New SMP or revised amendments to address these items are proposed in the amended draft SMP. Many of the proposed amendments are related to critical areas and a need to be consistent with current, accurate, and complete scientific information. The amended SMP is provided in <b>Exhibit C</b> . The amendments reflective of the feedback are highlighted in yellow.
4	These are policy items for County Council consideration. Community Planning is recommending that the policy items be addressed in Community Planning or Community Development work programs as additional, future conversations or projects as the items are significant in nature.

The comment summary in **Exhibit A** uses the above classification system to note how each comment was categorized.

**Next Steps**

- Council members are encouraged to contact Community Planning with questions or concerns in response to this project update.
- Once Planning Commission meetings resume, Planning Commission will hold a work session on the revised draft proposal, followed by a joint hearing with Ecology.
- Ecology will review the Planning Commission's recommendation, copies of the public comments and the county's response to comments, and provide an initial determination.
- Council may hold a work session on the proposal followed by a public hearing and adopting ordinance.
- Ecology will review the Council's decision and provide a final determination.

C: Dan Young, Community Development Director  
 Brent Davis, Wetland and Habitat Review Manager

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale	Category
1	Plas Newydd Farm Map Changes	Robison	Neighbor to Plas Newydd Farm asked if the proposal would change the shoreline designation on his property.	Staff researched the property in question in relation to the proposal and confirmed with the resident that no shoreline map changes would affect resident's property.	1
2	Marinas	Mathison	Recommendation to improve marinas in Clark County, both improvements at existing marinas and adding a marina to The Waterfront in downtown Vancouver. "The Ridgefield Marina needs more transient moorage/boat rental slips and docks and the few uncovered docks and slips are so primitive and rickety a boat would surely get scratched and dented using them, and the electrical looks scary. The few marinas, docks, and boat slips we have on Washington shores should be kept in first class condition NOT distressed. The Waterfront development in downtown Vancouver should have a marina similar to the Riverplace Marina in downtown Portland. The Camas/Washougal Marina is very nice. Bottom line Clark County deserves decent Marinas in Ridgefield, Vancouver, and Camas/Washougal to cover the west, central, and eastern sides of the County. Steamboat landing is a nice private marina but not much of a destination for transient visitors. This is not too much to ask. Just look at all the marinas on the Portland side. This would be a fraction of what they have. I am not a lone voice on this subject."	<p>Staff replied to Mr. Mathison and recommended that he also share his feedback with the cities noted, however, the reply email was not successfully delivered as a delivery has failed message was received on two attempts to send.</p> <p>Staff will share this comment with the cities mentioned in it: Vancouver, Ridgefield, Camas and Washougal, as the county does not have jurisdiction of the marinas within city limits. Staff are also sharing this comment with the County Council and Clark County Parks for their consideration. The county does not currently own or operate any public marinas. There are two privately owned marinas located in county jurisdiction. Review of the boating uses section of the SMP (CCC 40.460.630(C)) does not suggest the development regulations are interfering with marina improvements in unincorporated Clark County.</p>	1
3	Salmon Creek	Steiger	<p>Concern about proposed shoreline map not showing shoreline along Salmon Creek within the City of Battle Ground.</p> <p>Submitted a follow-up question on the agency responsible for approval and compliance for the incorporated areas in the county.</p>	Staff replied to Ms. Steiger and provided an explanation about each local jurisdiction having its own Shoreline Master Program. Staff provided additional information regard responsible authorities.	1
4	Boater Access on Private Property	James	Resident owns tide lands along the Columbia River and asked if any of the proposed changes would let boaters onto their property, such as in Oregon.	Staff replied to Ms. James and confirmed that the proposed amendments do not relate to boater access on private property. Staff also shared that if it was helpful, the other cities in the county would also be updating their SMP in the near future, in case Ms. James lives in one of the cities along the Columbia River.	1

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale	Category
5	Temporary hardship exemption	Huegel	<p>Request to modify the list of exemptions for needing a shoreline substantial development permit. Currently WAC 173-27-040 does not have a provision that would allow a temporary hardship structure to be issued as an exemption. "I think there should be because:</p> <ol style="list-style-type: none"> <li>1. The impact the area is less or equal to building a single family home which is currently allowed</li> <li>2. The use is temporary in nature – it’s a hardship</li> <li>3. The cost of doing a substantial development permit is 8k – 15k and isn’t guaranteed – this itself is a hardship.</li> <li>4. The true number of hardships is limited in it’s very nature – this won’t be a catalyst for major # of homes going in.</li> <li>5. I have a customer that want’s a house in the area but can’t do it legally because she doesn’t have the \$ or time to get a substantial development permit and therefore she lives in an RV – terrible situation.</li> </ol> <p>I hope this helps formulate a decent/persuasive case to change the code to allow Hardship Permits without the stress of doing a substantial development permit."</p>	<p>Staff have spoken with Mr. Huegel about his concern previously and have explained that the county is unable to create an exemption for a temporary hardship unless state legislation is changed to allow for this. State statute says that "Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process" (WAC 173-27-040(1)(a)).</p> <p>Staff have let Mr. Huegel know that his feedback is being shared with the County Council and Department of Ecology for their consideration.</p>	2
6	Wetlands	Markian Wichar	<p>The resident provided feedback on the need for increased wetlands protection and wetland restoration. "My main concern about the county's shoreline is that what little wetland remains should not be compromised in any way. Already, the only wetland remaining between the two interstate bridges is on the Washington side, at Water Resources Education Center. That is pathetic. Actually, it would be great if the county could and would restore wetland that once existed."</p>	<p>Staff replied to Mr. Markian Wichar and let him know that the City of Vancouver will also be updating its shoreline master plan over the course of the next year or so as the comments seem applicable in the city as well as unincorporated county.</p> <p>Broadly, these comments are being shared with the County Council and Department of Ecology for consideration.</p> <p>Additional review of the current state wetland guidelines in response to this comment and additional comments received from others, have lead staff to additional proposed amendments that would update county wetland and wetland buffer protections within shoreline jurisdiction to bring the shoreline master program into alignment with current state standards.</p>	4
7	Multiple. See rows 7-1 through 7-17 below.	Friends of Clark County and Sierra Club - Loo Wit Group	<p>Friends of Clark County and the Sierra Club – Loo Wit Group submitted joint comments. They expressed an overarching interest in improving the ecological function of waterbodies and their shorelands due to ecological function decline and new stressors from climate change impacts. More detailed comment summaries are provided below in rows 7-1 through 7-17.</p>	<p>Responses are provided below in rows 7-1 through 7-17.</p>	See below

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale		Category
7-1	Shoreline designations	Friends of Clark County and Sierra Club - Loo Wit Group	Some of these designations [the seven shoreline designations] are somewhat confusing. Perhaps clearer descriptions could be developed including allowable uses in each category. (Page 2)	We are not sure if this feedback was based on open house materials or the SMP itself. Staff reviewed relevant sections of code to see if the shoreline designations are sufficiently clear there, and hear the need for improved SMP educational materials.	No amendment needed. Staff will take comments into consideration with future SMP educational materials.	1
7-2	Net ecological gain	Friends of Clark County and Sierra Club - Loo Wit Group	Review net ecological gain concept and incorporate into planning. Reference two bills in legislature: HB 2549, integrates salmon recovery efforts with growth management and HB 2550, establishing net ecological gain as a policy for application across identified land use, development, and environmental laws. Request county to be at the forefront of promoting this concept. (Page 3)	Staff reviewed bills HB 2549 and 2550. After the short 2020 legislative session, HB 2549 is currently in the House Committee on Environment & Energy. The House committee on Environment & Energy did take action on Substitute HB 2550 and referred it to the House Committee on Appropriations. This Substitute bill would require the Office of Financial Management (OFM) to submit a report to the legislature that assesses how to incorporate a net ecological gain standard into state land use, development, and environmental laws and rules, including the Shoreline Management Act. To implement such a concept, a framework is needed for how the concept would be applied in the existing law. The county council would need to provide policy direction on whether or not they want staff to work on this framework prior to creation of any new state legislation. In discussing this item with Department of Ecology staff, there is some concern with the concept of net ecological gain and takings. See additional notes below in response to item number 7-15.	Check with Council	4
7-3	Mitigation	Friends of Clark County and Sierra Club - Loo Wit Group	Recommendation to evaluate each site for its site potential to correct for previous impacts that exacerbate poor water quality. Note riparian planting program of Clean Water Services in Washington County, OR as example of riparian planting as requirement in both land use permitting and component of NPDES water quality permit. (Page 4)	<p>Riparian planting is the main form of mitigation for development impacts in the shoreline. Generally any new vegetation clearing or impervious surface within 250 ft. of the ordinary high water mark (OWHM) will require riparian habitat mitigation in proportion of the impact. Higher ratios are applied to clearing of vegetation that is more difficult or takes more time to replace.</p> <p>The county uses site potential as part of mitigation planning, but only in proportion to the impact.</p> <p>Also, in case it is of interest, Clark County Code incorporates the current Department of Ecology <a href="#">Wetland Rating System, Washington State Wetland Rating System for Western Washington: 2014 Update</a> into the county wetland code by reference, in Section 40.450.020(B). This document contains a lot of detail on how wetlands are assessed, including the intersection of impaired waters, such as those on the 303(d) list, waterbodies with Total Maximum Daily Load (TMDL)</p>	Check with Council	4

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale	Category	
				plans, etc., and site potential related to water quality.		
7-4	Mitigation	Friends of Clark County and Sierra Club - Loo Wit Group	In reference to open house impacts and mitigation poster, note it is not clear how these ratios are set. The different ratios per mitigation activity should be listed for the public. Also advocate for increasing the ratio of mitigation for disturbed lands in face of climate change. (Page 4)	<p>Some mitigation ratios are in development code but we understand and acknowledge that they were not displayed on the open house materials.</p> <p>Wetland mitigation ratios are codified (Section 40.450.040(D) Clark County Code). Habitat mitigation ratios are not codified because the intent of the code is to craft mitigation that is specific to the impact on existing site conditions and accounts for other mitigation measures, such as conservation covenants. The County is required to substantially follow Washington Department of Fish and Wildlife (WDFW) management recommendations, therefore, the county biologists apply ratio guidelines developed with WDFW Habitat Program staff and consult with WDFW directly in more challenging cases. Ratio guidelines are maintained by the Program Manager and are available upon request. Permits and associated staff reports are public records, so mitigation ratios for every approved project are available upon request.</p>	Check with Council	4
7-5	Mitigation	Friends of Clark County and Sierra Club - Loo Wit Group	Concern that mitigation not effective and needs to be focused on ecological functions like hyporheic flow, shade, etc. (Page 4)	<p>The comment is raising issues staff ran into with the shoreline monitoring and adaptation plan. We would like to monitor ecological metrics, but don't have the resources to do it. Mitigation assumes function will be replaced within 20-years, and we are monitoring on shorter timeframes. We also don't have a baseline of specific, detailed ecological metrics. The 2012 Inventory and Characterization Report aggregates various existing datasets and doesn't have the level of detail needed to evaluate at site level, or that you could measure before and after a project. It seems like proxies for the key metrics are needed.</p> <p>Also consider that the Shoreline Master Program only applies to the immediate shoreline environment and it is unlikely that analysis could separate the effects of landscape scale impacts and mitigation from shoreline mitigation for most metrics. We need reliable and affordable metrics with direct relationships to the functions in question to be able to measure performance.</p>	Check with Council	4
7-6	Mitigation	Friends of Clark County and Sierra Club	Literature review on mitigation not being fully successful. (Pages 5-6)	The county's new permit system is making it easier to track and extract mitigation monitoring data.	Check with Council	4

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale		Category
		- Loo Wit Group		<p>The county did not complete a comprehensive review of Best Available Science (BAS) for this periodic review, as it was not part of the scope established by the Department of Ecology (Ecology). We have only reviewed new documents and guidelines included in the periodic review checklist provided by Ecology. The BAS for critical areas will be reviewed again as part of the next comprehensive critical areas ordinance update.</p> <p>In discussing this item with Department of Ecology staff, they noted that there are some recent sources that are showing better mitigation success in conjunction with better compliance regulations.</p>		
7-7	Salmon recovery	Friends of Clark County and Sierra Club - Loo Wit Group	HB 2549 incorporates salmon recovery as goal of GMA (Page 7)	<p>The Shoreline Master Program (SMP) is not subject to Growth Management Act (GMA) goals, but is required to be consistent with GMA critical areas ordinances to the extent that the critical areas ordinances may be more protective than the SMP. GMA requires critical areas ordinances to “give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries,” and the county’s critical areas ordinances are currently in compliance with GMA. The county is planning on completing a critical areas ordinance update before the next comprehensive plan update and will rely on the Department of Ecology to recommend any necessary interim updates to the SMP to ensure all ecological functions are protected to the extent required.</p>	Check with Council	4
7-8	Sea level rise	Friends of Clark County and Sierra Club - Loo Wit Group	County needs mechanism to update mapping to reflect change in 100-year floodplain as sea level increases (Page 7)	<p>FEMA flood hazard determination modifications require as a condition of continued eligibility in the National Flood Insurance Program (NFIP) to adopt or show evidence of adoption of floodplain management regulations that meet the standards of Paragraph 60.3(d) of the NFIP regulations in a legally enforceable document within 6 months from the date of notification from FEMA. Communities that fail to enact the necessary floodplain management regulations will be suspended from participation in the NFIP and subject to prohibitions in Section 202(a) of the 1973 Act as amended.</p> <p>The county participates in the NFIP and, as such, federal law already has in place a mechanism that prompts the county to update its flood hazard critical ordinance and Shoreline Master Program flood hazard regulations within 6-months of notification of updated flood hazard determination modifications.</p>	No amendment needed	1



Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale		Category
7-9	Steep slopes	Friends of Clark County and Sierra Club - Loo Wit Group	Certain high bank areas (Wiseman development on East Fork Lewis) are currently sloughing off into the river. Setbacks on high bank or cliff areas need to be extended further back to protect homes and ensure family safety. (Page 7)	This feedback sounds like the county should review its geohazards code regulations for high banks and cliff areas. While the county does not plan to complete that review as part of this project, and would want to look at this countywide, not just in shoreline management areas, we can add this feedback to our list of items to review during the next countywide geohazards code update. Current buffer and setback distances for steep slopes are in Section 40.430.020(D).	Check with Council	4
7-10	Drones for compliance monitoring	Friends of Clark County and Sierra Club - Loo Wit Group	Recommendation to fly drones along rivers in summer, monitoring for illegal water withdrawals for lawns and gardens. County needs to beef up enforcement efforts and not rely on neighbors informing on fellow citizens. (Page 7)	We will share this suggestion with County Council and the county Code Enforcement team.	Share suggestion with County Council and Code Enforcement.	4
7-11	Water temperature	Friends of Clark County and Sierra Club - Loo Wit Group	Temperatures continue to increase beyond what is suitable for ESA listed fish. (Page 7)	<p>In discussing this topic with county Clean Water Division technical staff, two of the main reasons stream temperatures are above acceptable levels in parts of Clark County are: 1) removal of woody debris from stream channels due to logging practice of 100 years ago. This makes the streams wider and shallower, exposing the stream bed to more sunlight; and 2) removal of trees from riparian areas, exposing streams to sunlight and removing the source or woody debris that causes channel complexity.</p> <p>Limiting clearing of riparian vegetation and riparian reforestation are accomplished through the Habitat Conservation Ordinance (Chapter 40.440 Clark County Code) and the Shoreline Master Program (Section 40.460.530(F)).</p> <p>This topic is largely covered by the county's Clean Water Division who manages county stormwater/National Pollution Discharge Elimination System (NPDES) issues. The county is currently in compliance with current State and Federal requirements. Details on stream health and recovery planning are available in the <a href="#">Clark County Stream Health Report</a>, <a href="#">Clark County Stormwater Needs Assessment reports</a>, and <a href="#">the Lower Columbia Fish Recovery Board Fish Recovery Plan</a>.</p>	Check with Council	4
7-12	Fire risk	Friends of Clark County and Sierra Club - Loo Wit Group	Increased fire risk from climate change. Extend buffers near homes. (Page 7)	The Department of Natural Resources (DNR) maintains guidelines for managing private property for wildfire risk (Firewise, <a href="https://www.dnr.wa.gov/firewise">https://www.dnr.wa.gov/firewise</a> ). The county biologists consider these guidelines with permitting placement of new structures, assessing hazard trees, and specifying mitigation regardless of	Check with Council	4

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale	Category	
				whether or not a property is in the wildlife-urban interface.		
7-13	Shoreline vegetation	Friends of Clark County and Sierra Club - Loo Wit Group	Re: view and aesthetics goal, shoreline vegetation may be more beneficially than more visually pleasing options like grass. Should not remove shrubs and trees and replace with grass. Shoreline vegetation should be enhanced, particularly in Chinook habitats. (Page 8)	<p>The Vegetation Conservation and Fish and Wildlife Habitat Conservation standards in the Shoreline Master Program (Sections 40.460.530(F) and 40.460.570 Clark County Code). The ratio referenced in Section 40.460.570(D) Clark County Code is a minimum for vegetation conservation, higher ratios are applied for riparian habitat under 40.460.530(F)(3)(b)(2) as warranted pursuant to Washington Department of Fish and Wildlife (WDFW) <a href="#">Management Recommendations for Priority Habitats: Riparian</a>.</p> <p>These standards effectively maintain native woody vegetation within 250 ft. of the ordinary high water mark (OHWM), clearing is limited, and vegetation replacement within 20 years is required. There are exceptions in state law for forest practices; however, the SMP requires restoration upon conversion to non-forestry use.</p> <p>The Ecology Shoreline Master Program guidelines are silent on vegetation mitigation ratios.</p>	Check with Council	4
7-14	Habitat conservation	Friends of Clark County and Sierra Club - Loo Wit Group	Protect all priority species and habitats, not just point habitats (Page 8)	<p>All priority species and habitat designations (PHS) defined in the Washington Department of Fish and Wildlife (WDFW) Priority Habitat and Species list are protected per Section 40.460.530 of the Shoreline Master Program and Chapter 40.440 Clark County Code. The “point habitats” referenced are how many priority species areas are defined in the PHS list to protect critical lifecycle stages (e.g. breeding and rearing).</p> <p>County staff agree that the code language in reference could be made more clear.</p>	Amend 40.440.010(C)(1)(b); Amend 40.460.530(F)(1)(4)	3
7-15	Net ecological gain	Friends of Clark County and Sierra Club - Loo Wit Group	Embrace shift from no net loss to net ecological gain objective; to more effectively meet standards that protect and restore public resources. We believe in the hierarchy of mitigation: to more seriously avoid impacts, keep disturbance to a minimum, mitigate on site, and if that is not possible – mitigate in the same reach. (Page 9)	Net ecological gain seems like a big project and the risk of needing to re-do work after the state completes a new framework seems likely. Staff will look to the County Council for direction to work on this item. This concept also likely requires a legal paradigm shift from considering restoring ecological function to be in the general public interest to preventing harm (e.g. treating existing ecological degradation similar to existing toxic contamination in the context of constitutional takings and substantive due process claims).	Check with Council	4
7-16	Mitigation monitoring	Friends of Clark County	Monitor new and existing mitigation efforts for functions and values, and to ensure full compliance over time (20 years) and	The recommended monitoring would require additional resources to collect data on most ecological function metrics at site level. The	Check with Council	4

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		and Sierra Club - Loo Wit Group	report findings to the public. (Page 9)	county would need to build additional infrastructure and dedicate additional ongoing resources to deliver and sustain this type of program.		
7-17	Climate change	Friends of Clark County and Sierra Club - Loo Wit Group	Prepare for anticipated Climate Change Effects of rising sea-level, increased water temperature, and reduced summer stream flows. (Page 9)	<p>In discussing this item with Department of Ecology (Ecology) staff, they noted that some local jurisdictions have created an SMP policy around climate change (e.g. Island County, King County, City of Olympia, City of Tacoma). There is not much current guidance from Ecology on how to account for climate change for non-coastal local jurisdiction Shoreline Master Programs, which is covered in <a href="#">Appendix A: Addressing Sea Level Rise in Shoreline Master Programs</a> of the <i>Shoreline Master Program Handbook</i>.</p> <p>In Clark County, the hydroperiod and hydrograph of the county's streams and rivers are at risk from climate change (multiple sources, i.e. <a href="#">Washington State of Knowledge Report – Climate Change Impacts and Adaptation in Washington State: Technical Summaries for Decision Makers, 2013, Section 6</a>). Some of these changes will fold into the existing Shoreline Master Program and be reflected in changes to the ordinary high water mark (OHWM) and 100-year floodplain as they shift over time.</p>	Check with Council	4
8	Multiple. See rows 8-1 through 8-11 below.	Trohimovich, Futurewise	Mr. Trohimovich included several recommendations as part of his submittal. A summary of each recommendation follows in rows 8-1 through 8-11.	Responses are provided below in rows 8-1 through 8-11.		See below
8-1	Avoidance of impacts	Trohimovich, Futurewise	Futurewise agrees with the Friends of Clark County and the Sierra Club recommendations that avoiding impacts should be required whenever possible. The Shoreline Master Program Update should include stronger avoidance and minimization requirements. (Page 2)	<p>Staff will share this feedback with the County Council for consideration of stronger avoidance language.</p> <p>The Shoreline Master Program, Section 40.460.530(A)(10) Clark County Code is consistent with the current shoreline avoidance-and-minimization requirements (WAC 173-26-201(2)(e) and 2016 wetland guidelines, pp. 10-11. (Chapter 40.450 Clark County Code will be reviewed and amended with the next critical areas ordinance update.)</p>	Check with Council	4
8-2	Fire risk	Trohimovich, Futurewise	Futurewise recommends that Clark County require wider setbacks between development and shoreline and critical areas buffers to protect homes and property from wildfire danger. (Page 4)	The Department of Natural Resources (DNR) maintains guidelines for managing private property for wildfire risk (Firewise, <a href="https://www.dnr.wa.gov/firewise">https://www.dnr.wa.gov/firewise</a> ). The county biologists consider these guidelines with permitting placement of new structures, assessing hazard trees, and specifying mitigation regardless of	Check with Council	4

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				<p>whether or not a property is in the wildlife-urban interface. County staff currently try to avoid mitigation that may pose an unreasonable future fire risk.</p> <p>The county does not have any requirement, but does consider fire danger as part of its work. The county could add a statement countywide, but would recommend pursuing that change during the next critical areas ordinance update instead of this project.</p>		
8-3	Sea level rise	Trohimovich, Futurewise	<p>Futurewise strongly recommends that the Clark County Shoreline Master Program (SMP) should comprehensively address sea level rise and include regulations protecting people, property, and the environment from the adverse effects of sea level rise. As is documented below, sea level rise is accelerating and buildings need to be protected from increased flooding. (Page 4)</p>	<p>The concerns underlying this comment seem to be about building risk/damage from sea level rise, increased cliff erosion, and the need for increased vegetative buffers as shorelines and floodplains shift over time.</p> <p>In discussion with Department of Ecology staff on this item, the SMP does address sea level rise in some ways through siting and not putting property at risk, addressing erosion hazards, etc. Ecology staff noted that the sea level rise topic seems like it needs to be addressed more comprehensively and holistically than just in the SMP. Some other local jurisdictions have developed a climate change policy as part of their SMP.</p> <p>If the county were to make regulations relative to sea level rise, the county would need to reference specific source(s) and scenario(s) for its assumptions. If Council wanted to pursue regulations related to this topic, staff would need to develop code language more specific than what is being recommended in this comment. This is a big project and seems beyond the scope of the current SMP periodic review. If Council would like staff to work on this, we would recommend a future amendment to the SMP after sufficient time to complete such a process. Also, more guidance and funding resources from the legislature and Department of Ecology would be recommended if such a process is to be conducted.</p> <p>In Clark County, the hydroperiod and hydrograph of the county's streams and rivers are also at risk from climate change (multiple sources, i.e. <a href="#">Washington State of Knowledge Report – Climate Change Impacts and Adaptation in Washington State: Technical Summaries for Decision Makers, 2013, Section 6</a>). In most cases, these changes, including those resulting from sea level rise, will be reflected in changes to the ordinary high water mark (OHWM) and 100-year</p>	Check with Council	4

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale		Category
				floodplain boundary as these changes occur.		
8-4	Geohazards	Trohimovich, Futurewise	We recommend that the County require an analysis of all geologically hazardous which can adversely impact a proposed development and require case-by-case determinations of landslide buffers based on the risk to the proposed development. (Page 7)	This topic applies countywide, and not just to the shoreline management area. While we do not plan to complete a countywide geohazard code review as part of this project, we can add this feedback to our list of items to review during the next geohazards code update. We would also be interested in higher quality data and additional state guidance on this topic, as suggested in the referenced article.	Check with Council	4
8-5	Habitat conservation	Trohimovich, Futurewise	Clark County should adopt up-to-date riparian buffers in Clark County Code (CCC) 40.460.530(F)(1)(a)(3) and CCC 40.460.570 to protect Chinook habitat and other aquatic habitats. (Page 11)	Current standards for Type S and F waters are consistent with current Washington Department of Fish and Wildlife (WDFW) <a href="#">Management Recommendations for Priority Habitats: Riparian</a> .  County staff recommend waiting for the final version of Riparian Ecosystems, Volume 2: Management Recommendations (2018) to be published before addressing the topic of site-potential tree height for determination of riparian buffer widths. We have heard, anecdotally, that there has been some feedback on the site-potential tree height approach and we are not sure where the final document will land on its recommendations. Regarding Endangered Species Act (ESA) compliance, that is managed at the federal level.	Check with Council	4
8-6	Habitat conservation	Trohimovich, Futurewise	Please clarify that the SMP protects fish and wildlife habitats depicted in the PHS GIS database as points, lines, and areas. This is needed to protect all priority species and habitats and to comply with the Shoreline Master Program (SMP) Guidelines. (Page 12)	County code language could be more clear on this topic. The SMP protects all PHS GIS database as points, lines, and areas.	Amend 40.440.010(C)(1)(b);  Amend 40.460.530(F)(1)(4)	3
8-7	Habitat conservation	Trohimovich, Futurewise	Please clarify that all development must comply with the fish and wildlife habitat conservation requirements. This is needed to protect all priority species and habitats and to comply with the SMP Guidelines. (Page 13)	The county requires habitat review under 40.460.530(F) for all development in Shoreline Management Act jurisdiction (which is also Priority Habitat by definition) that proposes "construction, earth movement, clearing, or other site disturbance," EXCEPT for those portions of the SMA that are associated wetlands extending beyond 200 ft. from the ordinary high water mark (OHWM) or the 100-year floodplain. Excepted wetlands are reviewed under 40.460.530(G).	No amendment needed.	1

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale	Category	
8-8	Habitat conservation	Trohimovich, Futurewise	Please update the priority habitat and species list and the priority species and habitat documents listed in the critical areas regulations. This is needed to protect all priority species and habitats and comply with the SMP Guidelines. (Page 14)	The referenced priority habitat and species list documents noted in code are not current and a text amendment is proposed to Section 40.440.010(C)(2) Clark County Code to fix that.	Amend 40.440.010(C)(2)	3
8-9	Wetlands	Trohimovich, Futurewise	Protect isolated Category III wetlands of less than 2,500 square feet in area and isolated Category IV wetlands of less than 4,350 square feet. This is needed to protect wetland functions to comply with the SMP Guidelines. (Page 15)	These exemptions in the critical areas code do not apply in the Shoreline Master Program (SMP) because Section 40.450.010(C)(2)(a) is not referenced in Section 40.460.530(G), only the designation and protection standards in 40.450.020, .030, and .040 are referenced.	No SMP amendment needed	1
8-10	Mitigation	Trohimovich, Futurewise	Increase mitigation ratios for riparian vegetation mitigation in CCC 40.460.570D. to protect fish and wildlife habitats. This is necessary to comply with the SMP Guidelines. (Page 16)	<p>The Vegetation Conservation and Fish and Wildlife Habitat Conservation standards in the Shoreline Master Program (Sections 40.460.530(F) and 40.460.570 Clark County Code). The ratio referenced in Section 40.460.570(D) Clark County Code is a minimum for vegetation conservation, higher ratios are applied for riparian habitat under 40.460.530(F)(3)(b)(2) as warranted pursuant to Washington Department of Fish and Wildlife (WDFW) <a href="#">Management Recommendations for Priority Habitats: Riparian</a>.</p> <p>These standards effectively maintain native woody vegetation within 250 ft. of the ordinary high water mark (OHWM), clearing is limited, and vegetation replacement within 20 years is required. There are exceptions in state law for forest practices; however, the SMP requires restoration upon conversion to non-forestry use.</p> <p>The Ecology Shoreline Master Program guidelines are silent on vegetation mitigation ratios.</p>	Check with Council	4
8-11	Aquaculture	Trohimovich, Futurewise	Prohibit net pen aquaculture for nonnative species in table 40.460.620-1. This will make the SMP consistent with RCW 77.125.050(1). (Page 16)	Section 40.460.630(B)(1) Clark County Code states: "No aquatic species shall be introduced into county waters without prior written approval of the appropriate state or federal regulatory agency for the species proposed for introduction. Such approval(s) shall be submitted in writing to the county as part of the shoreline permit application." This statement seems to cover the requirement to follow all Department of Natural Resources (DNR) laws and rules. However, an amendment to reference RCW 77.125.050 could be added for clarity.	Amend 40.460.630(B)(13)	3

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9	Floating homes; Floating on-water residences	Flores, Washington State Department of Natural Resources (DNR)	<p>DNR was generally supportive of the proposed code amendments related to floating homes and on-water residences. They proposed four suggestions to be more specific:</p> <ol style="list-style-type: none"> <li>1. DNR would suggest adding language that identifies what a floating home moorage is and that they can only be located at established marinas/boating facilities according to 40.460.630(C).</li> <li>2. DNR would suggest adding language that identifies the specific circumstances for moving floating homes.</li> <li>3. DNR suggests adding language that identifies what a floating on-water moorage is and that they can only be located at established marinas/boating facilities according to 40.460.630(C).</li> <li>4. DNR would suggest adding language that identifies the specific circumstances for moving on-water residences as established by WAC 332-30-171(7)(a-c).</li> </ol>	<p>Staff had previously spoken with Mr. Flores about the floating homes and floating on-water residences topic in December, 2019 and were aware he was planning to review the county proposal and submit suggestions during the comment period.</p> <p>Staff are recommending incorporation of the DNR suggestions to the proposal, to make the code language more clear.</p>		3
10	Multiple. See rows 10-1 through 10-25 below.	Department of Ecology	<p>The Department of Ecology provided comments on Clark County wetlands Critical Areas Ordinance in spring 2019. Ecology followed-up to re-share this feedback to be considered as part of the SMP periodic review, to ensure that the SMP wetlands regulations meet the most current, accurate, and complete scientific and technical information available and meet the requirement of WAC 173-26-201()(a). The updated wetland guidelines are part of the SMP periodic review checklist provided by Ecology. Specific comment summaries are included below in rows 10-1 through 10-25.</p>	<p>Staff have been in contact with Department of Ecology staff throughout this project. These comments were shared during, and just after, the 30-day comment period. Due to the timing of receipt during the process, staff are including them as part of this comment review to consider how to address them. Comment responses are provided below in rows 10-1 through 10-25.</p>		See below
10-1	Wetland buffers	Department of Ecology	<p>40.450.040(C)(1): Reduced width: We recommend including language that all applicable design elements shall be implemented in order to be eligible for the buffer reduction from high intensity to moderate intensity. Otherwise, applicants may select only one or two that won't sufficiently reduce the intensity of the impact to warrant the buffer reduction. Also, Ecology's guidance does not include the option of reducing buffers from moderate intensity to low intensity through the impact-reducing measures. The impact-reducing measures aren't designed to reduce the adjacent impacts to low-intensity land use, which include uses such as forestry and unpaved trails. In no case should a buffer width based on the habitat function of a wetland be reduced in exchange for reductions in water quality impacts from adjacent land uses (40.450.040.C.1.a.3 (surface water management) and C.1.b (LID design)).</p> <p>Addressing this issue is important to ensure provisions are consistent with the SMP Guidelines requirement to meet no net loss</p>	<p>Code section 40.450.040(C)(1)(b) is not consistent with the proposed updates to the stormwater manual and will need to be removed or revised substantially. We recommend deletion of this code section to address this issue.</p> <p>We can propose to require all other measures to the extent that they are applicable in 40.460.530(G)(3)(h)(2)(c).</p> <p>These amendments would improve internal consistency between the county Stormwater Manual and Wetlands code and improve alignment with the 2016 wetland guidance and Appendix 8-C of Wetlands in Washington State, Volume 2 (revised July 2018) which contains Ecology's complete wetland buffer recommendations.</p>	<p>Amend 40.450.040(C)(1);</p> <p>Amend 40.460.530(G)(3)(h)(2) and (i)(1);</p> <p>Amend 40.460.530(G)(1)(f)</p>	3

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale		Category
			of shoreline ecological functions. At the very least, the option to allow for reduction of buffers from moderate intensity to low intensity should not apply in shoreline jurisdiction, nor should the buffer width be reduced in exchange for reductions in water quality impacts (last sentence).			
10-2	Wetland buffers	Department of Ecology	40.450.040(C)(1): The County should be aware that Ecology recently changed its guidance on habitat scores. A habitat score of 5 is now considered to be low habitat function (previously, only 3-4 were considered to be low function). In section C.1.c(1) the language should be changed to "...scores higher than five (5)..." to reflect this change. Also, C.4.b should say "fewer than six (6) points.	40.450.040(C)(1)(c)(1) should be updated for consistency with the 2016 wetland guidelines. This was an oversight when Ord. 2019-03-05 was adopted. 40.450.040(C)(4)(b) is correct and was addressed in Ord. 2019-03-05.  This amendment would fix the mentioned item in the wetlands code and improve alignment with the current Ecology wetland guidelines in the 2016 wetland guidance and Appendix 8-C of Wetlands in Washington State, Volume 2 (revised July 2018).	Amend 40.450.040(C)(1)	3
10-3	Wetland buffers	Department of Ecology	40.450.040(C)(2) states that the minimum buffer should be not less than the low-intensity buffer, which could represent a 50% reduction from our standard buffer recommendation. We believe that this represents a high-risk approach resulting in buffers that are not wide enough to protect the wetland's functions, and we recommend limiting the amount of reduction or average to 25% of the standard buffer width that would be required by the habitat score and the adjacent land use (i.e., the buffer should not be averaged or reduced to below 75% of the standard buffer).  Limiting buffer modifications in shoreline jurisdiction, whether by averaging or reduction to no more than 25% should be a requirement in the SMP. Any greater reduction would be authorized by shoreline variance.	This comment is requesting a revision to 40.450.040(C)(3)(a). Making the requested change outside the SMA without a full public discussion of the policy implications is problematic. Inside the SMA, the change is unlikely to have much effect. It may result in a few additional shoreline variances for residential building permits.  The proposed amendment would improve SMP wetland regulation alignment with the 2016 wetland guidance document, pp. 12-13 buffers and buffer averaging.  Additional review and discussion of the critical areas ordinance can take place during the next critical areas ordinance update.	Amend 40.460.530 (G)(3)(h)(2) and (i)(1);  Amend 40.460.530(G)(1)(f)	3
10-4	Wetland buffers	Department of Ecology	40.450.040(C)(3)(a): Buffer averaging should not be used in combination with other buffer reduction methods on the same buffer segment.  If this isn't clear in the SMP it should be. Mechanisms to reduce buffers should not be combined. The issue here may simply be a result of the way this provision is written.	Making the requested change outside the SMA without a full public discussion of the policy implications is problematic. Inside the SMA, the change is unlikely to have much effect. It may result in a few additional shoreline variances for residential building permits.  Amending the SMP to address this feedback would improve SMP wetland regulation alignment with the 2016 wetland guidance document, p. 13, buffer averaging.  Additional review of the critical areas ordinance can take place during	Amend 40.460.530(G)(3)(i)(1);  Amend 40.460.530(G)(1)(f)	3



Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale		Category
				the next critical areas ordinance update.		
10-5	Wetland buffers	Department of Ecology	<p>40.450.040(C)(4)(b) should state “(fewer than six (6) points...” (see above comment on habitat scores). Also, “the outer edge” is vague. We recommend limiting facilities to the outer 25% of the buffer.</p> <p>It appears the numerical issue was addressed. Facilities should be limited to the outer 25% of wetland buffers in shoreline jurisdiction.</p>	<p>The “fewer than six (6) points...” was addressed when the county adopted the revised buffer width guidelines [Ord. 2019-03-05] and makes the code consistent with the 2016 wetland buffer guidelines and Appendix 8-C of Wetlands in Washington State, Volume 2 (revised July 2018). As such, the feedback has already been addressed.</p> <p>The 25% issue has not been addressed yet and code could be amended for clarification and improved alignment with the current wetland buffer guidelines, 2016 wetland guidelines and Appendix 8-C of Wetlands in Washington State, Volume 2 (revised July 2018).</p>	Amend 40.460.530(G)(3)(a)	3
10-6	Wetland buffers	Department of Ecology	<p>40.450.040(C)(5)(b): We recommend including more specificity about how functions would be replaced. Would this mean requiring more buffer area to compensate for the area that is lost in the crossing?</p>	<p>This comment refers to buffer standards and authorized activities for road and utility crossings and a condition in code that says “Impacts to the wetland and buffer are minimized.”</p> <p>These cases are unique and mitigation solutions and options can vary. We kept this standard general intentionally. We encounter wide variability in site constraints and mitigation opportunities for roads and residential driveways that cannot practicably avoid wetland buffers.</p> <p>The SMP is current with the 2016 wetland guidelines regarding buffer standards and road and utility crossings, Ecology 2016 pp. 11-13. The county can discuss this topic further with Ecology during its next critical areas ordinance update.</p>	No SMP amendment needed	1
10-7	Wetland buffers	Department of Ecology	<p>40.450.040(C)(6) should say “buffer reduction per 40.450.040.C.1” rather than “buffer reduction via enhancement.”</p> <p>This is an important clarification.</p>	<p>The code Section 40.450.040(C)(6) relates to the buffer standards for other activities in a buffer. The feedback recommends pointing to the buffer reduced width based on modification of land use intensity section instead of buffer enhancement language. Buffer enhancement is one general site design measure in this section, but not all of the mitigation measures that need to be applied to the greatest extent applicable.</p> <p>Incorporating the suggested amendment would be consistent with the 2016 wetland guidelines, buffers pp. 11-13 and Appendix 8-C of Wetlands in Washington State, Volume 2 (revised July 2018).</p>	Amend 40.450.040(C)(6)	3

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale	Category	
10-8	Wetland avoidance-minimization-mitigation sequence	Department of Ecology	40.450.040(D)(1)(a): These criteria for avoidance aren't consistent with mitigation sequencing. See <a href="https://ecology.wa.gov/Water-Shorelines/Wetlands/Mitigation/Avoidance-and-minimization">https://ecology.wa.gov/Water-Shorelines/Wetlands/Mitigation/Avoidance-and-minimization</a> . The applicant should be made aware that if state and federal permits are required, the Corps and Ecology do not interpret "avoidance" as it is described here.	<p>In the SMP, 40.460.530(A)(10) outlines the critical areas avoidance and mitigation sequence. This code section supersedes the referenced portion of 40.450 per the provisions of 40.460.170(D), which states that "in the event this Program conflicts with other applicable county policies or regulations, they must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous, and unless otherwise stated, the provisions that provide the most protection to shoreline ecological processes and functions shall prevail."</p> <p>The SMP is consistent with the current avoidance-and-minimization guidance and 2016 wetland guidelines, pp. 10-11. Chapter 40.450 CCC can be reviewed with the next critical areas ordinance update.</p>	No SMP amendment needed	1
10-9	Wetland preservation	Department of Ecology	40.450.040(D)(4)(b): We recommend including additional criteria for considering preservation. See pages 40-41 of <a href="https://fortress.wa.gov/ecy/publications/documents/1606001.pdf">https://fortress.wa.gov/ecy/publications/documents/1606001.pdf</a> .	<p>The feedback references pages 40-41 in the 2016 wetland guidance. The county could amend table 40.450.040-2 so that it is more clear that table is about preservation of Category I and II wetlands.</p> <p>Additional conversation on this topic can be considered during the next critical areas ordinance update.</p>	Amend Table 40.450.040-2	3
10-10	Wetland mitigation	Department of Ecology	40.450.040(D)(4)(c)(4): This language is not consistent with interagency joint mitigation guidance or the wetland rating system regarding HGM classes separately within a wetland. We recommend removing it.	<p>This feedback is in regards to a section of code regarding the responsible official having the authority to reduce wetland mitigation under specific circumstances. The circumstance referenced as being out of alignment with current wetland mitigation guidance is in wetlands where several HGM classifications are found within one (1) delineated wetland boundary, the areas of the wetlands within each HGM classification can be scored and rated separately and the mitigation ratios adjusted accordingly, if certain conditions apply.</p> <p>The comment references the Wetland Mitigation in Washington State guidance (Ecology, March 2006) and the 2014 wetland rating system (Ecology, 2014), both of which are identified as current science of wetland protection in the 2016 wetland guidance (Ecology, 2016).</p> <p>For consistency with current science, the county SMP could be amended so that 40.450.040(D)(4)(c)(4) doesn't apply in SMA jurisdiction.</p> <p>Section 40.450.040(D) can be reviewed in more detail during the next critical areas ordinance comprehensive update.</p>	Amend 40.460.530(G)(3)(f)	3

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10-11	Wetland buffers	Department of Ecology	40.450.040(D)(5)(a): The meaning of this is not clear. Buffer loss doesn't result from wetland fill.	<p>The feedback is regarding a code section on indirect wetland impacts due to loss of buffer function or stormwater discharges. One indirect wetland impact listed is buffer loss resulting from wetland fills permitted under this section. What is meant by this statement is that when wetlands are partially filled (by a permitted activity), buffers are generally lost or the fill creates development through the wetland that should have a buffer.</p> <p>The SMP is current with wetland buffer guidelines (Ecology, 2016 and Appendix 8-C of Wetlands in Washington State, Volume 2 (revised July 2018)).</p> <p>This code section can be reviewed further as part of the critical areas ordinance update.</p>	No SMP amendment needed	1
10-12	Wetland mitigation	Department of Ecology	40.450.040(D)(6): This language is not consistent with interagency joint mitigation guidance. The required width of the perimeter buffer should be sufficient to protect the proposed category of the compensation wetland and its proposed level of function, particularly habitat functions. If the applicant proposes to increase habitat functions then the buffer needs to be wide enough to protect those habitat functions.	<p>The feedback references the Wetland Mitigation in Washington State –Part 1: Agency Policies and Guidance (Version 1) (March 2006).</p> <p>The county could add language that requires the reduction of mitigation credit if proposed buffers are insufficient to support the specific functions provided by the mitigation, to better align with the interagency joint mitigation guidance.</p>	Amend 40.450.040(D)(6)	3
10-13	Wetlands and stormwater facilities	Department of Ecology	40.450.040(D)(8): Stormwater facilities must meet the avoidance and minimization criteria. They are considered an impact that must be compensated. This section should also state “fewer than six (6) points” (see above comment on habitat scores).	In the SMP, 40.460.530(A)(10) which outlines the avoidance-minimization-mitigation sequence applies to all critical areas and the habitat score issue was addressed when the county adopted the revised buffer width guidelines [Ord. 2019-03-05]. As such, the feedback has already been addressed in the SMP.	No SMP amendment needed	1
10-14	Wetlands and underground utilities	Department of Ecology	40.450.040(D)(9): Underground utility crossing can have adverse effects on wetlands due to draining or soil disruption. You should consider adding language about BMPs for these situations.	<p>The current code prohibits loss of wetland area and permanent reduction of wetland functions, to date this language has been sufficient to address the specific risks of underground utilities.</p> <p>Ecology and county staff have seen that applications for utility crossings typically include best management practices (BMPs) as part of application. Ecology confirmed that they are okay with the county code current language. If the county were to add language about BMPs to its code, then it puts the burden on the county. If the county leaves the BMPs out of the code, it puts the burden on the applicant.</p>	No amendment needed	1
10-15	Wetland activities	Department of Ecology	40.450.040(D)(10): This section should say “consistent with D.1” since D.1 doesn't prohibit any activities. However, we wonder if this	This feedback can be addressed during the next critical areas ordinance update. The intent is to ensure that activities that are not	No SMP amendment	1

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale	Category	
			language is necessary? Is there a list of allowed uses provided in this chapter? If so, consider deleting this language because it may generally allow uses that have adverse effects on wetlands not specifically anticipated in this language.	explicitly permitted in the referenced section are regulated subject to the performance standard listed.	needed	
10-16	Wetland delineation	Department of Ecology	<p>40.450.030(D)(1): should state that the identification of wetlands and delineation of their boundaries pursuant to this Title shall be done in accordance with the approved federal wetland delineation manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0) (2010). All areas within the county meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this Title.</p> <p>I note that the definition for “wetland delineation manual” refers to WAC 173-22-035 which ultimately tells you which manual to use. It’s an awkward way to get there and you might consider adding the language directly into the SMP:</p>	There are other chapters in Title 40 Clark County Code that rely on the wetland delineation manual definition. We prefer to maintain a single definition in a single location to ensure consistency and simplicity in making updates.	No amendment needed	1
10-17	Wetland class	Department of Ecology	40.450.030(D)(2)(e)(4): should state specifically what type of wetland “class;” does this refer to Cowardin class or HGM class?	The wetland class in question refers to the Cowardin class. Code could be amended to add this clarification. This clarification would be in alignment with the current 2014 wetland rating system and 2016 wetland guidance.	Amend 40.450.030(D)(2)(e)(4)	3
10-18	Wetland buffers	Department of Ecology	40.450.030(D)(2)(g): This isn’t clear. How does the acreage affect buffer size? Since this section is about delineation, we recommend deleting part of the sentence so that it reads “Acreage of each wetland on the site.”	<p>This feedback refers to wetland delineation information requirements for the delineation report. One of the requirements states: “Acreage of each wetland on the site based on the survey if the acreage will impact the buffer size determination or the project design.”</p> <p>The acreage affects buffer size as it pertains to 40.450.030(E)(4)(c). However, we agree that 40.450.030(D)(2)(g) could be made more clear if revised so that the sentence reads: “acreage of each wetland on the site” and the last part of the sentence is removed.</p> <p>Also, CCC 40.460.530(G)(1)(f) could be amended to exclude Section 40.450.030(E)(4)(c) from the SMP because it is not consistent with the buffer guidelines in the 2016 wetland guidance and Appendix 8-C of Wetlands in Washington State, Volume 2 (revised July 2018).</p>	Amend 40.450.030(D)(2)(g); Amend 40.460.530(G)(1)(f)	3
10-19	Wetland buffers	Department of Ecology	40.450.030(E)(2) should state that “Buffer widths are established by comparing the wetland rating category, the habitat score, and the	The feedback is consistent with the 2016 wetland guidelines and Appendix 8-C of Wetlands in Washington State, Volume 2 (revised	Amend 40.450.030(E)(2)	3

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale		Category
			intensity of land uses...” since habitat scores are used in the tables.	July 2018). We can incorporate the recommended clarification in 40.450.030(E).		
10-20	Wetland buffers	Department of Ecology	40.450.030(E)(2): Table 4 should include rows for habitat scores of 8 and 9 points. Ecology has determined that Category III wetlands with these habitat scores do exist. Since the county’s buffer widths are based partially on habitat score, the Category III table should include buffers for wetlands with 8 or 9 points (which are the same as the buffers for Category I and II wetlands with 8 or 9 points). We recommend that the county adopt the buffer tables as shown in our guidance ( <a href="https://fortress.wa.gov/ecy/publications/documents/1606001.pdf">https://fortress.wa.gov/ecy/publications/documents/1606001.pdf</a> ). These recommended buffers are dependent upon proper implementation of the buffer reduction criteria as discussed in the first bullet above.	The feedback references the 2016 wetland guidelines and Appendix 8-C of Wetlands in Washington State, Volume 2 (revised July 2018).  This item was addressed in CCC 40.450.030(E) when the county adopted the revised buffer width guidelines [Ord. 2019-03-05]. As such, the feedback has already been addressed.	No amendment needed	1
10-21	Non-buildable tract	Department of Ecology	40.450.030(E)(3)(c): The inability to create a non-buildable tract is not sufficient reason to allow a residential lot to extend into a wetland or its buffer. Mitigation sequencing must be applied.  The cited provision should not be applicable in shoreline jurisdiction.	The exceptions in 40.450.030(E)(3) were expressly requested by the Clark County Board of Commissioners in 2006, but have not been used since they were adopted.  Since the SMA does not allow reasonable use exceptions, providing instead a variance pathway to afford regulatory relief (WAC 173-27-170), excluding this provision (40.450.030(E)(3)(c)) from the SMP would make the SMP in alignment with the SMA and the Ecology 2016 wetland guidelines (pp. 8-9).  Regarding the note that mitigation sequencing must be applied, the SMP regulations would be more clear if they stated that the avoidance-mitigation sequence applies to wetland buffers.	Amend 40.460.530(G)(1)(f);  Amend 40.460.530(G)(1)(m)	3
10-22	Wetland buffers	Department of Ecology	40.450.030(E)(4)(b)(1): What is meant by “vertical separation?” Is there a minimum height measurement? It’s not clear that vertical separation would result in a functionally isolated buffer.	To improve consistency with the Ecology 2016 wetland buffer guidelines (pp. 11-13) and Appendix 8-C of Wetlands in Washington State, Volume 2 (revised July 2018), the SMP could be updated to exclude this provision in SMA areas. The vertical separation criteria can be deleted from the critical areas code too.	Amend 40.450.030(E)(4)(b)(1);  Amend 40.460.530(G)(1)(f)	3
10-23	Wetland buffers	Department of Ecology	40.450.030(E)(4)(b)(2): This approach is not consistent with how the rating system is applied. We recommend deleting it.  This provision should not be applicable in shoreline jurisdiction.	The feedback is citing provision about adjusted wetland buffer width when distinct portions of wetlands with reduced habitat functions that are components of wetlands with an overall habitat rating score greater than five (5) points shall not be subject to the habitat function	No SMP amendment needed	1

Comment Number	Comment Topic	Commenter	Comment Summary	Local Government Response and Rationale		Category
				<p>buffers in Table 40.450.030-3 if certain criteria are met.</p> <p>This provision does not apply in the county’s SMP because the entire SMA area is, by definition, a WDFW Priority Habitat and Species Area. In Clark County, riparian priority habitat areas, DNR Type S waters require a 250 ft buffer from the ordinary high water mark or to the edge of the 100-year floodplain, whichever is greater (40.460.530(F)). The only sections of the shoreline jurisdiction that may not be considered priority riparian habitat are associated wetlands that extend beyond the edge of the 100-year floodplain. But wetlands are also considered a priority habitat per 2016 wetland guidance, p. 24 and Priority Habitat and Species List, Washington Department of Fish and Wildlife, 2008 (revised 2020). Therefore, all of the SMA jurisdiction in Clark County is considered priority habitat area.</p> <p>The next critical areas ordinance update can look at this code section more closely for non-shoreline wetland buffers.</p>		
10-24	Flood hazard areas	Department of Ecology	<p>40.460.530(A)(4): We (Ecology) have been thinking about a policy shift that would remove the “hard” reference which brings the flood hazard code language into the SMP, and making it a soft reference – in other words, acknowledging that the flood code is important and development needs to be consistent with it but not including it directly into the SMP. This, in part, to avoid conflicts with specific NFIP process requirements. Our Guidelines in WAC 173-26-221(3) address flood hazard reduction and it does suggest integrating SMP flood hazard reduction provisions with other regulations and programs including flood plain regulations and the NFIP, among others. However, I don’t think this suggestion to integrate leads to a requirement to adopt your NFIP program into the SMP.</p>	<p>In discussion with Ecology, the Department is working on new guidance regarding flood hazard code and its integration with the SMP. Staff recommend waiting for the new guidelines before addressing this item.</p>	Check with Council	4
10-25	Cumulative effects fund	Department of Ecology	<p>40.460.530(G)(3)(j): Cumulative effects fund. Is that a currently used mechanism?</p>	<p>The cumulative effects fund has not been used much. It was developed before there was a fee in lieu rule/option, and was added to county code in 2006. It has been used for habitat but not wetlands.</p> <p>An amendment to the alternate wetland mitigation code section to clarify alternate mitigation options would be consistent with the mitigation alternatives section of the 2016 wetland guidance, pp. 14-15.</p>	40.460.530(G)(3)(j)	3

**From:** [Jenna Kay](#)  
**To:** ["William Robison"](#)  
**Subject:** RE: SMP2020  
**Date:** Tuesday, February 4, 2020 11:21:04 AM

---

Your welcome. Please let us know if you think of any other questions.

Regards,  
Jenna

---

**From:** William Robison [mailto:brobison@ccrslaw.com]  
**Sent:** Tuesday, February 4, 2020 9:52 AM  
**To:** Jenna Kay  
**Subject:** [Contains External Hyperlinks] RE: SMP2020

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Thanks, the overlay of the relevant exhibit seemed to show a change that crosses the line, but when looking at it further I think there was no change.

William D. Robison  
Caron, Colven, Robison & Shafon  
900 Washington St., Ste. 1000  
Vancouver, WA 98660  
Phone: (360) 699-3001  
Fax: (360) 699-3012  
E-Mail: [wrobison@ccrslaw.com](mailto:wrobison@ccrslaw.com)<mailto:[wrobison@ccrslaw.com](mailto:wrobison@ccrslaw.com)>

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**From:** Jenna Kay <Jenna.Kay@clark.wa.gov>  
**Sent:** Tuesday, February 4, 2020 9:37 AM  
**To:** William Robison <brobison@ccrslaw.com>  
**Cc:** Brent Davis <Brent.Davis@clark.wa.gov>  
**Subject:** RE: SMP2020

Hello Mr. Robinson,

Thank you for your inquiry.

I have looked up your property to see how the county proposal impacts it.

I am confirming that no shoreline map changes are proposed that would affect your property. There are some shoreline designation changes on the Plas Newydd farm property, due to the detailed mapping work they have done on their own property, but those changes do not extend to your

property.

Since your property is located along the Lewis River, much of your property does have a Rural Conservancy Resource Land shoreline designation. That designation has been on your property for many years, so it is nothing new.

Please let me know if I can provide more information or answer additional questions. I have also copied our shoreline administrator on this email in case you have any additional questions he can help answer.

Thank you again for reaching out.

Regards,  
Jenna



**Jenna Kay**  
Planner II  
COMMUNITY PLANNING

564.397.4968



---

**From:** William Robison [<mailto:brobison@ccrslaw.com>]  
**Sent:** Monday, February 3, 2020 4:59 PM  
**To:** Jenna Kay  
**Subject:** SMP2020

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I own Pekin Ferry which abuts the east edge of Plas Newydd farm. It appears to me that this plan proposes to re designate my property as Rural Conservancy Resource Land. Is that true? Is it intentional? If so why?  
Bill Robison 34115 n.w. Pekin Ferry road Ridgefield.

Sent from my Verizon, Samsung Galaxy smartphone

This e-mail and related attachments and any response may be subject to public disclosure under state law.



**From:** [Jenna Kay](#)  
**To:** [Help\\_Desk-County](#)  
**Subject:** FW: Shoreline Master Plan feedback - Marinas  
**Date:** Monday, February 10, 2020 10:44:50 AM

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**From:** Mail Delivery System [mailto:MAILER-DAEMON@smtp2.clark.wa.gov]  
**Sent:** Thursday, February 6, 2020 4:57 PM  
**To:** Jenna Kay  
**Subject:** Undeliverable: Shoreline Master Plan feedback - Marinas

### Delivery has failed to these recipients or groups:

[outlook\\_B7B3E16CDC438A8B@outlook.com](mailto:outlook_B7B3E16CDC438A8B@outlook.com)

A communication failure occurred during the delivery of this message. Please try resending the message later. If the problem continues, contact your helpdesk.

The following organization rejected your message: outlook-com.olc.protection.outlook.com.

### Diagnostic information for administrators:

Generating server: smtp2.clark.wa.gov

outlook\_B7B3E16CDC438A8B@outlook.com  
 outlook-com.olc.protection.outlook.com #<outlook-com.olc.protection.outlook.com #5.5.0 smtp; 550 5.5.0 Requested action not taken: mailbox unavailable.> #SMTP#

### Original message headers:

Return-Path: <prvs=12999b2b44=Jenna.Kay@clark.wa.gov>  
 Received: from smtp2.clark.wa.gov (localhost.localdomain [127.0.0.1]) by localhost (Email Security Appliance) with SMTP id 391B3ED91B\_E3CB5C2B for <outlook\_B7B3E16CDC438A8B@outlook.com>; Fri, 7 Feb 2020 00:56:34 +0000 (GMT)  
 Received: from cas.clark.wa.gov (esxvm401.clark.root.local [141.185.2.177]) by smtp2.clark.wa.gov (Sophos Email Appliance) with ESMTMP id C2877F3033\_E3CB5C1F for <outlook\_B7B3E16CDC438A8B@outlook.com>; Fri, 7 Feb 2020 00:56:33 +0000 (GMT)  
 Received: from ESXVM406.clark.root.local ([141.185.2.168]) by esxvm401.clark.root.local ([141.185.2.177]) with mapi id 14.03.0468.000; Thu, 6 Feb 2020 16:56:33 -0800  
 From: Jenna Kay <Jenna.Kay@clark.wa.gov>  
 To: 'William K Mathison' <outlook\_B7B3E16CDC438A8B@outlook.com>  
 Subject: RE: Shoreline Master Plan feedback - Marinas  
 Thread-Topic: Shoreline Master Plan feedback - Marinas  
 Thread-Index: AQHV3U2RXPCaJih0CEuyJdvVM2uvu6gO45QQ  
 Date: Fri, 7 Feb 2020 00:56:33 +0000  
 Message-ID: <79968EAE93837642B2EE5CDEF9446BC43A37AF16@esxvm406.clark.root.local>  
 References: <BY5PR08MB6406530A4796F47A5EA44DCBEC1D0@BY5PR08MB6406.namprd08.prod.outlook.com>  
 In-Reply-To: <BY5PR08MB6406530A4796F47A5EA44DCBEC1D0@BY5PR08MB6406.namprd08.prod.outlook.com>  
 Accept-Language: en-US  
 Content-Language: en-US

X-MS-Has-Attach: yes  
X-MS-TNEF-Correlator:  
x-originating-ip: [141.185.35.206]  
Content-Type: multipart/related;

boundary="\_007\_79968EAE93837642B2EE5CDEF9446BC43A37AF16esxvm406clarkro\_";  
    type="multipart/alternative"  
MIME-Version: 1.0  
X-SASI-RCODE: 200

**From:** [Jenna Kay](#)  
**To:** "[William K Mathison](#)"  
**Subject:** RE: Shoreline Master Plan feedback - Marinas  
**Date:** Friday, February 7, 2020 7:55:04 AM

---

Mr. Mathison,

I am writing to confirm receipt of your comment and to thank you for your participation in the county's Shoreline Master Plan periodic review project.

In case it's helpful to know, in addition to the county's Shoreline Master Program review, each of the cities in Clark County will also be reviewing their Shoreline Master Programs over the course of the next year to year and a half, and will also be holding comment periods. I encourage you to share your comments with these other local jurisdictions as well.

Regards,  
Jenna



**Jenna Kay**  
Planner II  
COMMUNITY PLANNING

564.397.4968



---

**From:** William K Mathison [mailto:outlook\_B7B3E16CDC438A8B@outlook.com]  
**Sent:** Thursday, February 6, 2020 4:36 PM  
**To:** Jenna Kay  
**Subject:** Shoreline Master Plan feedback - Marinas

**CAUTION:** This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Jenna,

One thing that needs to be improved with the Shoreline Master Plan is the marina situation in Clark County. Marina improvements at existing marinas and adding a Marina to The Waterfront in downtown Vancouver.

The Ridgefield Marina needs more transient moorage/boat rental slips and docks. It has a small/newer covered boat slip building that is very nice but the few uncovered docks and slips are so

primitive and rickety a boat would surely get scratched and dented using them, and the electrical looks scary. The few marinas, docks, and boat slips we have on Washington shores should be kept in first class condition NOT distressed.

The Waterfront development in downtown Vancouver made a huge mistake not expanding the ridiculously tiny little transient boat dock. With the new Waterfront Vancouver should be a boating destination. It should have a marina similar to the Riverplace Marina in downtown Portland. The excuses I have heard for not including a nice marina at the biggest City on the Columbia River Washington waterfront are very lame... I consider the excuses an abuse of power by environmental extremists who want everything off limits to humans. There needs to be more balance than that.

The Camas/Washougal Marina is very nice. Bottom line Clark County deserves decent Marinas in Ridgefield, Vancouver, and Camas/Washougal to cover the west, central, and eastern sides of the County. Steamboat landing is a nice private marina but not much of a destination for transient visitors.

This is not too much to ask. Just look at all the marinas on the Portland side. This would be a fraction of what they have. I am not a lone voice on this subject.

Sincerely,

William K Mathison  
Battle Ground, WA  
360-903-5951

**From:** [Cathy Steiger](#)  
**To:** [Jenna Kay](#)  
**Subject:** [Contains External Hyperlinks] Re: [Contains External Hyperlinks] Re: Salmon creek  
**Date:** Saturday, February 8, 2020 10:27:27 AM

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Thank you for your attention. Regards, Cathy

On Feb 7, 2020, at 1:35 PM, Jenna Kay <[Jenna.Kay@clark.wa.gov](mailto:Jenna.Kay@clark.wa.gov)> wrote:

Hi Cathy,

It will be the city's Community Development team that manages the shoreline master program, any updates to it, and implementation of it. Any changes to the plan would be approved by the city's Council as well as the state Dept. of Ecology. The Dept. of Ecology is also involved on the implementation side of shoreline master programs too.

I'm not sure who the city's primary shoreline contact is, but if you contact Sam Crummett, the Community Development Director, he should be able to direct you to the best person and answer additional city-specific questions.

Hope this helps.

Regards,  
 Jenna



**Jenna Kay**  
 Planner II  
 COMMUNITY PLANNING

564.397.4968



**From:** Cathy Steiger [<mailto:forke.cate@gmail.com>]  
**Sent:** Friday, February 7, 2020 12:03 PM  
**To:** Jenna Kay  
**Subject:** [Contains External Hyperlinks] Re: Salmon creek

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Your answer is what I assumed, but does does give me comfort. What agency approves and follows compliance with City of Battle Ground or any other incorporated area?

On Feb 7, 2020, at 11:56 AM, Jenna Kay <[Jenna.Kay@clark.wa.gov](mailto:Jenna.Kay@clark.wa.gov)> wrote:

Hi Cathy,

Thank you for your note.

The county's Shoreline Master Program only applies to the unincorporated parts of the county. The City of Battle Ground has its own Shoreline Master Program that covers the shorelines of the state within its boundaries, such as Salmon Creek. Similarly, each of the other cities in Clark County have their own Shoreline Master Programs.

Hopefully that answers your question, but if not, please let me know.

Regards,  
Jenna



**Jenna Kay**  
Planner II  
COMMUNITY PLANNING

564.397.4968



-----Original Message-----

From: Cathy Steiger [<mailto:forks.cate@gmail.com>]

Sent: Friday, February 7, 2020 11:51 AM

To: Jenna Kay

Subject: Salmon creek

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, Jenna,

I see no change proposed for Salmon Creek near me. I am frighten, tho , that it appears jurisdiction and rules governing our stream seems to end where the City of Battle begins. What's with that? Rules for Streams of Statewide Significance I assumed were comprehensive.

What is the jurisdictional overlay of regulations.?

Thank you, Cathy Steiger

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This e-mail and related attachments and any response may be subject to public disclosure under state law.

**From:** [Jenna Kay](#)  
**To:** "SHARLEEN JAMES"  
**Subject:** RE: Shoreline program  
**Date:** Monday, February 10, 2020 10:11:03 AM

---

Hello,

Thanks for reaching out.

There are no proposed changes in the county's proposal related to boater access on private property. Does that answer your question? If not, please let me know.

Also, in case it is helpful: the county's proposal only applies to the unincorporated areas in Clark County. If your property happens to be located in one of the cities along the Columbia, i.e. Vancouver, Camas, or Washougal, then the county's proposal would not apply to you.

Please let me know if I can provide any additional information.

Regards,  
Jenna



**Jenna Kay**  
Planner II  
COMMUNITY PLANNING

564.397.4968



-----Original Message-----

**From:** SHARLEEN JAMES [mailto:sjames2996@aol.com]  
**Sent:** Saturday, February 8, 2020 4:38 PM  
**To:** Jenna Kay  
**Subject:** Shoreline program

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi. I happen to own tide lands along the Columbia River. Are you proposing any changes such as letting boaters up on our property such as Oregon does?

Sent from my iPhone



**From:** [Derek Huegel](#)  
**To:** [Jenna Kay](#)  
**Subject:** Shoreline Comments  
**Date:** Monday, February 24, 2020 5:51:21 PM

---

**CAUTION:** This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jenna,

I would like to request modifications to the list of exemptions preventing folks from building within 100' of a state shoreline. Currently WAC 173-27-040 does not have a provision for a hardship / temporary permit to be issued under a non-substantial development permit and I think there should be.

I think there should be because:

1. The impact the area is less or equal to building a single family home which is currently allowed
2. The use is temporary in nature – it's a hardship
3. The cost of doing a substantial development permit is 8k – 15k and isn't guaranteed – this itself is a hardship.
4. The true number of hardships is limited in it's very nature – this won't be a catalyst for major # of homes going in.
5. I have a customer that want's a house in the area but can't do it legally because she doesn't have the \$ or time to get a substantial development permit and therefore she lives in an RV – terrible situation.

I hope this helps formulate a decent/persuasive case to change the code to allow Hardship Permits without the stress of doing a substantial development permit.

Thanks,

Derek Huegel  
360-314-8037

**From:** [Derek Huegel](#)  
**To:** [Jenna Kay](#)  
**Subject:** Shoreline comments  
**Date:** Tuesday, January 28, 2020 10:25:20 AM

---

**CAUTION:** This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jenna,  
Is now the time to make the comments to the state about allowing a hardship near the shoreline?  
Thanks,

Derek Huegel  
Wolf Industries, Inc.  
C: 360.314.8037 O: 360.723.5307



**From:** [Denis Markian Wichar](#)  
**To:** [Jenna Kay](#)  
**Subject:** Shoreline Master Plan Review  
**Date:** Tuesday, February 25, 2020 3:18:42 PM

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**CAUTION:** This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

My main concern about the county's shoreline is that what little wetland remains should not be compromised in any way. Already, the only wetland remaining between the two interstate bridges is on the Washington side, at Water Resources Education Center. That is pathetic. Actually, it would be great if the county could and would restore wetland that once existed.

Den Mark Wichar  
711 W 25 St  
Vancouver WA 98660

"We learn from history  
that we don't learn from history."  
--- Anglican Archbishop Desmond Mpilo Tutu

**From:** [Sue Marshall](#)  
**To:** [Jenna Kay](#)  
**Cc:** [Jim Byrne](#); [Fred Suter](#); [Mark Leed \(markleed02@gmail.com\)](#); [Oliver Orjiako](#)  
**Subject:** [Contains External Hyperlinks] Joint Comments FOCC, Sierra Club re Update SMP  
**Date:** Wednesday, February 26, 2020 1:49:49 PM  
**Attachments:** [FoCC & Sierra Club Comments CC Shoreline Management.docx](#)

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Hello Jenna,

Please accept the attached joint comments from Friends of Clark County and Sierra Club - Loo Wit Group, regarding the Shoreline Master Program update.

Thank you very much for your time in meeting with several of us regarding the SMP. It was a very helpful and we appreciate that you and Brent Davis provided your expertise.

We look forward to hearing back from you as the process moves forward.

Best regards,

Sue Marshall

Sent from [Outlook](#)



Feb. 26, 2020

Jenna Kay  
Clark County Community Planning  
PO Box 9810,  
Vancouver, WA 98666-9810

REGARDING: FRIENDS OF CLARK COUNTY – SHORELINE MANAGEMENT UPDATE COMMENTS

Dear Ms. Kay:

Friends of Clark County (FoCC, Friends) appreciates the opportunity to comment on the 8 year update of its Shoreline Master Program (SMP), as required by the Washington State Shoreline Management Act (SMA), [RCW 90.58.080\(4\)](#). The following comments are jointly submitted on behalf of Friends of Clark County and Sierra Club – Loo Wit Group.

The County has determined “The Shoreline Master Program (SMP) is a set of policies and regulations required by state law that has three basic policy areas: fostering reasonable and appropriate uses, protecting natural resources and promoting public access. There are seven shoreline designations aquatic, natural, urban conservancy, medium intensity, high intensity, rural conservancy residential and rural conservancy resource.” Some of these designations are somewhat confusing such as natural, urban conservancy, medium intensity, rural conservancy residential and rural conservancy resource. Perhaps clearer descriptions could be developed including allowable uses in each category.

**No Net Loss**

County planners have determined, “No net loss is a key concept of the Shoreline Management Act (SMA). It means that the condition of shoreline ecological functions post-development need to be at least equal to pre-development ecological functions. The no net loss standard is designed to balance the introduction of new impacts to shoreline ecological functions resulting from new development through mitigation sequencing and restoration. Any amendments to the Shoreline Master Program that may occur

through this periodic review process will need to comply with the no net loss standard.” Friends believes the County needs to go further than merely “No Net Loss.

### **Net Ecological Gain**

Presently there are two bills in the legislature, HB 2549 and HB 2550. **HB 2549 - Integrates salmon recovery efforts with growth management.** This bill revises the role of “No Net Loss” into one of a net ecological gain. This is a more modern, enlightened concept and reflects the failings of previous mitigation projects coupled with the effects of climate change. It is being addressed in the Governor’s salmon recovery efforts and in potential salmon recovery dollar distributions. Friends encourages staff to review this concept and incorporate it into current planning.

**HB 2550 - Establishing net ecological gain as a policy for application across identified land use, development, and environmental laws,** is an environmental community priority that may have far reaching implications for state and city environmental regulatory efforts. The Washington Association of Cities states, “The premise of the proposal, sponsored by Rep. Debra Lekanoff (D–La Conner), is that the decline of Washington State Southern Resident Orca and our inability to recover the state’s endangered salmon runs can be traced to the lack of rigor in the state and local environmental regulations. The argument is that the state’s current “no net loss” approach to environmental standards has failed and that we must institute a “net ecological gain” standard. In recent reviews, planners and legislators have followed the success of the “No Net Loss” concept and have found it lacking. . . . “Net ecological gain” means a standard for a development project, policy, plan, or activity in which the impacts on the ecological integrity caused by the development are outweighed by measures taken consistent with the new mitigation hierarchy to avoid and minimize the impacts, undertake site restoration, and compensate for any remaining impacts in an amount sufficient for the gain to exceed the loss.

Net Ecological Gain. “The concept of net ecological gain is defined for purposes of the Growth Management Act (GMA) as a standard for a development project, policy, plan, development regulation, or activity in which the environmental impacts caused by the development are outweighed by measures taken consistent with the mitigation hierarchy. The mitigation hierarchy is established as the following management options to address environmental impacts, in **descending order of priority**:

- avoidance;
- minimization;
- rehabilitation or restoration;
- offset;
- and compensation.” **HB2549**

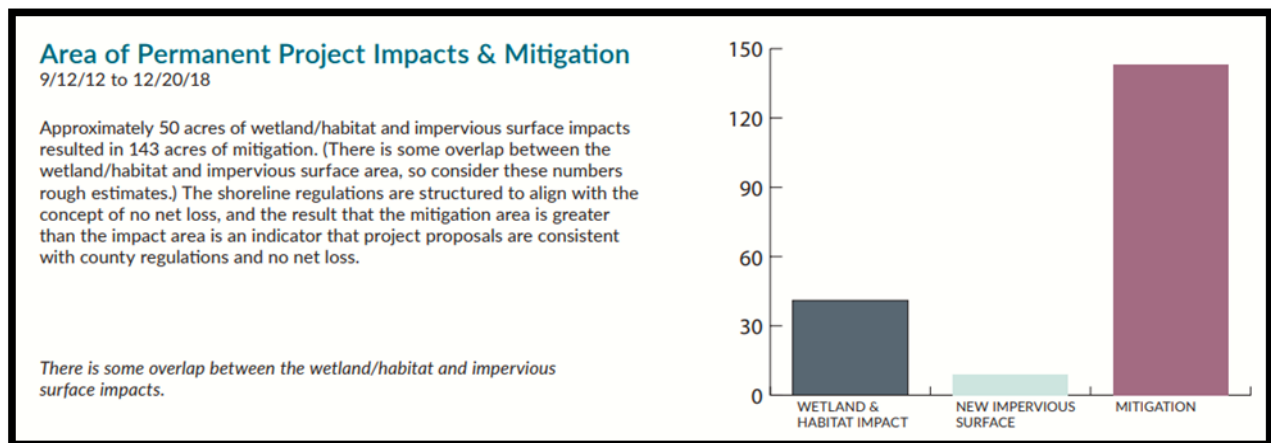
FoCC believe the mitigation activities, should be avoided if possible. This should be the County’s first choice. and should be proactively incorporated early in long range planning and zoning determinations to most effectively **avoid** impacts. If the action cannot be avoided, then it should be kept to a minimum. If mitigation is to occur, it must stay on the same site, or at least in the same watershed. This is designated in Policies 1 & 2 of Chapter 13 Comprehensive Plan – SMP Periodic Review – Jan 2020 Draft, exhibit 2 pg. 5, “. New developments should be located in such a manner as to not require shoreline stabilization measures. 2. When necessary, natural, non-structural shoreline stabilization measures are preferred over structural stabilization measures. Alternatives for shoreline stabilization should be based on the following hierarchy of preference: No action”, . . . then increasing actions needed to minimize disturbance.

Friends agree with net ecological gain and with this priority system. We do not believe it needs to be incorporated into state law, prior to the County adopting it as a guiding policy. We would like to see Clark County in the fore front of promoting this concept. Since it exceeds rather than diminishes the existing standard; it should be legally defensible.

### Net Ecological Gain to Address Clean Water Act Compliance

There is an opportunity when development is proposed along a shoreline to address water quality limiting parameters such as elevated temperature, decreased dissolved oxygen, increased turbidity and bacteria. Each site should be evaluated not just for the impact of the development, but also the **site potential** to correct for previous impacts that exacerbate poor water quality. The riparian planting program of Clean Water Services in Washington County, Oregon, is a good example where riparian planting to restore stream buffers are requirement in both land use permitting and a component of their NPDES water quality permit.

The County has provided an inventory of project impacts and mitigation acreage (see below). The chart appears on the County's Shorelines Update webpage. It appears to indicate 50 acres of wetland and shoreline activity, resulted in 143 acres of mitigation. More acres were created through mitigation than consumed from development activities during 2012 through 2018. The ratio of development acres to mitigation acreage is not apparent in this graph. It is not clear how these ratios are set. The different ratios per mitigation activity should be listed for the public. In face of climate change, Friends advocates for increasing the ratio of mitigation for disturbed lands (see climate change section).



Friends has great concern with the present use of the term “Mitigation”. Numerous studies indicate it does not produce the desired effects associated with no net loss. The concept of “No Net Loss” is hard to document, particularly in shoreline areas where levels of shading, underground water flow, temperature increase are difficult to monitor, particularly in the short term. Mitigation needs to be effective in the long term and on many levels, not just the aesthetic.

Often, on the ground, mitigation refers to an acre for acre land swap according to some set ratio. The results are most often visual, without a true evaluation of the true functions and values of an individual parcel. Most often overlooked, are the hyporheic flows that a particular shoreline parcel might provide. Because these flows are sub-surface, they are not often recognized; but are essential to the proper function and values of that shoreline parcel. Tree removal and shade are also functions, that can seem to be easily exchanged, but this is not often the case. Shoreline ecological functions post-development need to be at least equal to pre-development ecological functions. It is the functions and values that must be protected, not merely a swap of modified land.

The focus of the mitigation should be protecting the functions and values of that particular parcel. This means maintaining the hyporheic flow, shade and other functional values; not merely the aesthetics of the property. The functioning needs to occur in perpetuity if possible.

### Mitigation Literature Review

In the past, Clark County has relied heavily on mitigation to insure “No Net Loss”, but there are no assurances that it truly works, in restoring subterranean the functions and values associated with a particular parcel. There is doubt that these functions can be completely duplicated or replaced. Here are six peer reviewed citations regarding the effectiveness of mitigation efforts:

- Results from a WASDOT review demonstrated that wetland mitigation on sites were not completely effective. Only one of the 30 mitigation sites reviewed for this study met all of the specified goals, and a few had significant shortfalls. Sixteen of 30 mitigation sites did not obtain their required wetland acreage, and only 96 of 173 performance standards were achieved during the intended monitoring period for sites included in this study. From: **AN EVALUATION OF WETLAND MITIGATION SITE COMPLIANCE AT THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION 2005. Fredrick S. Bergdolt, 1 Cynthia A. Prehmus, 2 and Jesse B. Barham 3 Washington State Department of Transportation, P.O. Box 47332, Olympia, Washington, USA 98504-7332.**

- Based on reviews of both published literature and agency reports, our survey of past mitigation projects nationwide indicates that the success rate of permit - linked mitigation projects remains low overall. In addition, there is continuing difficulty in translating mitigation concepts into legal principles, regulatory standards, and permit conditions that are scientifically defensible and sound. Based on the record of past poor performance, we assert that continued piecemeal revision efforts focused on technical or scientific details are not likely to make compensatory mitigation more effective. From: **Race, M.S. and Fonseca, M.S. (1996), Fixing Compensatory Mitigation: What Will it Take?. Ecological Applications, 6: 94-101. doi:[10.2307/2269556](https://doi.org/10.2307/2269556)**

- Washington. In Washington State, 71 percent wetland compensatory mitigation projects were failing to meet basic permit requirements (Johnson, et al., 2000). In addition, only 65% of the total acreage of wetlands lost was replaced by wetland creation or restoration of new wetland area and only 63% of projects were at least partially compensating for the permitted wetland losses. . . . Mitigation plans should include a detailed assessment of land uses at local, watershed and regional scales including projected changes in land use and development. There has been inadequate assessment of ecosystem integrity and quality. Success criteria for mitigation has often been developed for permit requirements without regards to restoration of ecosystem integrity which encompasses the physiochemical and biological attributes of the wetland or stream.

Discussion -- Successful compensatory mitigation for wetland losses and stream impacts requires restoration of dynamic processes, function, and structure. The intent of restoration is to partially or fully reestablish the attributes of a naturalistic, functioning, self-regulating system (USACE, 1999). Wetland mitigation projects have generally failed due to inadequate incorporation of a hydrologic assessment (Bedford, 1996). The key to a successful stream or wetland restoration is an understanding of the underlying hydrogeomorphic processes, how to measure them and how to replace or incorporate those processes into the restoration project. Successfully compensating for wetland losses requires duplication of wetland structure and function; however, simple measures of function do not exist (Zedler, 1996). From: **Compensatory Mitigation: Success Rates, Causes of Failure, and Future Directions By Bruce A. Pruitt, PhD, PH, PWS US Army Corps of Engineers Engineer Research and Development Center Presented at the Environmental Law Summer Seminar July 26-27, 2013 The Omni, Amelia Island Plantation, FL**

- Estimates of mitigation success vary, but local, regional, and national studies show that most mitigation projects fail to fully achieve their intended goals and are not effectively replacing lost or



damaged resources, habitats, and functions. We are not even close to achieving the goal of no net loss for wetlands and other aquatic habitats.

Land use planning and permit decisions are not adequately informed by an understanding of ecosystem processes or watershed conditions. Opportunities to direct mitigation dollars to the most beneficial restoration and conservation efforts likely are being lost. As a result, we may be inadvertently driving development into the areas that are more appropriate and suited for restoration or conservation. At the same time, there is not confidence that conservation and restoration priorities are harmonized with other local efforts to maintain a buildable lands inventory and protect resource lands, especially agricultural lands. From: **Making Mitigation Work: The Report of the Mitigation that Works Forum p. 1 WA State Dept. of Ecology, PO Box 47600, Olympia WA 98504 - 7600 Publication Number #08 - 06 - 018**

- Several studies determined the level of success of compensatory mitigation projects . . . Though the data indicated that some projects were successful and some projects were unsuccessful, most compensation projects had an intermediate level of success, meaning they were neither fully successful nor completely unsuccessful.
  - 25 to 66% of projects were determined to have an intermediate level of success
  - 3 to 43% of projects achieved full success
  - 7 to 97% of projects were unsuccessful, though half of the studies found that at least 20% of projects were unsuccessful . . . From: **D. Sheldon, T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale, *Wetlands in Washington State - Volume 1: A Synthesis of the Science* p. 6-8 (Washington State Department of Ecology Publication #05-06-006 Olympia, WA: March 2005)**

- The effectiveness of habitat compensation projects in achieving no net loss of habitat productivity (NNL) was evaluated at 16 sites across Canada. Periphyton biomass, invertebrate density, fish biomass, and riparian vegetation density were used as indicators of habitat productivity. Approximately 63% of projects resulted in net losses in habitat productivity. From: **Effectiveness of Fish Habitat Compensation in Canada in Achieving No Net Loss. 2006. Quigley J. T. and D. J. Harper, *Environmental Management* Vol. 37, No.3, pp. 351-366**

Currently, “No Net Loss” is a key concept of the Shoreline Management Act (SMA). It means that the condition of shoreline ecological functions post-development need to be at least equal to pre-development ecological functions. The no net loss standard is designed to balance the introduction of new impacts to shoreline ecological functions resulting from new development through mitigation sequencing and restoration. The county must achieve this standard through both the Shoreline Master Program planning process and appropriately regulating individual developments as they are proposed in the future.” From – **Clark Co Display Panel, Shorelines website.**

FoCC believes there has been a too heavy reliance on mitigation to maintain the concept of no net loss within Clark County. The citations above indicate mitigation has yet to be proven as an effective habitat preservation tool. If the County proposes to utilize mitigation, there needs to be some assurance that the mitigation process is working, with a series of annual inspections to assure effectiveness and compliance. Evaluations of mitigation success or failure need to be made available to the public. Citizens just cannot take it on faith that mitigation works in the face of many scientific studies indicating it is ineffective in many instances and does result in loss of function. The mitigation must be effective for a long timeframe (20 years); ideally in perpetuity.

**HB 2549** also incorporates salmon recovery as one of the listed goals of the GMA. “It is specified to include supporting the recovery and enhancement of salmon stocks through net ecological gain from growth planning designed to fulfill tribal treaty obligations and achieve the delisting of threatened or endangered species. The environment and open space and recreation goals of the GMA are also amended to establish a goal of net ecological gain with respect to the protection of the environment and the conservation, protection, and restoration of fish and wildlife habitat.”

### **Future Climate Change**

Climate change and raising sea levels due to melting polar caps will alter the County’s shorelines in the future. As the ocean rises, more water will flood into the Columbia River and its Clark Co. tributaries (Lewis River and East Fork Lewis, Salmon Creek, Lake River, Vancouver Lake, and the Washougal River. These water bodies will climb higher onto the shoreline. The 100-year floodplain is one of the criteria for determining shoreline jurisdiction. The shoreline boundaries will need to be modified in areas where the 100-year floodplain has changed and results in a shift to new and higher shoreline jurisdictions. This impact to county waters needs to be addressed on a frequent and re-occurring basis.

The County will need to develop a mechanism / process in place to address this in the planning and permitting process. Then, County mapping and zoning will need to reflect the reality of the 100-year floodplain and rising sea levels as reflected in current Univ. of Washington and FEMA data. The county appears to have done this. County maps are good. We have no discrepancies with lands included or excluded from the current shoreline designation; however, Certain high bank areas (Wiseman development on East Fork Lewis) are currently sloughing off into the river. Setbacks on high bank or cliff areas; need to be extended further back to protect homes and ensure family safety.

Climate change poses the issue of higher sea level and flooding. But it also can decrease stream flows in warmer months. The last six summers have shown very reduced flows (<40 CFS- a near all-time record) in the East Fork summer flow. While summer flows are down, summer water temperatures are higher than normal. The Dept. of Ecology lists the East Fork Lewis as a 303 (d) river, exceeding the threshold 64° F. temperature for salmonid fishes and excessive bacteria levels. This is especially true for the lower portions of the river. The river below Heisson regularly exceeds this temperature during summer months. Most of the river below this point is unsuitable for trout and salmon during summer. The County should fly drones along the rivers in the summer, monitoring for illegal water withdrawals for lawns and gardens. Riparian landowners should not exceed their water rights, when known. The County needs to beef up its enforcement efforts, and not rely on neighbors informing on fellow citizens.

Temperatures continue to increase beyond those suitable for ESA listed Fish. It is critical that the Shoreline Management Plan lines up with temperature, flow, shade, and other habitat attributes as defined in the fish and wildlife habitat critical areas ordinance. The County must assure that fish species are meeting the latest standards as proposed by WDFW, including extra riparian vegetation in Chinook habitats.

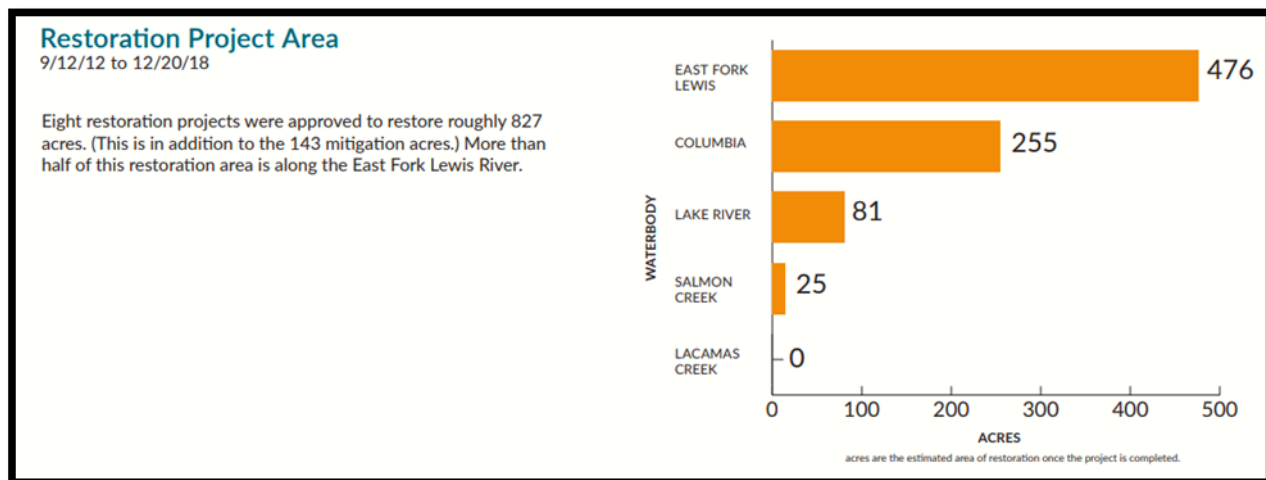
Climate change will also cause a drying of vegetation and increased fire danger in shoreline and other areas. Buffers near homes will need to be extended to provide additional fire protection in shoreline and all areas.

Because we are advocating for an ecological net gain policy; as protected waters fail to meet required standards, what will the County do? What additional mitigation can be employed to counter these losses? What is the impact on ecological net gain or no net loss? What will be the County’s proactive plans?

We urge the county to incorporate adaptation to climate change in the Shoreline Management update.

### Restoration Success

Below is an inventory of Restoration Project Areas in Clark County. As you can see from the graph, the majority (58%) of effort has occurred in the East Fork of the Lewis River Basin. Since 2000, the Lower Columbia Fish Recovery Board has delivered \$12.6 million for fish recovery efforts in the East Fork. Much of that was devoted to fish restoration efforts. Clark County has continued to acquire parcels along the East Fork through the Legacy Lands program, costing millions of dollars. In November 2017 alone, the County Councilors authorized issuing \$7 million in bonds to purchase 10 properties spread across the county. Six of which are located in the East Fork Basin



Yet, the East Fork Lewis continues to have increased temperatures and reduced flow regimes, during summer. It is on the Dept. of Ecology's 303(d) list of rivers that fail in temperature flow and bacteria levels. Salmonid numbers returning to the East Fork are also in decline. This would indicate the restoration projects on the East Fork are not realizing their intended goals. The county is not getting a good return for the millions of dollars spent in land acquisition and restoration efforts. Current restoration efforts do not appear to be working. A shift to "Net Ecological Gain" is needed.

Friends agrees with the listed County's Shoreline Modification and Stabilization goal, "The goal for shoreline modification and stabilization is to avoid or minimize the need for shoreline armoring along shorelines of the state and when it is necessary, achieve it in a way that best protects ecosystem processes, shoreline ecological functions and downstream properties", in Exhibit 2 Proposed Amendments to Chapter 13 of the Clark County Comprehensive Growth Management Plan 2015-2035.

Under the goal for Views and Aesthetics, "The goal for views and aesthetics is to assure that the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water, is protected to the greatest extent feasible". However, riparian shoreline vegetation which may be less visually pleasing, is essential in providing and preserving riparian shoreline habitat. A clean swarth of grass running to the shoreline edge may be visually enticing, but it does not provide the functions and values of riparian vegetation. Shrubs and their shade, cool water and provide needed insects as food for fish and other species. We should not remove shrubs and trees and replace with grass. Shoreline vegetation should be enhanced, particularly in Chinook habitats.

We would like to see all priority species and habitats protected from nearby adverse uses, not just point habitats. This is particularly important in streams and rivers, where listed threatened and endangered fish species reside and migrate. Streams and riparian areas are often used as migration corridors for many listed and unlisted fish and wildlife species.

In summary, Friends would like to see the County:

- Embrace a shift from “No Net Loss” to a “Net Ecological Gain” objective; to more effectively meet standards that protect and restore public resources. We believe in the hierarchy of mitigation: to more seriously avoid impacts, keep disturbance to a minimum, mitigate on site, and if that is not possible – mitigate in the same reach.
- Monitor new and existing mitigation efforts for functions and values, and to ensure full compliance over time (20 years) and report findings to the public.
- Prepare for anticipated Climate Change Effects of rising sea-level, increased water temperature, and reduced summer stream flows.

Thank you for your attention.

Sincerely,



Sue Marshall, President  
Friends of Clark County.



Mark Leed, Chair  
Sierra Club – Loo Wit Group



**From:** [Tim Trohimovich](#)  
**To:** [Jenna Kay](#)  
**Subject:** [Contains External Hyperlinks] Futurewise's comments on the Clark County Shoreline Master Program Update  
**Date:** Wednesday, February 26, 2020 3:20:48 PM  
**Attachments:** [image003.png](#)  
[Futurewise Coms on Clark Co SMP Update Feb 26 2020 Final.pdf](#)

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**CAUTION:** This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Kay:

Enclosed please find Futurewise's comments on the Clark County Shoreline Master Program Update. This letter references documents on a data CD we mailed to you yesterday. It should arrive tomorrow.

If you need anything else, please let me know.

Tim Trohimovich, AICP (he/him)  
Director of Planning & Law



[Join me for the 30<sup>th</sup> Anniversary Spring Luncheon & Livable Communities Awards!](#)

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February 26, 2020

Ms. Jenna Kay, Planner II  
Clark County Community Planning  
PO Box 9810  
Vancouver, Washington 98666-9810

Dear Ms. Kay:

**Subject: Comments on the 2020 Shoreline Master Program (SMP) Periodic Review.**

Send via email to: [jenna.kay@clark.wa.gov](mailto:jenna.kay@clark.wa.gov)

Thank you for the opportunity to comment on the 2020 Shoreline Master Program (SMP) Periodic Review. Futurewise strongly supports the review and update. The update is an important opportunity to provide for the recovery of important fish and wildlife resources such as the Chinook salmon and to begin addressing the adverse effects of global warming including sea level rise and increased wildfire danger. We have recommendations address these important issues and to strengthen the SMP review and update included in this letter below.

Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has members and supporters throughout Washington State including Clark County.

This letter will first summarize our recommendations. We then explain the recommendations in more detail.

## Summary of the Recommendations

- Futurewise agrees with the Friends of Clark County and the Sierra Club recommendations that avoiding impacts should be required whenever possible. The Shoreline Master Program Update should include stronger avoidance and minimization requirements. Please see page 2 of this letter for more information.
- Futurewise recommends that Clark County require wider setbacks between development and shoreline and critical areas buffers to protect homes and property from wildfire danger. Please see page 4 of this letter for more information.
- Futurewise strongly recommends that the Clark County Shoreline Master Program (SMP) should comprehensively address sea level rise and include regulations protecting people, property, and the environment from the adverse effects of sea level rise. As is documented below, sea level rise is accelerating and buildings need to be protected from increased flooding. Please see page 4 of this letter for more information.

- We recommend that the County require an analysis of all geologically hazardous which can adversely impact a proposed development and require case-by-case determinations of landslide buffers based on the risk to the proposed development. This will better protect people and property. Please see page 7 of this letter for more information.
- Clark County should adopt up-to-date riparian buffers in Clark County Code (CCC) 40.460.530F.1.a.(3) and CCC 40.460.570 to protect Chinook habitat and other aquatic habitats. Please see page 11 of this letter for more information.
- Please clarify that the SMP protects fish and wildlife habitats depicted in the PHS GIS database as points, lines, and areas. This is needed to protect all priority species and habitats and to comply with the Shoreline Master Program (SMP) Guidelines. Please see page 12 of this letter for more information.
- Please clarify that all development must comply with the fish and wildlife habitat conservation requirements. This is needed to protect all priority species and habitats and to comply with the SMP Guidelines. Please see page 13 of this letter for more information.
- Please update the priority habitat and species list and the priority species and habitats documents listed in the critical areas regulations. This is needed to protect all priority species and habitats and comply with the SMP Guidelines. Please see page 14 of this letter for more information.
- Protect isolated Category III wetlands of less than 2,500 square feet in area and isolated Category IV wetlands of less than 4,350 square feet. This is needed to protect wetland functions and to comply with the SMP Guidelines. Please see page 15 of this letter for more information.
- Increase mitigation ratios for riparian vegetation mitigation in CCC 40.460.570D. to protect fish and wildlife habitats. This is necessary to comply with the SMP Guidelines. Please see page 16 of this letter for more information.
- Prohibit net pen aquaculture for nonnative species in Table 40.460.620-1. This will make the SMP consistent with RCW 77.125.050(1). Please see page 16 of this letter for more information.

## Detailed Comments on Exhibit 5 Proposed Amendments to Chapter 40.460 Clark County Code

**Futurewise agrees with the Friends of Clark County and the Sierra Club recommendations that avoiding impacts should be required whenever possible. Please see Clark County Code (CCC) 40.460.530A.10 on page 29 of 99**

Futurewise agrees with the Friends of Clark County and the Sierra Club that impacts to shoreline ecological functions and systems should be avoided whenever possible and that the Clark County Shoreline Master Program should have stronger avoidance requirements. *As Making Mitigation Work: The Report of the Mitigation that Works Forum* concluded “[e]stimates of mitigation success vary, but local, regional, and national studies show that most mitigation projects fail to fully achieve their intended goals and are not effectively replacing lost or damaged resources, habitats, and functions.



We are not even close to achieving the goal of no net loss for wetlands and other aquatic habitats.”<sup>1</sup> This is why for forum’s “Recommendation 1” is to “Reinforce the Importance of Avoiding and Minimizing Impacts to Resources that are Highly Valuable or Difficult to Replace.”<sup>2</sup> The Shoreline Master Program regulations must include strengthened avoidance and minimization requirements.

**Require wider setbacks between development and shoreline and critical areas buffers to protect homes and property from wildfire danger. Please see Clark County Code (CCC) 40.460.530E. on pages 28 and 29 of 99**

The Washington Department of Natural Resources’ database of wildfires on the lands protected by the agency lists more than 1,050 fires in Clark County between 1970 and January 2016.<sup>3</sup> Climate change has the potential to increase wildfire risk through changes in fire behavior, wildfire ignitions, fire management, and the vegetation that fuels wildfire.<sup>4</sup>

Setbacks from critical areas buffers provide an area in which buildings can be repaired and maintained without having to intrude into the buffer. It also allows for the creation of a Home Ignition Zone that can protect buildings from wildfires and allow firefighters to attempt to save the buildings during a wildfire. Since a 30-foot-wide Home Ignition Zone is important to protect buildings,<sup>5</sup> we recommend that CCC 40.460.530E. require a setback at least 30 feet wide adjacent to shoreline and critical area buffers. Combustible structures, such as decks, should not be allowed within this setback to protect the building from wildfires. This will increase protection for people and property. We recommend that a new CCC 40.460.530E.12. be adopted to read as follows with our additions double underlined.

**12. There shall be a building setback of thirty (30) feet established on the landward or development facing edge of any buffer required by this chapter. The setback shall be an open space that may include landscaping and paved surfaces. Buildings, decks, architectural features, and combustible structures shall not be constructed in the setback.**

<sup>1</sup> ESA and Ross & Associates Environmental Consulting, Ltd., *Making Mitigation Work: The Report of the Mitigation that Works Forum* (Washington State Department of Ecology Olympia, Washington Publication Number: 08-06-018: Dec. 2008) last accessed on Feb. 25, 2020 at: <https://fortress.wa.gov/ecy/publications/SummaryPages/0806018.html> <https://> and on the CAO on CD on CD 1 enclosed with Futurewise’s Feb. 25, 2020, letter in the Wetlands directory with the filename: “0806018.html.pdf.”

<sup>2</sup> *Id.* at p. 7.

<sup>3</sup> Tetra Tech, *Clark Regional Natural Hazard Mitigation Plan Volume 1 — Planning Area-Wide Elements* p. 14-3 (Clark Regional Emergency Services Agency: Final Aug. 2017) accessed on Feb. 19, 2020 at: [http://cresa911.org/wp-content/uploads/2018/04/ClarkCoHazMitPlan\\_Volume1\\_Final\\_2017-09-21v2-2.pdf](http://cresa911.org/wp-content/uploads/2018/04/ClarkCoHazMitPlan_Volume1_Final_2017-09-21v2-2.pdf) and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “ClarkCoHazMitPlan\_Volume1\_Final\_2017-09-21v2-2.pdf.”

<sup>4</sup> *Id.* at p. 14-15.

<sup>5</sup> Nation Fire Protection Association “preparing homes for wildfire” webpage last accessed on Feb. 19, 2020 at: <https://www.nfpa.org/Public-Education/By-topic/Wildfire/Preparing-homes-for-wildfire> and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “NFPA - Preparing homes for wildfire.pdf.”

**Futurewise strongly recommends that the Clark County Shoreline Master Program should comprehensively address sea level rise. Please see CCC 40.460.530D.3. on page 31 of 99**

The Shoreline Management Act and Shoreline Master Program (SMP) Guidelines require shoreline master programs to address the flooding that will be caused by sea level rise.<sup>6</sup> RCW 90.58.100(2)(h) requires that shoreline master programs “shall include” “[a]n element that gives consideration to the statewide interest in the prevention and minimization of flood damages ...” WAC 173-26-221(3)(b) provides in part that “[o]ver the long term, the most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas ...” The areas subject to sea level rise are flood prone areas just the same as areas along bays, rivers, or streams that are within the 100-year flood plain. RCW 90.58.100(1) and WAC 173-26-201(2)(a) also require “that the ‘most current, accurate, and complete scientific and technical information’ and ‘management recommendations’ [shall to the extent feasible] form the basis of SMP provisions.”<sup>7</sup>

Sea level rise is a real problem that is happening now. Sea level is rising and floods and erosion are increasing. In 2012 the National Research Council concluded that global sea level had risen by about seven inches in the 20<sup>th</sup> Century.<sup>8</sup> A recent analysis of sea-level measurements for tide-gage stations, including the Astoria, Oregon tide-gauge, shows that sea level rise is accelerating.<sup>9</sup> The Virginia Institute of Marine Science (VIMS) “emeritus professor John Boon, says ‘the key message from the 2019 report cards is a clear trend toward acceleration in rates of sea-level rise at 25 of our 32 tide-gauge stations. Acceleration can be a game changer in terms of impacts and planning, so we really need to pay heed to these patterns.’

“VIMS marine scientist Molly Mitchell says ‘seeing acceleration at so many of our stations suggests that—when we look at the multiple sea-level scenarios that NOAA puts out based on global models—we may be moving towards the higher projections.’”<sup>10</sup>

Climate Central projects two feet of sea level rise for the Columbia River and other tidally influenced water bodies in Clark County by 2100 based on the National Research Council’s mid-range Pacific

<sup>6</sup> Although the Shoreline Master Program (SMP) Guidelines are called “guidelines,” they are actually binding state agency rules and shoreline management program updates must comply with them. RCW 90.58.030(3)(b) & (c); RCW 90.58.080(1) & (7).

<sup>7</sup> *Taylor Shellfish Company, Inc., et al., v. Pierce County and Ecology (Aquaculture II)*, Final Decision and Order Central Puget Sound Region Growth Management Hearings Board Case No. 18-3-0013c (June 17, 2019), at 10 of 81 footnote omitted.

<sup>8</sup> National Research Council, *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future* p. 23, p. 156, p. 96, p. 102 (2012) last accessed on Feb. 5, 2020 at: <https://www.nap.edu/download/13389>.

<sup>9</sup> William and Mary Virginia Institute of Marine Science, U.S. *West Coast Sea-Level Trends & Processes Trend Values for 2019* accessed on Feb. 5, 2020 at: [https://www.vims.edu/research/products/slrc/compare/west\\_coast/index.php](https://www.vims.edu/research/products/slrc/compare/west_coast/index.php) and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “2020-02-05 US West Coast Sea-Level Trends.pdf.”

<sup>10</sup> David Malmquist, *Sea-level report cards: 2019 data adds to trend in acceleration* Virginia Institute of Marine Science website (Jan. 30, 2020) accessed on Feb. 5, 2020 at: [https://www.vims.edu/newsandevents/topstories/2020/slrc\\_2019.php](https://www.vims.edu/newsandevents/topstories/2020/slrc_2019.php) and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “2020-02-05 2019 data adds to sea level rise acceleration trend.pdf.”

coast sea level rise projections.<sup>11</sup> The extent of the sea level rise currently projected for Clark County can be seen on the NOAA Office for Coastal Management Digitalcoast Sea Level Rise Viewer available at: <https://coast.noaa.gov/digitalcoast/tools/slr.html>.

Projected sea level rise will substantially increase flooding. As Ecology writes, “[s]ea level rise and storm surge[s] will increase the frequency and severity of flooding, erosion, and seawater intrusion—thus increasing risks to vulnerable communities, infrastructure, and coastal ecosystems.”<sup>12</sup> Not only our marine shorelines will be impacted, as Ecology writes “[m]ore frequent extreme storms are likely to cause river and coastal flooding, leading to increased injuries and loss of life.”<sup>13</sup>

Zillow recently estimated that 31,235 homes in Washington State may be underwater by 2100, 1.32 percent of the state’s total housing stock. The value of the submerged homes is an estimated \$13.7 billion.<sup>14</sup> Zillow wrote:

It’s important to note that 2100 is a long way off, and it’s certainly possible that communities [may] take steps to mitigate these risks. Then again, given the enduring popularity of living near the sea despite its many dangers and drawbacks, it may be that even more homes will be located closer to the water in a century’s time, and these estimates could turn out to be very conservative. Either way, left unchecked, it is clear the threats posed by climate change and rising sea levels have the potential to destroy housing values on an enormous scale.<sup>15</sup>

Sea level rise will have an impact beyond rising seas, floods, and storm surges. The National Research Council wrote that:

Rising sea levels and increasing wave heights will exacerbate coastal erosion and shoreline retreat in all geomorphic environments along the west coast. Projections of future cliff and bluff retreat are limited by sparse data in Oregon and Washington and by a high degree of geomorphic variability along the coast. Projections using only historic rates of cliff erosion predict 10–30 meters [33 to 98 feet] or more of retreat along the west coast by 2100. An increase in the rate of sea-level rise combined with larger waves could significantly increase these rates. Future retreat of

<sup>11</sup> Climate Central, *Sea level rise and coastal flood risk: Summary for Clark County, WA* p. 1 (2016) accessed on Feb. 14, 2019 at: [https://riskfinder.climatecentral.org/county/clark-county.wa.us?comparisonType=postal-code&forecastType=NOAA2017\\_int\\_p50&level=7&unit=ft](https://riskfinder.climatecentral.org/county/clark-county.wa.us?comparisonType=postal-code&forecastType=NOAA2017_int_p50&level=7&unit=ft) and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “WA\_Clark\_County-report sea level rise 2016.pdf.”

<sup>12</sup> State of Washington Department of Ecology, *Preparing for a Changing Climate Washington State’s Integrated Climate Response Strategy* p. 90 (Publication No. 12-01-004: April 2012) last accessed on Feb. 5, 2020 at: <https://fortress.wa.gov/ecy/publications/publications/1201004.pdf> and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “1201004.pdf.”

<sup>13</sup> *Id.* at p. 17.

<sup>14</sup> Krishna Rao, *Climate Change and Housing: Will a Rising Tide Sink all Homes?* ZILLOW webpage (Jun. 2, 2017) last accessed on Feb. 14, 2020 at: <http://www.zillow.com/research/climate-change-underwater-homes-12890/>.

<sup>15</sup> *Id.*

beaches will depend on the rate of sea-level rise and, to a lesser extent, the amount of sediment input and loss.<sup>16</sup>

These impacts are why the Washington State Department of Ecology recommends “[l]imiting new development in highly vulnerable areas.”<sup>17</sup>

Unless wetlands and shoreline vegetation can migrate landward, their area and ecological functions will decline.<sup>18</sup> If development regulations are not updated to address the need for vegetation to migrate landward in feasible locations, wetlands and shoreline vegetation will decline. This loss of shoreline vegetation will harm the environment. It will also deprive marine shorelines of the vegetation that protects property from erosion and storm damage by modifying soils and accreting sediment.<sup>19</sup> This will increase damage to upland properties.

To prevent these adverse impacts Futurewise recommend that the SMP require new lots and new buildings be located outside the area of likely sea level rise and if that is not possible, buildings should be elevated above the likely sea level rise. These requirements will provide better protection for buildings and people and will also allow wetlands and marine vegetation to migrate as the sea level rises. We recommend the following new regulations be added to the SMP periodic update in CCC 40.460.530D.3. on page 31 of 99.

- h. New lots shall be designed and located so that the buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.
- i. Where lots are large enough, new structures and buildings shall be located so that they are outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.

<sup>16</sup> National Research Council, *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future* p. 135 (2012).

<sup>17</sup> State of Washington Department of Ecology, *Preparing for a Changing Climate Washington State’s Integrated Climate Response Strategy* p. 90 (Publication No. 12-01-004: April 2012).

<sup>18</sup> Christopher Craft, Jonathan Clough, Jeff Ehman, Samantha Joye, Richard Park, Steve Pennings, Hongyu Guo, and Megan Machmuller, *Forecasting the effects of accelerated sea-level rise on tidal marsh ecosystem services* FRONT ECOL ENVIRON 2009; 7, doi:10.1890/070219 p. \*6 last accessed on Feb. 5, 2020 at:

<http://nsmn1.uh.edu/steve/CV/Publications/Craft%20et%20al%202009.pdf>. Frontiers in Ecology and the Environment is a peer-reviewed scientific journal. Frontiers in Ecology and the Environment Journal Overview webpage last accessed on Feb. 19, 2020 at: <https://esajournals.onlinelibrary.wiley.com/journal/15409309>. Both on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “Craft et al 2009.pdf” and “Frontiers in Ecology and the Environment - Journal Overview” respectively.

<sup>19</sup> R. A. Feagin, S. M. Lozada-Bernard, T. M. Ravens, I. Möller, K. M. Yeagei, A. H. Baird and David H. Thomas, *Does Vegetation Prevent Wave Erosion of Salt Marsh Edges?* 106 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA pp. 10110-10111 (Jun. 23, 2009) last accessed on Feb. 5, 2020 at: <http://www.pnas.org/content/106/25/10109.full> and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “10109.full.pdf.” This journal is peer-reviewed. *Id.* at p. 10113.

- j. New and substantially improved structures shall be elevated above the likely sea level rise elevation in 2100 or for the life of the building, whichever is less.

Also, to avoid flooding, erosion, and other adverse impacts on shoreline resources, Futurewise strongly recommends that the County take a comprehensive approach to adapting to sea level rise and its adverse impacts modeled on the process California’s coastal counties and cities use. The process includes six steps.<sup>20</sup>

1. Determine the range of sea level rise projections relevant to Clark County’s shorelines subject to tidal influence. The California Coastal Commission recommends analyzing intermediate and long-term projections because “development constructed today is likely to remain in place over the next 75-100 years, or longer.”<sup>21</sup>
2. Identify potential physical sea level rise impacts in Clark County’s shorelines subject to tidal influence.
3. Assess potential risks from sea level rise to the resources and development on the shorelines subject to tidal influence.
4. Identify adaptation strategies to minimize risks. The *California Coastal Commission Sea Level Rise Policy Guidance* includes recommended adaptation strategies to consider.<sup>22</sup>
5. Adopt an updated shoreline master program incorporating the selected adaptation strategies.
6. Implement the updated shoreline master program and monitor and revise as needed. Because the scientific data on sea level rise is evolving, the California Coastal Commission recommends modifying “the current and future hazard areas on a five to ten year basis or as necessary to allow for the incorporation of new sea level rise science, monitoring results, and information on coastal conditions.”<sup>23</sup>

**Require analysis of all geological hazards which can adversely impact a proposed development and require case-by-case determinations of landslide buffers based on the risk to the proposed development. Please see CCC 40.460.530E.2.a. and 3.c. on pages 31 – 32 of 99**

The March 22, 2014, Oso landslide “claimed the lives of 43 people, making it the deadliest landslide event in United States history. Of the approximately 10 individuals who were struck by the landslide

<sup>20</sup> *California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits* pp. 69 – 95 (Nov. 7, 2018) last accessed on Feb. 10, 2020 at: <https://www.coastal.ca.gov/climate/slrguidance.html> and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “0\_Full\_2018AdoptedSLRGuidanceUpdate.pdf.”

<sup>21</sup> *Id.* at p. 74.

<sup>22</sup> *Id.* at pp. 121 – 162.

<sup>23</sup> *Id.* at p. 94.

and survived, several sustained serious injuries.”<sup>24</sup> So properly designating geologically hazardous areas and protecting people from geological hazards is very important.

Homeowner’s insurance does not cover the damage from landslides. “Insurance coverage for landslides is uncommon. It is almost never a standard coverage and is difficult to purchase inexpensively as a policy endorsement.”<sup>25</sup>

None of the Oso victims’ homes were covered by insurance for landslide hazards.<sup>26</sup> And that is common when homes are damaged by landslides.<sup>27</sup> For example, on March 14, 2011, a landslide damaged the home of Rich and Pat Lord.<sup>28</sup> This damage required the homeowners to abandon their home on Norma Beach Road near Edmonds, Washington. Because their homeowner’s insurance did not cover landslides, they lost their home.<sup>29</sup> This loss of what may be a family’s largest financial asset is common when homes are damaged or destroyed by landslides or other geological hazards.

Landslide buyouts are rare and when they occur the property owner often only recovers pennies on the dollar. The property owners bought out after the Aldercrest-Banyon landslide in Kelso, Washington destroyed their homes received 30 cents on the dollar.<sup>30</sup> This underlines why preventing development in geologically hazardous areas is just plain ordinary consumer protection.

Landslides in Western Washington can run out long distances. The 1949 Tacoma Narrows Landslide, in Tacoma “failed catastrophically along steep” 300 feet high bluffs and ran out 1,500 feet

<sup>24</sup> Jeffrey R. Keaton, Joseph Wartman, Scott Anderson, Jean Benoît, John deLaChapelle, Robert Gilbert, David R. Montgomery, *The 22 March 2014 Oso Landslide, Snohomish County, Washington* p. 1 (Geotechnical Extreme Events Reconnaissance (GEER): July 22, 2014) last accessed on Jan. 23, 2020 at: [http://www.geerassociation.org/index.php/component/geer\\_reports/?view=geerreports&layout=build&id=30](http://www.geerassociation.org/index.php/component/geer_reports/?view=geerreports&layout=build&id=30) and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “GEER\_Oso\_Landslide\_Report.pdf.” If the American territories are included, then the Oso landslide is the second deadliest landslide in American history. R.M. Iverson, D.L. George, K. Allstadt, *Landslide mobility and hazards: implications of the Oso disaster* 412 EARTH AND PLANETARY SCIENCE LETTERS 197, 198 (2015). The Geological Society of America gave an award to *The 22 March 2014 Oso Landslide, Snohomish County, Washington*. Hannah Hickey, Joseph Wartman, David Montgomery honored for Oso landslide report p. 1 (July 15, 2016) on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “GEER Oso Report Receives Award.pdf.”

<sup>25</sup> Robert L. Schuster & Lynn M. Highland, *The Third Hans Cloos Lecture: Urban landslides: socioeconomic impacts and overview of mitigative strategies* 66 BULLETIN OF ENGINEERING GEOLOGY AND THE ENVIRONMENT 1, p. 22 (2007) last accessed on Jan. 23, 2020 at:

<https://www.researchgate.net/publication/225794820> The Third Hans Cloos Lecture Urban landslides socioeconomic impacts and overview of mitigative strategies.

<sup>26</sup> Sanjay Bhatt, *Slide erased their homes, but maybe not their loans* *The Seattle Times* (April 2, 2014) last accessed on Jan. 6, 2020 at: [http://old.seattletimes.com/html/latestnews/2023278858\\_mudslidefinancial.xml.html](http://old.seattletimes.com/html/latestnews/2023278858_mudslidefinancial.xml.html).

<sup>27</sup> *Id.*

<sup>28</sup> Ian Terry, *Abandoned and trashed after mudslide, Edmonds house now for sale* *The Herald* (Feb. 11, 2015). The house is for sale after the bank who held the Lord’s mortgage took ownership of the home. *Id.* Last accessed on Jan. 6, 2020 at: <http://www.heraldnet.com/article/20150211/NEWS01/150219829>.

<sup>29</sup> *Id.* at p. \*6.

<sup>30</sup> Isabelle Sarikhan, *Sliding Thought Blog, Washington’s Landslide Blog* Landslide of the Week – Aldercrest Banyon Landslide July 29, 2009 last accessed on Feb. 6, 2020 at: <https://slidingthought.wordpress.com/2009/07/29/landslide-of-the-week-aldercrest-banyon-landslide/>.

into Puget Sound.<sup>31</sup> This is five times the buff height. The 2014 Oso slide ran out for over a mile (5,500 feet) even though the slope height was 600 feet.<sup>32</sup> This was nine times the slope height. Recent research shows that long runout landslides are more common than had been realized.<sup>33</sup> This research documents that over the past 2000 years, the average landslide frequency of long runout landslides in the area near the Oso landslide is one landslide every 140 years.<sup>34</sup> The landslides ran out from 656 feet to the 6,561 feet of the 2014 landslide.<sup>35</sup> The 2013 Ledgewood-Bonair Landslide on Whidbey Island extended approximately 300 feet into Puget Sound.<sup>36</sup> In a study of shallow landslides along Puget Sound from Seattle to Everett, the average runout length was 197.5 feet (60.2 m) and the maximum runout length was 771 feet (235 m).<sup>37</sup> So only requiring development that must obtain a county approval and is in or within 100 feet of a geologic hazard area to comply with the geologically hazardous area requirements as CCC 40.460.530E.2.a. does not adequately protect people and property. As the cited landslide runouts show, limiting the toe of slope buffer to half of the slope height but not to exceed 15 feet as CCC 40.430.020D.2.a. does will not protect people and

<sup>31</sup> Alan F. Chleborad, *Modeling and Analysis of the 1949 Narrows Landslide, Tacoma, Washington* xxxi ENVIRONMENTAL AND ENGINEERING GEOSCIENCE 305 p. 305 (1994) last accessed on Feb. 6, 2020 at: <https://pubs.geoscienceworld.org/aeg/eeg/article-abstract/xxxi/3/305/137520/modeling-and-analysis-of-the-1949-narrows?redirectedFrom=fulltext> and cited page on the data CD enclosed with Futurewise's Feb. 25, 2020, letter transmitting supporting materials with the filename: "Modeling and Analysis of the 1949 Narrows Landslide, Tacoma, WA \_ Environmental and Engineering Geoscience.pdf" Environmental & Engineering Geoscience is a peer-reviewed journal. Environmental & Engineering Geoscience Complete Author Instructions p. 1 of 6 (May 8, 2012) on the data CD enclosed with Futurewise's Feb. 25, 2020, letter transmitting supporting materials with the filename: "Environmental & Engineering Geoscience Author Instructions.pdf."

<sup>32</sup> Jeffrey R. Keaton, Joseph Wartman, Scott Anderson, Jean Benoît, John deLaChapelle, Robert Gilbert, David R. Montgomery, *The 22 March 2014 Oso Landslide, Snohomish County, Washington* p. 56 & p. 144 (Geotechnical Extreme Events Reconnaissance (GEER): July 22, 2014).

<sup>33</sup> Sean R. LaHusen, Alison R. Duvall, Adam M. Booth, and David R. Montgomery, *Surface roughness dating of long-runout landslides near Oso, Washington (USA), reveals persistent postglacial hillslope instability* GEOLOGY pp. \*2 – 3, published online on 22 December 2015 as doi:10.1130/G37267.1 and on the data CD enclosed with Futurewise's Feb. 25, 2020, letter transmitting supporting materials with the filename: "G37267.1.full.pdf"; Geological Society of America (GSA) Data Repository 2016029, *Data repository for: Surface roughness dating of long-runout landslides near Oso, WA reveals persistent postglacial hillslope instability* p. 4 and on the data CD enclosed with Futurewise's Feb. 25, 2020, letter transmitting supporting materials with the filename: "2016029.pdf." Geology is a peer-reviewed scientific journal. Geology – Prep webpage accessed on Jan. 23, 2018 at:

<http://www.geosociety.org/GSA/Publications/Journals/Geology/GSA/Pubs/geology/home.aspx#overview> and on the data CD enclosed with Futurewise's Feb. 25, 2020, letter transmitting supporting materials with the filename: "Geology – Prep.pdf."

<sup>34</sup> Sean R. LaHusen, Alison R. Duvall, Adam M. Booth, and David R. Montgomery, *Surface roughness dating of long-runout landslides near Oso, Washington (USA), reveals persistent postglacial hillslope instability* GEOLOGY p. \*2, published online on 22 December 2015 as doi:10.1130/G37267.1.

<sup>35</sup> Geological Society of America (GSA) Data Repository 2016029, *Data repository for: Surface roughness dating of long-runout landslides near Oso, WA reveals persistent postglacial hillslope instability* p. 4.

<sup>36</sup> Stephen Slaughter, Isabelle Sarikhan, Michael Polenz, and Tim Walsh, *Quick Report for the Ledgewood-Bonair Landslide, Whidbey Island, Island County, Washington* pp. 3 – 4 (Washington State Department of Natural Resources, Division of Geology and Earth Resources: March 28, 2013) last accessed on Feb. 6, 2020 at: [http://www.dnr.wa.gov/publications/ger\\_qr\\_whidbey\\_island\\_landslide\\_2013.pdf](http://www.dnr.wa.gov/publications/ger_qr_whidbey_island_landslide_2013.pdf).

<sup>37</sup> Edwin L. Harp, John A. Michael, and William T. Laprade, *Shallow-Landslide Hazard Map of Seattle, Washington* p. 17 (U.S. Geological Survey Open-File Report 2006–1139: 2006) accessed on Feb. 6, 2020 at: <http://pubs.usgs.gov/of/2006/1139/> and on the data CD enclosed with Futurewise's Feb. 25, 2020, letter transmitting supporting materials with the filename: "of06-1139\_508.pdf."

property. Similarly, limiting the top of slope buffer to one third of the slope height but not to exceed 40 feet as CCC 40.430.020D.2.b. does will not protect people and property.

The Joint SR 530 Landslide Commission recommends identifying “[c]ritical area buffer widths based on site specific geotechnical studies” as an “innovative development regulation[]” that counties and cities should adopt.<sup>38</sup> So we recommend that all properties that may be adversely impacted by a steep slope hazard should have their buffers based on a critical areas report for that site. Construction should not be allowed in buffer areas. These standards are necessary to protect Clark County families and their largest investment, their homes. For these reasons we recommend that CCC 40.460.530E.2.a. be revised to read as follows with our additions double underlined and our deletions struck through.

a. All construction, development, earth movement, clearing, or other site disturbance which may be adversely impacted by ~~requires a permit, approval or other authorization from the County in or within one hundred (100) feet of a~~ geologic hazard area shall comply with the requirements of this Program.

For the above reasons we recommend that CCC 40.460.530E.2.a. be revised to read as follows with our additions double underlined and our deletions struck through.

a. The Shoreline Administrator shall determine the size of the required buffer and setback based upon a critical area report prepared by a geotechnical engineer or geologist. ~~Required buffers and setbacks for development activities in geologic hazard areas are specified in Section 40.430.020.~~

b. ~~The Shoreline Administrator may approve buffers and setbacks which differ from those required by Section 40.430.020(D)(1) if the applicant submits a geologic hazard area study described in Section 2 40.430.030(C), which technically demonstrates and illustrates that the alternative buffer provides protection which is greater than or equal to that provided by the buffer required in Section 40.430.020(D)(1).~~

~~e~~ The Shoreline Administrator may increase buffers or setbacks where necessary to meet requirements of the International Building Code.

<sup>38</sup> The SR 530 Landslide Commission, *Final Report* p. 31 (Dec. 15, 2014) accessed on Feb. 6, 2020 at: [http://www.governor.wa.gov/sites/default/files/documents/SR530LC\\_Final\\_Report.pdf](http://www.governor.wa.gov/sites/default/files/documents/SR530LC_Final_Report.pdf) and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “SR530LC\_Final\_Report.pdf.”



**Adopt up-to-date riparian buffers in CCC 40.460.530F.1.a.(3) on page 32 of 99 and CCC 40.460.570 on pages 40 – 42 of 99 to protect Chinook habitat and other aquatic habitats**

As has been reported in media and scientific reports, the Southern Resident orcas, or killer whales, are threatened by (1) an inadequate availability of prey, the Chinook salmon, “(2) legacy and new toxic contaminants, and (3) disturbance from noise and vessel traffic.”<sup>39</sup> “Recent scientific studies indicate that reduced Chinook salmon runs undermine the potential for the Southern Resident population to successfully reproduce and recover.”<sup>40</sup> A 2018 analysis by the National Oceanic and Atmospheric Administration and the State of Washington Department of Fish and Wildlife ranked the Lower Columbia spring Chinook stocks that originate in the Lewis River as the 7<sup>th</sup> highest in importance as food sources for the Southern Resident killer whales.<sup>41</sup> The shoreline master program update is an opportunity to take steps to help recover the Southern Resident orcas, the Chinook salmon, and the species and habitats on which they depend.

The Shoreline Master Program (SMP) Guidelines, in WAC 173-26-221(3)(c), provides in part that “[i]n establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and *Management Recommendations for Washington's Priority Habitats*, prepared by the Washington state department of fish and wildlife where applicable.”

The State of Washington Department of Fish and Wildlife has recently updated the Priority Habitat and Species recommendations for riparian areas. The updated management recommendations document that fish and wildlife depend on protecting riparian vegetation and the functions this vegetation performs such as maintaining a complex food web that supports salmon and maintaining temperature regimes to name just a few of the functions.<sup>42</sup>

The updated *Riparian Ecosystems, Volume 1: Science synthesis and management implications* scientific report concludes that the “[p]rotection and restoration of riparian ecosystems continues to be critically important because: a) they are disproportionately important, relative to area, for aquatic species, e.g.,

<sup>39</sup> State of Washington Office of the Governor, Executive Order 18-02 Southern Resident Killer Whale Recovery and Task Force p. 1 (March 14, 2018) last accessed on Feb. 18, 2020 at:

[https://www.governor.wa.gov/sites/default/files/exe\\_order/eo\\_18-02\\_1.pdf](https://www.governor.wa.gov/sites/default/files/exe_order/eo_18-02_1.pdf) and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “eo\_18-02\_1.pdf.”

<sup>40</sup> *Id.*

<sup>41</sup> National Oceanic and Atmospheric Administration and the State of Washington Department of Fish and Wildlife, *Southern Resident Killer Whale Priority Chinook Stocks* p. 6 (June 22, 2018) last accessed on Feb. 18, 2020 at:

<https://www.documentcloud.org/documents/4615304-SRKW-Priority-Chinook-Stocks.html> and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “SRKW-Priority-Chinook-Stocks.pdf.”

<sup>42</sup> Timothy Quinn, George F. Wilhere, and Kirk L. Krueger, technical editors, *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications* pp. 265 – 68 & p. 270 (A Priority Habitat and Species Document of the Washington Department of Fish and Wildlife, Olympia, WA: Updated Jan. 2020) last accessed on Feb. 18, 2020 at: <https://wdfw.wa.gov/publications/01987/> and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “wdfw01987.pdf.” This report was peer-reviewed. *Id.* at pp. 11 – 12.

salmon, and terrestrial wildlife, b) they provide ecosystem services such as water purification and fisheries (Naiman and Bilby 2001; NRC 2002; Richardson et al. 2012), and c) by interacting with watershed-scale processes, they contribute to the creation and maintenance of aquatic habitats.”<sup>43</sup> The report states that “[t]he width of the riparian ecosystem is estimated by one 200-year site-potential tree height (SPTH) measured from the edge of the active channel or active floodplain. Protecting functions within at least one 200-year SPTH is a scientifically supported approach if the goal is to protect and maintain full function of the riparian ecosystem.”<sup>44</sup> For Clark County, the stream length-weighted third quartile 200-year SPTH is 235 feet.<sup>45</sup>

We recommend that shoreline jurisdiction should continue to include the 100-year flood plain<sup>46</sup> and that the buffers for river and stream shoreline be increased to use the newly recommended 200-year SPTH of 235 feet and that this width should be measured from the edge of the channel, channel migration zone, or active floodplain whichever is wider.<sup>47</sup> New development, except water dependent uses should not be allowed within this area.<sup>48</sup> This will help maintain shoreline functions and Chinook habitat.

**Clarify that the SMP protects fish and wildlife habitats depicted in the PHS GIS database as points, lines, and areas. Please see CCC 40.460.530F.1.a.(4) on page 32 of 99**

The Shoreline Master Program (SMP) Guidelines in WAC 173-26-221(2)(a)(ii) provide that shoreline master programs “must” “[p]rovide a level of protection to critical areas within the shoreline area [including fish and wildlife habitat conservation areas] that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources[.]”<sup>49</sup> WAC 173-26-191(2) provides in relevant part that “[t]he terms ‘shall,’ ‘must,’ and ‘are required’ and the imperative voice, mean a mandate; the action is required ...”

The actual location of most fish and wildlife habitats are identified through the Washington Department of Fish and Wildlife’s (WDFW) Priority Habitats and Species (PHS) geographic

<sup>43</sup> *Id.* at p. 270.

<sup>44</sup> *Id.* at p. 271.

<sup>45</sup> Amy Windrope, Timothy Quinn, Keith Folkerts, and Terra Rentz, *Riparian Ecosystems, Volume 2: Management Recommendations* p. A2-3 (A Priority Habitat and Species Document of the Washington Department of Fish and Wildlife, Olympia: May 2018 Public Review Draft) last accessed on Feb. 18, 2020 at <https://wdfw.wa.gov/publications/01988/> and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “wdfw01988.pdf.”

<sup>46</sup> Authorized by RCW 90.58.030(2)(d)(i).

<sup>47</sup> Amy Windrope, Timothy Quinn, Keith Folkerts, and Terra Rentz, *Riparian Ecosystems, Volume 2: Management Recommendations* p. A2-8 (A Priority Habitat and Species Document of the Washington Department of Fish and Wildlife, Olympia: May 2018 Public Review Draft).

<sup>48</sup> Timothy Quinn, George F. Wilhere, and Kirk L. Krueger, technical editors, *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications* pp. 270 – 71 (A Priority Habitat and Species Document of the Washington Department of Fish and Wildlife, Olympia, WA: Updated Jan. 2020).

<sup>49</sup> The SMP Guidelines specifically recognize fish and wildlife habitat conservation areas as critical areas. WAC 173-26-020(8); WAC 173-26-221(2)(a)(ii).

information system maps and datasets.<sup>50</sup> This habitat data is depicted as points, lines, and polygons, the polygons are also referred to as areas.<sup>51</sup> The enclosed screen shots from the PHS on the Web website show various habitats in unincorporated Clark County.<sup>52</sup> As you can see, the habitats are shown as lines and areas. The line habitats include the federally threatened Coho and Chinook salmon. The area habitats include the state endangered Sandhill Crane and waterfowl concentrations.<sup>53</sup> However, the current shoreline master program does not protect the area and line habitats. CCC 40.460.530F.1.a.(4) only requires review for developments that are near but will impact out of water priority species and habitats for point habitats, not line or area habitats. WAC 173-26-221(2)(a)(ii) requires no net loss of all fish and wildlife habitat conservation areas including the habitats shown in the databases as areas and lines.<sup>54</sup> By failing to protect habitats depicted as lines and areas, CCC 40.460.530F.1.a.(4) fails to comply with this requirement. To address this inconsistency with the SMP Guidelines, we recommend that the following amendment to CCC 40.460.530F.1.a.(4) with our additions double underlined and our deletions double struck through.

(4) Other Priority Habitats and Species (PHS) Areas. Areas identified by and consistent with WDFW priority habitats and species criteria, including areas within one thousand (1,000) feet of individual priority habitats and areas used by priority species ~~point sites~~. The county shall defer to WDFW in regards to classification, mapping and interpretation of priority habitat species.

**Clarify that all development must comply with the fish and wildlife habitat conservation requirements. Please see CCC 40.460.530F.2.a. on page 32 of 99**

The Shoreline Master Program (SMP) Guidelines in WAC 173-26-221(2)(a)(ii) provide that shoreline master programs “must” “[p]rovide a level of protection to critical areas within the shoreline area [including fish and wildlife habitat conservation areas] that assures no net loss of shoreline ecological

<sup>50</sup> Washington Department of Fish and Wildlife, *Using PHS Data: Frequently Asked Questions* pp. 1 – 2 of 5 accessed on Jan. 22, 2018 at <http://apps.wdfw.wa.gov/phsontheweb/faq.htm> and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “PHS on the Web FAQs.pdf.”

<sup>51</sup> *Id.* at 1 – 2 of 5; Washington Department of Fish and Wildlife, PHS on the Web screen shots pp. 1 – 4 accessed on Feb. 18, 2020 at: <http://apps.wdfw.wa.gov/phsontheweb/> and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “2020-02-18\_10-37-06 PHS on Web Clark Co.pdf.” materials.

<sup>52</sup> Washington Department of Fish and Wildlife, PHS on the Web screen shots pp. 1 – 4.

<sup>53</sup> *Id.* at pp. 1 – 3; Washington Department of Fish and Wildlife, Priority Habitats and Species identified for Clark County accessed on Feb. 18, 2020 at: <https://wdfw.wa.gov/species-habitats/at-risk/phs/list> and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “Copy of 2019\_distribution\_by\_county.xls.”

<sup>54</sup> *Olympic Stewardship Found. v. State Envtl. & Land Use Hearings Office through W. Washington Growth Mgmt. Hearings Bd.*, 199 Wn. App. 668, 690, 399 P.3d 562, 572 (2017) review denied *Olympic Stewardship Foundation v. State Department of Ecology*, 189 Wn.2d 1040, 409 P.3d 1066 (2018) and *certiorari denied Olympic Stewardship Foundation v. State of Washington Environmental and Land Use Hearings Office*, 139 S.Ct. 81, 202 L.Ed.2d 25 (Oct. 01, 2018) “In fact, reasonable and appropriate uses should be allowed on the shorelines only if they will result in no net loss of shoreline ecological functions and systems. See RCW 90.58.020; WAC 173-27-241(3)(j).” See also *Futurewise v. Stevens County*, EWGMHB Case No. 05-1-0006, Final Decision and Order (Jan. 13, 2006), at 2 *affirmed Stevens Cty. v. Futurewise*, 146 Wn. App. 493, 497, 192 P.3d 1, 3 (2008) *review denied Stevens Cty. v. Futurewise*, 165 Wn.2d 1038, 205 P.3d 132 (2009).

functions necessary to sustain shoreline natural resources[.]” WAC 173-26-186(8)(b)(ii) also provides that “[l]ocal master programs shall include regulations ensuring that exempt development in the aggregate will not cause a net loss of ecological functions of the shoreline.”

However, CCC 40.460.530F.2.a. only applies to proposals within a habitat area which require a permit, approval, or other authorization from the County. To ensure that exempt development in the aggregate will not cause a net loss of ecological functions of the shoreline as WAC 173-26-186(8)(b)(ii) requires, we recommend that CCC 40.460.530F.2.a. be amended to require review of all site disturbing proposals. Our recommended deletions are double struck through.

a. All construction, development, earth movement, clearing, or other site disturbance proposals within a habitat area ~~which require a permit, approval, or other authorization from the county~~ shall be reviewed pursuant to Chapter 40.440 and shall comply with the requirements of this section.

**Please update priority habitat and species list and the priority species and habitat documents listed in the critical areas regulations.**

The Washington State Department of Fish and Wildlife regularly updates the priority habitats and species list. The most recent list was updated in 2019 and is enclosed on the data CD that includes the documents cited in this letter. In addition, other the management recommendations for the priority species have been updated and other recommendations are being updated, such as the mammal recommendations.

CCC 40.460.530B.4. provides that CCC 40.440.010C.2. applies to the protection of priority habitats and species in shoreline jurisdiction. CCC 40.440.010C.2. references two out of date documents. To adequately protect shoreline functions, CCC 40.440.010C.2. should be updated with our additions double underlined and our deletions double struck through.

2. Best Available Science. Definitions and maps of habitat areas are based on best available science, as defined in WAC 365-195-905 (Criteria for determining which information is the “best available science”) and described in the following documents:

a. The current ~~1999~~ Washington Department of Fish and Wildlife Priority Habitats and Species List;

b. The State of Washington Department of Fish and Wildlife’s current ~~1997~~ mManagement rRecommendations for the priority habitat or priority species ~~Washington’s Priority Habitats~~;

[No additional amendments recommended to CCC 40.440.010C.2.]

## Protect isolated Category III wetlands of less than 2,500 square feet and isolated Category IV wetlands of less than 4,350 square feet

The Shoreline Master Program (SMP) Guidelines in WAC 173-26-221(2)(a)(ii) provide that shoreline master programs “must” “[p]rovide a level of protection to critical areas within the shoreline area [including wetlands] that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources[.]”<sup>55</sup> WAC 173-26-191(2) provides in relevant part that “[t]he terms ‘shall,’ ‘must,’ and ‘are required’ and the imperative voice, mean a mandate; the action is required ...” WAC 173-26-221(2)(c)(i)(A) requires Shoreline Master Program regulations “to achieve, at a minimum, no net loss of wetland area and functions ...”

Small wetlands provide important wetland functions. The State of Washington Department of Ecology has summarized the science applicable to small wetlands:

- The studies of the correlation of wetland size to wildlife use conflict somewhat in their findings, but most generally conclude that small wetlands are important habitats (particularly where adjacent buffer habitats are available) and that elimination of small wetlands can negatively impact local populations.
- Small wetlands provide habitat for a range of species that are not a subset of the species found in larger, more permanently inundated wetlands. Small wetlands do not just provide a smaller area for the same array of amphibian species found in larger wetlands.
- Small wetlands are very important in reducing isolation among wetland habitat patches. Smaller wetlands provide significant habitat for wildlife and affect the habitat suitability of larger wetlands by reducing isolation on the landscape.
- The presence of small wetlands reduces the distance between wetlands and thus increases the probability of successful dispersal of organisms. This, in turn, likely increases the number of individuals dispersing among patches in a wetland mosaic, thereby reducing the chance of population extinction.
- Isolated wetlands provide the same range of wetland functions as non-isolated wetlands. Isolated wetlands provide important water quantity, water quality, and habitat functions.<sup>56</sup>

<sup>55</sup> The SMP Guidelines specifically recognize wetlands as critical areas. WAC 173-26-020(8)(a); WAC 173-26-221(2)(c)(i).

<sup>56</sup> D. Sheldon, T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale, *Wetlands in Washington State - Volume 1: A Synthesis of the Science* pp. 5-12 – 5-13 (Washington State Department of Ecology Publication #05-06-006 Olympia, WA: March 2005) last accessed on Aug. 15, 2019 at: <https://fortress.wa.gov/ecy/publications/summarypages/0506006.html> and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “0506006.pdf.”

CCC 40.460.530B.5. provides that CCC 40.450.010C.2.a. applies to wetlands under the jurisdiction of the Shoreline Management Act. CCC 40.450.010C.2.a. exempts from wetland protections isolated Category III wetlands less than 2,500 square feet in area and isolated Category IV wetlands less than 4,350 square feet in area. So, these wetlands can be adversely impacted without any replacement of the lost functions. This violates WAC 173-26-221(2)(a)(ii) and WAC 173-26-221(2)(c)(i)(A). CCC 40.460.530B.5. should be repealed to comply with the SMP Guidelines and the Shoreline Management Act.

### **Increase mitigation ratios for riparian vegetation mitigation in CCC 40.460.570D. on page 41 of 99 to protect fish and wildlife habitats**

No net loss of ecological functions is a requirement for shoreline management programs.<sup>57</sup> A peer-reviewed study concluded that “[i]t appears that riparian habitats are much more difficult to compensate for because 57% of projects sampled for this variable resulted in a net loss and no projects achieved a net gain.”<sup>58</sup> The study continued “even if projects were entirely compliant and created twice as much compensation habitat compared to the [impacted habitat], the Habitat Policy goal of [no net loss] NNL would still not always be achieved.”<sup>59</sup>

Mitigation ratios of 1 to 1 will not result in no net loss for riparian vegetation. We recommend that CCC 40.460.570D be amended to read as follows with our additions double underlined.

D. If vegetation removal cannot be avoided, it shall be minimized and then mitigated at a minimum ratio of one to one (1:1), and shall result in no net loss of shoreline ecological functions. Riparian vegetation shall be replaced at a ratio of 2.25 in mitigation area to 1 of the area adversely impacted. Lost functions may be replaced by enhancing other functions; provided, that no net loss in overall functions is demonstrated and habitat connectivity is maintained. Mitigation shall be provided consistent with an approved mitigation plan.

### **Prohibit net pen aquaculture for nonnative species in Table 40.460.620-1. Shoreline Use, Modification, and Development Standards on page 44 of 99**

RCW 77.125.050(1) provides that the State of Washington Department of Natural Resources “may authorize or permit activities associated with the use of marine net pens for nonnative marine finfish aquaculture only if these activities are performed under a lease of state-owned aquatic lands in effect on June 7, 2018. The department may not authorize or permit any of these activities or operations after the expiration date of the relevant lease of state-owned aquatic lands in effect on June 7, 2018.”

<sup>57</sup> WAC 173-26-186(8)(b) & (d); WAC 173-27-241(3)(j).

<sup>58</sup> Jason T. Quigley and David J. Harper, *Effectiveness of Fish Habitat Compensation in Canada in Achieving No Net Loss* 37 ENVIRONMENTAL MANAGEMENT 351, p. 356 (2006) and on the data CD enclosed with Futurewise’s Feb. 25, 2020, letter transmitting supporting materials with the filename: “Effectiveness of Fish Habitat Compensation in Canada in Achieving No Net Loss 2006.pdf.” This article was peer-reviewed. *Id.* at p. 364.

<sup>59</sup> *Id.* pp. 361 – 62.

Consistent with RCW 77.125.050(1), Table 40.460.620-1 should prohibit marine net pens for nonnative marine finfish aquaculture.

Thank you for considering our comments. If you require additional information, please contact me at telephone 206-343-0681 Ext. 102 and email: [tim@futurewise.org](mailto:tim@futurewise.org).

Very Truly Yours,

A handwritten signature in blue ink, consisting of two stylized, overlapping loops that resemble the letters 'S' and 'T'.

Tim Trohimovich, AICP  
**Director of Planning and Law**

**From:** [FLORES, HUGO \(DNR\)](#)  
**To:** [Jenna Kay](#)  
**Subject:** [Contains External Hyperlinks] Clark County SMP Periodic Review Comments  
**Date:** Thursday, February 27, 2020 7:55:40 AM  
**Attachments:** [SMPPrComments.pdf](#)

---

**CAUTION:** This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Jenna,

Thank you for the opportunity to provide comments on the Clark County SMP Periodic Review. Let me know if you have questions.

Hugo

Hugo Flores  
SMA-GMA-HARBOR AREAS  
1111 Washington St SE  
PO Box 47027  
Olympia, WA 98504-7027  
(360) 902-1126  
[Hugo.flores@dnr.wa.gov](mailto:Hugo.flores@dnr.wa.gov)  
<http://www.dnr.wa.gov>





February 25, 2020

Jenna Key, Planner II  
Clark County Community Planning  
1300 Franklin Street PO Box 9810  
Vancouver, WA. 98666-9810

RE: Clark County SMP Periodic Review

Dear Jenna,

Thank you for the opportunity to provide comments on the Clark County Shoreline Master Program Periodic Review. The Department of Natural Resources (DNR) manages 2.6 million acres of state-owned aquatic lands for the benefit of current and future citizens of the state. As steward of these lands, DNR is responsible for balancing the benefits provided by state-owned aquatic lands, which include encouraging direct public use and access; fostering water dependent uses; ensuring environmental protection; utilizing renewable resources; and when in agreement with these public benefits, generating revenue which is also a public benefit. The Department of Natural Resources' comments take into consideration these public benefits and are intended to avoid inconsistencies with the Clark County SMP. DNR staff have reviewed the proposed Clark County SMP amendments and provided comments summarized in the table attached to this letter. If you have questions, you may contact me at (360) 902-1126 or [hugo.flores@dnr.wa.gov](mailto:hugo.flores@dnr.wa.gov)

Sincerely,

A handwritten signature in black ink, appearing to read "Hugo Flores".

Hugo Flores  
SMA-GMA-Harbor Areas

Location	Text	Comment	Suggested Language
<p>4. Floating homes and on-water residences. Proposed Code Change to CCC 40.460.250(B)(7) and 40.460.630(K)(11) and (12).12(a)</p>	<p>Floating homes shall be moored at sites established as floating home moorages consistent with Section 40.460.630(C)</p>	<p>40.460.630(C) addresses boating uses which reference DNR requirements and other state guidance. DNR is very supportive of this and commends Clark County for this approach. However, the lack of a definition for "floating home moorages" does not provide specific criteria and guidelines. This opens many potential interpretations for floating home moorages.</p>	<p>DNR would suggest adding language that identifies what a floating home moorage is and that they can only be located at established marinas/boating facilities according to 40.460.630(C).</p>
<p>4. Floating homes and on-water residences. Proposed Code Change to CCC 40.460.250(B)(7) and 40.460.630(K)(11) and (12).12(c)</p>	<p>Floating homes may relocate within a moorage or between moorage sites, consistent with the standards of Section 40.460.630(C) and 40.460.630(K).</p>	<p>DNR's WAC 332-30-171(a-c) addresses the issue of grandfather sites for floating homes. According to this, local governments need to identify specific sites and circumstances for floating house moorage in an adopted local shoreline management plan that provides for the present and future needs of all uses, considers cumulative impacts to habitat and resources of statewide value, identifies specific areas or situations in which floating house moorage will be allowed, and justifies the exceptional nature of those areas or situations; and (c) The floating house moorage is compatible with water-dependent uses existing in or planned for the area.</p>	<p>DNR would suggest adding language that identifies the specific circumstances for moving floating homes.</p>

Location	Text	Comment	Suggested Language
<p>4. Floating homes and on-water residences. Proposed Code Change to CCC 40.460.250(B)(7) and 40.460.630(K)(13).13(a)</p>	<p>New floating on-water residences shall be moored at sites established as a floating on-water moorages consistent with Section 40.460.630(C).</p>	<p>40.460.630(C) addresses boating uses which reference DNR requirements and other state guidance. DNR is very supportive of this and commends Clark County for this approach. However, the lack of a definition for "floating on-water moorages" does not provide specific criteria and guidelines. This opens many potential interpretations for floating on-water moorages.</p>	<p>DNR would suggest adding language that identifies what a floating on-water moorage is and that they can only be located at established marinas/boating facilities according to 40.460.630(C).</p>
<p>4. Floating homes and on-water residences. Proposed Code Change to CCC 40.460.250(B)(7) and 40.460.630(K)(11) and (12).12(c)</p>	<p>On-water residences may be relocated within a moorage or between moorage sites, consistent with the standards of Section 40.460.630(C) and 40.460.630(K).</p>	<p>DNR's WAC 332-30-171(7)(a-c) addresses the issue of grandfather sites for floating homes. According to this, local governments need to identify specific sites and circumstances for floating house moorage in an adopted local shoreline management plan that provides for the present and future needs of all uses, considers cumulative impacts to habitat and resources of statewide value, identifies specific areas or situations in which floating house moorage will be allowed, and justifies the exceptional nature of those areas or situations; and (C) The floating house moorage is compatible with water-dependent uses existing in or planned for the area.</p>	<p>DNR would suggest adding language that identifies the specific circumstances for moving on-water residences as established by WAC 332-30-171(7)(a-c).</p>

**From:** [Van Zwalenburg, Kim \(ECY\)](#)  
**To:** [Jenna Kay](#)  
**Cc:** [Rothwell, Rebecca \(ECY\)](#); [Bunten, Donna \(ECY\)](#)  
**Subject:** [Contains External Hyperlinks] CAO comments - priorities for the SMP  
**Date:** Friday, February 28, 2020 5:19:20 PM  
**Attachments:** [Ecology CAO comments.docx](#)  
[Flood Hazard Areas NFIP regulations and your SMP.msg](#)

---

**CAUTION:** This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jenna:

I wanted to send this quick email regarding this topic in case I need to leave suddenly again.

I copied the comments (from the email I forwarded to you earlier in the week) into the attached Word document and then annotated it to help set priorities for you in addressing these. In large measure, our concerns are focused on buffers, how they can be reduced and where things can occur – generally encroachment should be limited to the outer portion of the buffer.

The basis for my comments lies in the SMP Guidelines requirement to ensure no net loss of ecological function along with the need to ensure your regulations are consistent with the most current, accurate, and complete scientific or technical information available (WAC 173-26-201(2)(a)).

One other small piece, or perhaps not so small piece to think about, has to do with the incorporation of your Flood Code (because it is embedded into your CAO) directly into the SMP. I am attaching an email I sent to Cayla Cothron about the same issue, and while specific to the Vancouver SMP, I am providing it for your consideration.

We can talk more about all of this. It may also be that for the time being we leave the flood provisions in the SMP as is. If the County hasn't had issues with implementation, this could be a low priority item to be more fully addressed at a later date and after Ecology's policy around this has gotten clearer (and written down!).

Kim

Kim Van Zwalenburg, Senior Shoreline Planner  
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(360) 407-6520; FAX (360) 407-6305  
e-mail: [kim.vanzwalenburg@ecy.wa.gov](mailto:kim.vanzwalenburg@ecy.wa.gov)

Ecology comments on Clark County CAO<sup>1</sup>

- 40.450.040.C.1 Reduced width: We recommend including language that all applicable design elements shall be implemented in order to be eligible for the buffer reduction from high intensity to moderate intensity. Otherwise, applicants may select only one or two that won't sufficiently reduce the intensity of the impact to warrant the buffer reduction. Also, Ecology's guidance does not include the option of reducing buffers from moderate intensity to low intensity through the impact-reducing measures. The impact-reducing measures aren't designed to reduce the adjacent impacts to low-intensity land use, which include uses such as forestry and unpaved trails. In no case should a buffer width based on the habitat function of a wetland be reduced in exchange for reductions in water quality impacts from adjacent land uses (40.450.040.C.1.a.3 (surface water management) and C.1.b (LID design)).

The County should be aware that Ecology recently changed its guidance on habitat scores. A habitat score of 5 is now considered to be low habitat function (previously, only 3-4 were considered to be low function). In section C.1.c(1) the language should be changed to "...scores higher than five (5)..." to reflect this change. Also, C.4.b should say "fewer than six (6) points.

40.450.040.C.2 states that the minimum buffer should be not less than the low-intensity buffer, which could represent a 50% reduction from our standard buffer recommendation. We believe that this represents a high-risk approach resulting in buffers that are not wide enough to protect the wetland's functions, and we recommend limiting the amount of reduction or average to 25% of the standard buffer width that would be required by the habitat score and the adjacent land use (i.e., the buffer should not be averaged or reduced to below 75% of the standard buffer).

- 40.450.040.C.3.a: Buffer averaging should not be used in combination with other buffer reduction methods on the same buffer segment.
- 40.450.040.C.4.b should state "(fewer than six (6) points..." (see above comment on habitat scores). Also, "the outer edge" is vague. We recommend limiting facilities to the outer 25% of the buffer.
- 40.450.040.C.5.b: We recommend including more specificity about how functions would be replaced. Would this mean requiring more buffer area to compensate for the area that is lost in the crossing?
- 40.450.040.C.6 should say "buffer reduction per 40.450.040.C.1" rather than "buffer reduction via enhancement."
- 40.450.040.D.1.a: These criteria for avoidance aren't consistent with mitigation sequencing. See <https://ecology.wa.gov/Water-Shorelines/Wetlands/Mitigation/Avoidance-and-minimization>. The applicant should be made aware that if state and federal permits are required, the Corps and Ecology do not interpret "avoidance" as it is described here.

**Comment [VZK(1):** My comments are intended to provide you with some guidance and identify priorities for addressing where we find the CAO no longer meeting most current, accurate, and complete scientific and technical information available.

Ensuring your critical areas provisions are consistent with Ecology's wetland guidance meets this requirement. (WAC 173-26-201(2)(a))

**Comment [VZK(2):** Jenna: Addressing this issue is important to ensure provisions are consistent with the SMP Guidelines requirement to meet no net loss of shoreline ecological functions. At the very least, the option to allow for reduction of buffers from moderate intensity to low intensity should not apply in shoreline jurisdiction, nor should the buffer width be reduced in exchange for reductions in water quality impacts (last sentence).

**Comment [VZK(3):** Limiting buffer modifications in shoreline jurisdiction, whether by averaging or reduction to no more than 25% should be a requirement in the SMP. Any greater reduction would be authorized by shoreline variance.

**Comment [VZK(4):** If this isn't clear in the SMP it should be. Mechanisms to reduce buffers should not be combined. The issue here may simply be a result of the way this provision is written.

**Comment [VZK(5):** It appears the numerical issue was addressed. Facilities should be limited to the outer 25% of wetland buffers in shoreline jurisdiction.

**Comment [VZK(6):** This is an important clarification.

<sup>1</sup> These comments were sent via email from Rebecca Rothwell to Sharon Lumbantobing on 4/16/2019 after review of proposed amendments to Title 40.450.040 submitted to Department of Commerce on March 20, 2019.

- 40.450.040.D.4.b: We recommend including additional criteria for considering preservation. See pages 40-41 of <https://fortress.wa.gov/ecy/publications/documents/1606001.pdf>.
- 40.450.040.D.4.c(4): This language is not consistent with interagency joint mitigation guidance or the wetland rating system regarding HGM classes separately within a wetland. We recommend removing it.
- 40.450.040.D.5.a: The meaning of this is not clear. Buffer loss doesn't result from wetland fill.
- 40.450.040.D.6: This language is not consistent with interagency joint mitigation guidance. The required width of the perimeter buffer should be sufficient to protect the proposed category of the compensation wetland and its proposed level of function, particularly habitat functions. If the applicant proposes to increase habitat functions then the buffer needs to be wide enough to protect those habitat functions.
- 40.450.040.D.8: Stormwater facilities must meet the avoidance and minimization criteria. They are considered an impact that must be compensated. This section should also state "fewer than six (6) points" (see above comment on habitat scores).
- 
- 40.450.040.D.9: Underground utility crossing can have adverse effects on wetlands due to draining or soil disruption. You should consider adding language about BMPs for these situations.
- 40.450.040.D.10: This section should say "consistent with D.1" since D.1 doesn't prohibit any activities. However, we wonder if this language is necessary? Is there a list of allowed uses provided in this chapter? If so, consider deleting this language because it may generally allow uses that have adverse effects on wetlands not specifically anticipated in this language.
- 40.450.030.D.1 should state that the identification of wetlands and delineation of their boundaries pursuant to this Title shall be done in accordance with the approved federal wetland delineation manual and Regional Supplement to the Corps of
- Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0) (2010). All areas within the county meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this Title.
- 40.450.030.D.2.e(4) should state specifically what type of wetland "class;" does this refer to Cowardin class or HGM class?
- 40.450.030.D.2.g: This isn't clear. How does the acreage affect buffer size? Since this section is about delineation, we recommend deleting part of the sentence so that it reads "Acreage of each wetland on the site."
- 40.450.030.E.2 should state that "Buffer widths are established by comparing the wetland rating category, the habitat score, and the intensity of land uses..." since habitat scores are used in the tables.

**Comment [VZK(7):** I note that the definition for "wetland delineation manual" refers to WAC 173-22-035 which ultimately tells you which manual to use. It's an awkward way to get there and you might consider adding the language directly into the SMP:

- 40.450.030.E.2, Table 4 should include rows for habitat scores of 8 and 9 points. Ecology has determined that Category III wetlands with these habitat scores do exist. Since the county’s buffer widths are based partially on habitat score, the Category III table should include buffers for wetlands with 8 or 9 points (which are the same as the buffers for Category I and II wetlands with 8 or 9 points). We recommend that the county adopt the buffer tables as shown in our guidance (<https://fortress.wa.gov/ecy/publications/documents/1606001.pdf>). These recommended buffers are dependent upon proper implementation of the buffer reduction criteria as discussed in the first bullet above.
- 40.450.030.E.3.c: The inability to create a non-buildable tract is not sufficient reason to allow a residential lot to extend into a wetland or its buffer. Mitigation sequencing must be applied.
- 40.450.030.E.4.b(1): What is meant by “vertical separation?” Is there a minimum height measurement? It’s not clear that vertical separation would result in a functionally isolated buffer.
- 40.450.030.E.4.b(2): This approach is not consistent with how the rating system is applied. We recommend deleting it.

**Comment [VZK(8):** I no longer see the referenced table in your CAO so this may be moot.

**Comment [VZK(9):** The cited provision should not be applicable in shoreline jurisdiction.

**Comment [VZK(10):** This provision should not be applicable in shoreline jurisdiction.

**From:** [Van Zwalenburg, Kim \(ECY\)](#)  
**To:** [Cothron, Cayla](#)  
**Subject:** Flood Hazard Areas, NFIP regulations and your SMP

---

Hi Cayla:

I think I brought up the issue of incorporating your flood code directly into the SMP by reference (usually happening because these codes are often embedded in a community's CAO). We (Ecology) have been thinking about a policy shift that would remove the "hard" reference which brings the language into the SMP, and making it a soft reference – in other words, acknowledging that the flood code is important and development needs to be consistent with it but not including it directly into the SMP. This, in part, to avoid conflicts with specific NFIP process requirements.

Our Guidelines in WAC 173-26-221(3) address flood hazard reduction and it does suggest integrating SMP flood hazard reduction provisions with other regulations and programs including flood plain regulations and the NFIP, among others. However, I don't think this suggestion to integrate leads to a requirement to adopt your NFIP program into the SMP. We likely wouldn't even be talking about this if your CAO included a few things about flood hazards and then referenced off to another part of the City's code for your NFIP ordinance.

When I look at Chapter 5A, certain sections of the flood code look appropriate to include but others which really look like building code requirements, do not. See for example: 6. Construction Materials and Methods, and 10. Residential Construction, particularly where it starts to address Fully Enclosed Areas Below the Lower Floor, talks about openings, etc. There are other provisions for non-residential buildings as well.

We do need to ensure the SMP meets the requirements of WAC 173-26-221(3)(c) and some additional language may need to be added. The SMP includes policies in 3.6.2. Some of the explicit standards required by the Guidelines are in 6.4.3.1 Flood Control Works. My question is whether the SMP includes provisions addressing WAC 173-26-221(3)(c)(i):

(c) **Standards.** Master programs shall implement the following standards within shoreline jurisdiction:

(i) Development in flood plains should not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter [86.12](#) RCW, provided the plan has been adopted after 1994 and approved by the department. New development or new uses in shoreline jurisdiction, including the subdivision of land, should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. The following uses and activities may be appropriate and/or necessary within the channel migration zone or floodway:

- Actions that protect or restore the ecosystem-wide processes or ecological functions.
- Forest practices in compliance with the Washington State Forest Practices Act and its implementing rules.



- Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
  - Mining when conducted in a manner consistent with the environment designation and with the provisions of WAC [173-26-241](#) (3)(h).
  - Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of watershed or drift cell.
    - Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.
    - Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
      - Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
      - Development in incorporated municipalities and designated urban growth areas, as defined in chapter [36.70A](#) RCW, where existing structures prevent active channel movement and flooding.
      - 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 measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

A colleague of mine in our Bellevue office recently worked on the decision for the City of Kenmore periodic review.

The recommended language added is shown below:

g. KMC Chapter 18.55, Article XIX, Flood Hazard Areas. While the Flood Hazard Areas regulations apply within shoreline jurisdiction, the regulations, themselves, are not incorporated as part of this Shoreline Master Program.

Her rationale:

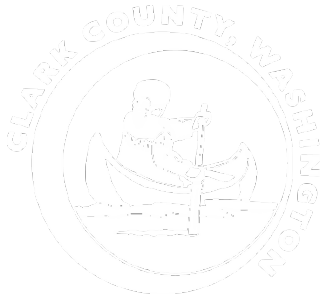
[Recommended change: Do not incorporate flood hazard regulations into the SMP.](#)

Flood hazard regulations are not necessary for consistency with RCW 90.58 or the SMP guidelines. The purpose of these regulations is for NFIP certification, not the SMA. These regulations, by-and-large, are building codes. By incorporating these regulations into the SMP, any applicant that needs to deviate from these would need to obtain a shoreline variance, which could be hard to obtain. Furthermore any amendments to these that may be required by the NFIP would then need to go through the SMP amendment process. Several definitions in this section are inconsistent with SMA definitions. Ultimately, these unnecessary permitting and process steps could threaten the City's ability to maintain its certifications under the NFIP. We recommend that the SMP contain a soft reference to its flood hazard regulations and that these be implemented separately from the SMP.

I am sure we will have more to discuss regarding this particular issue, but did want to send this on.

Kim

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# SHORELINE MASTER PROGRAM PERIODIC REVIEW PROPOSED CHANGES

**Document overview: This document includes draft proposed amendments to the Clark County Comprehensive Growth Management Plan 2015-2035, Clark County Code, and shoreline designations map.**

**For text amendments, deletions are indicated by ~~striketrough~~. Additions are underlined. **Highlights** indicate changes in response to comments received during a 30-day comment period held from January 28 – February 27, 2020. For map amendments, a supplementary map is included that indicates areas of proposed change.**

## Contents

Comprehensive Plan Amendments.....	3
Critical Areas Code Amendments .....	4
40.440.010    Introduction .....	4
40.450.030    Standards .....	10
40.450.040    Wetland Permits .....	15
Shoreline Master Program Code Amendments.....	35
40.460.210    Applicability .....	35
40.460.220    Shoreline Substantial Development Permit Required .....	38
40.460.230    Exemptions from a Shoreline Substantial Development Permit .....	39
40.460.250    Nonconforming Uses and Development .....	43
40.460.430    Shoreline Designations .....	44
40.460.440    Official Shoreline Map .....	52
40.460.510    General Shoreline Use and Development Regulations.....	54
40.460.530    Critical Areas Protection .....	55
40.460.630    Use-Specific Development Regulations .....	63
40.460.710    Administrative Authority and Responsibility.....	80
Map Amendments .....	83

## 1 Comprehensive Plan Amendments

2 **Section 1. Amendatory.** The Clark County Comprehensive Growth Management Plan 2015-2035 is amended as  
3 follows:

- 4 1. The Comprehensive Plan Introduction Section on Integration with other plans is hereby amended to read as  
5 follows:

### 6 **Integration with other plans**

7 The 2016 Plan serves as an umbrella plan to ensure that the following plans are compatible and advance the  
8 goals described in the *Community Framework Plan*:

- 9
- 10 • Highway 99 Subarea Plan, December 16, 2008
  - 11 • Agriculture Preservation Strategies Report, March 2009
  - 12 • Mill Creek Subarea Plan, June 23, 2009
  - 13 • Clark County Bicycle and Pedestrian Plan, December 2010
  - 14 • Clark County Economic Development Plan Final Edition, September 2011
  - 15 • ~~Shoreline Master Program, November 2011; amended December 2014~~
  - 16 • Coordinated Water System Plan, January 2012
  - 17 • Aging Readiness Plan, February 12, 2012
  - 18 • Growing Healthier Planning for a Healthier Clark County Report, June 5, 2012
  - 19 • Clark County Conservation Areas Acquisition Plan, March 2014
  - 20 • Clark County Community Development Block Grant Program and Home Investment Partnerships  
21 Program Consolidated Housing and Community Development Plan 2015-2019, July 2015
  - 22 • Clark County Comprehensive Parks, Recreation and Open Space Plan, September 2015
- 23
- 24 2. A copy of the Shoreline Designations map is added as Figure 36 to Appendix B Figures.
- 25 3. The Shoreline Master Program 2020 Periodic Review ordinance and adoption date are added to Appendix H  
26 Clark County Legislative History.
- 27 4. Chapter 13 Shoreline Master Program is hereby amended to read as follows:

### 27 **Introduction**

28 This chapter contains Clark County's Shoreline Master Program Goals and Policies. These goals and policies  
29 are implemented by Chapter 40.460 of the Clark County Code. These goals and policies, along with Chapter  
30 40.460 and the Official Shoreline Map are adopted as the Clark County Shoreline Master Program  
31 (Program).

32 The Shoreline Management Act (SMA) (RCW 90.58) was adopted in 1971. In 1995, the state legislature  
33 amended the Growth Management Act to add the goals and policies of the SMA as one of the goals of the  
34 Growth Management Act (RCW 36.70A.480).

35 The SMA requires local governments to plan for the use of shorelines within their jurisdictions. The SMA  
36 and WAC 173-26 establish a broad policy giving preference to shoreline uses that:

- 37
- 38 1. Depend on proximity to the shoreline ("water-dependent uses");
  - 39 2. Protect biological and ecological resources, water quality and the natural environment; and
  - 40 3. Preserve and enhance public access or increase recreational opportunities for the public along  
41 shorelines.

41 Clark County's first shoreline master program (SMP) was adopted in 1974. The county adopted a  
42 comprehensive update to its SMP in 2012. ~~had not been updated since then. Using a grant from the~~

1 Department of Ecology, the county partnered with its seven cities (the Clark County Shoreline Coalition) to  
 2 develop a uniform set of goals, policies and shoreline designations for shorelines across the county.

### 3 **General Shoreline Goals**

4 The general goals of this Program are to:

- 5 1. Use the full potential of shorelines in accordance with the opportunities presented by their  
 6 relationship to the surrounding area, their natural resource values and their unique aesthetic qualities  
 7 offered by water, topography and views; and
- 8 2. Develop a physical environment that is both ordered and diversified and which integrates water and  
 9 shoreline uses while achieving a net gain of ecological function.

### 10 **Shorelines of Statewide Significance**

11 Within the County, the Columbia and Lewis Rivers, portions of the East Fork Lewis and Washougal Rivers,  
 12 Lakes Merwin, Vancouver and Yale are designated shorelines of statewide significance (SSWS). Shorelines  
 13 of statewide significance are of value to the entire state. In accordance with RCW 90.58.020, SSWS will be  
 14 managed as follows:

- 15 1. Preference shall be given to the uses that are consistent with the statewide interest in such  
 16 shorelines. These are uses that:
  - 17 • Recognize and protect the statewide interest over local interest;
  - 18 • Preserve the natural character of the shoreline;
  - 19 • Result in long-term over short-term benefit;
  - 20 • Protect the resources and ecological function of the shoreline;
  - 21 • Increase public access to publicly-owned areas of the shorelines;
  - 22 • Increase recreational opportunities for the public in the shoreline; and
  - 23 • Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.
- 24 2. Uses that are not consistent with these policies should not be permitted on SSWS.
- 25 3. Those limited shorelines containing unique, scarce and/or sensitive resources should be protected.
- 26 4. Development should be focused in already developed shoreline areas to reduce adverse  
 27 environmental impacts and to preserve undeveloped shoreline areas. In general, SSWS should be  
 28 preserved for future generations by restricting or prohibiting development that would irretrievably  
 29 damage shoreline resources and evaluating the short-term economic gain or convenience of  
 30 developments relative to the long-term and potentially costly impairments to the natural shoreline.

31 \*\*\*  
 32

## 33 **Critical Areas Code Amendments**

34 **Section 2. Amendatory.** Sec. 1 (Exh. A) of Ord. 2003-11-01 and codified as Clark County Code (CCC) 40.440.010,

35 and as most recently amended by Sec. 16 of Ord. 2019-05-07, are each hereby amended to read as follows:

### 36 **40.440.010 Introduction**

37 A. Purpose.

1 The purpose of this chapter is to further the goal of no net loss of habitat functions and values within  
 2 designated habitat areas by protecting environmentally distinct, fragile and valuable fish and wildlife habitat areas, as  
 3 defined in Section 40.440.010(C), for present and future generations, while also allowing for reasonable use of private  
 4 property. This chapter intends to conserve the functional integrity of the habitats needed to perpetually support fish  
 5 and wildlife populations.

6 1. These purposes are to be carried out by reviewing impacts of proposed activities within designated habitat  
 7 areas, and through the development of education, outreach and incentive programs. Review under this chapter  
 8 shall be based on best available science and the mandates of the Washington Growth Management Act, and shall  
 9 include consultation with the Washington Department of Fish and Wildlife (WDFW). The county shall  
 10 emphasize education and voluntary conservation options prior to regulatory enforcement.

11 2. Within areas designated by this chapter, development or clearing activities which degrade habitat should  
 12 generally be avoided where possible. However, activities listed as exempt in this chapter can be undertaken in  
 13 habitat areas without additional review. Activities not listed as exempt can be undertaken following county  
 14 review if they do not substantially diminish the habitat functions and values present.

15 3. It is the intent of Council that this chapter be administered with flexibility and attention to site-specific  
 16 characteristics.

17 4. The provisions of this chapter dealing with existing agricultural activities are designed to balance conflicting  
 18 Growth Management Act goals to preserve both agricultural uses and habitat areas, and recognize:

19 a. That the maintenance and enhancement of natural resource-based industries, including agriculture,  
 20 is a goal of the state Growth Management Act;

21 b. That any regulation should be consistent with the “right to farm” provisions in Chapter 9.26 of this  
 22 code;

23 c. That agricultural lands can provide habitat;

24 d. That habitat protection must relate to the baseline of existing functions and values given historic  
 25 agricultural practices, rather than seeking to restore pre-agricultural conditions;

26 e. That since agricultural activities are dynamic, habitat functions and values can be expected to  
 27 fluctuate during the course of an agricultural cycle, which fluctuation must be considered in identifying  
 28 existing functions and values; and

29 f. That it is expected that continuation of existing agriculture will not degrade existing functions and  
 30 values unless sediment, nutrients, or chemicals are allowed to enter streams, or existing beneficial canopy in  
 31 close proximity to streams is significantly degraded.

32 (Amended: Ord. 2019-05-07)

33 B. Applicability.

34 1. General. Review under the standards of this chapter shall apply to any proposed development or  
 35 non-development clearing activities within designated habitat areas, defined in Section 40.440.010(C), which are  
 36 not listed as exempt, pursuant to Table 40.440.010-1.

37 a. Development activities are those proposals already subject to existing county land division,  
 38 building, grading or other review processes.

39 b. Non-development clearing activities are proposals which are not otherwise subject to county  
 40 review, but involve the alteration or removal of vegetation in designated habitat areas.

1 2. Shoreline Master Program. Within shoreline jurisdiction, development may be allowed for those uses in the  
2 Shoreline Master Program (Chapter 40.460) either through a statement of exemption or through an application  
3 with a habitat review as part of the shoreline permit process.

4 3. Activities Adjacent to Certain Designated Habitat Areas. Proposed new single-family residential  
5 development occurring immediately outside but within three hundred (300) feet of designated priority species  
6 polygons or within one hundred (100) feet of designated non-riparian priority habitat polygons shall require  
7 consultation with WDFW prior to issuance of a development permit. In such cases, further review under this  
8 chapter is not required unless WDFW finds that there are potential adverse impacts. Agricultural activities  
9 adjacent to designated agricultural riparian areas are subject to Section 40.440.040(B). Other proposed land  
10 divisions and nonresidential development adjacent to designated wildlife sites shall be subject to SEPA as  
11 normally required by Chapter 40.570 (State Environmental Policy Act), and mitigative measures established if  
12 there are adverse impacts to the adjacent designated habitat areas.

13 4. Exempt Activities.

14 a. All proposed activities outside designated habitat areas are exempt from review under this chapter,  
15 except where noted in Sections 40.440.010(B)(3) and 40.440.040(B).

16 b. Within designated habitat areas exempt activities are listed in Section 40.440.010(D). These do not  
17 require review.

18 c. All other proposed activities within habitat areas which are not consistent with an approved  
19 stewardship plan or subject to Section 40.440.040 shall be subject to the provisions of Section  
20 40.440.020(D).

21 (Amended: Ord. 2012-07-16)

22 C. Habitat Areas Covered by This Chapter.

23 1. Categories. This chapter shall apply to nonexempt activities as defined in Table 40.440.010-1 that are  
24 proposed within the following habitat areas:

25 a. Riparian Priority Habitat. Areas extending outward on each side of the stream (as defined in Section  
26 40.100.070, Definitions) from the ordinary high water mark to the edge of the one hundred (100) year  
27 floodplain, or the following distances, if greater:

28 (1) DNR Type S waters, two hundred fifty (250) feet;

29 (2) DNR Type F waters, two hundred (200) feet;

30 (3) DNR Type Np waters, one hundred (100) feet;

31 (4) DNR Type Ns waters, seventy-five (75) feet.

32 Water types are defined and mapped based on WAC 222-16-030, (Forest Practices Rules). Type S streams  
33 include shorelines of the state and have flows averaging twenty (20) or more cubic feet per second; Type F streams are  
34 those that are not Type S but still provide fish habitat; and Type N streams do not have fish habitat and are either  
35 perennial (Np) or seasonal (Ns). All streams are those areas where surface waters flow sufficiently to produce a  
36 defined channel or bed as indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely  
37 rooted vegetation by the action of moving water. Ns streams must connect to another stream above ground. Seasonal  
38 or intermittent streams are surface streams with no measurable flow during thirty (30) consecutive days in a normal  
39 water year.

40 b. Other Priority Habitats and Species (PHS) Areas (PHS as defined in the most current WDFW  
41 Priority Habitats and Species List, Areas identified by and consistent with WDFW priority habitats and  
42 species criteria, including areas within one thousand (1,000) feet of individual species points mapped by



1 **WDFW sites.** The county shall defer to WDFW in regards to classification, mapping and interpretation of  
 2 priority habitat species.

3 c. Locally Important Habitats and Species. Areas legislatively designated and mapped by the county  
 4 because of unusual or unique habitat warranting protection because of qualitative species diversity or habitat  
 5 system health indicators. This subsection shall not apply to areas which have not been designated on official  
 6 mapping. The criteria for mapping of these areas are that they possess unusual or unique habitat warranting  
 7 protection because of qualitative species diversity or habitat system health indicators. Recommendations for  
 8 mapping areas meeting these criteria may be submitted by any person or group, and shall be reviewed  
 9 annually by the county in conjunction with the plan amendments docket process as specified by Section  
 10 40.560.030 (Amendments Docket). Notice of any such recommendations deemed to merit formal  
 11 consideration shall be provided to impacted property owners pursuant to Section 40.510.030(E)(3) (Type III  
 12 Process). Such recommendations will not be reviewed as part of individual development requests.

13 2. Best Available Science. Definitions and maps of habitat areas are based on best available science, as defined  
 14 in WAC 365-195-905 (Criteria for determining which information is the “best available science”) and described  
 15 in the following documents:

- 16 a. **1999The most current** Washington Department of Fish and Wildlife Priority Habitats and Species  
 17 List **and Maps**;
- 18 b. **1997The most current Washington Department of Fish and Wildlife Mmanagement**  
 19 **Rrecommndations for Washington’s Priority Habitats and Species**;
- 20 c. The list of best available science references as maintained by the responsible official; and
- 21 d. Associated GIS data files maintained by Clark County Department of Assessment and GIS.

22 Best available scientific data supporting this chapter may be updated and/or re-evaluated as part of future  
 23 Title 40 (Unified Development Code) amendments.

24 3. Determining Site-Specific Applicability.

- 25 a. **Determination of habitat categories applicable to a site shall be based on the definitions and Best**  
 26 **Available Science that were current at the time the application under review is vested pursuant to**  
 27 **Chapter 40.510.**
- 28 b. In the event of inconsistencies, official habitat area definitions shall prevail over countywide maps  
 29 in determining applicability of this chapter. The county shall follow the recommendations of  
 30 WDFW in the interpretation of site-specific conditions as they relate to the definition of priority  
 31 habitat and species.

32 D. Activities Reviewed Under This Chapter.

33 This chapter applies to activities within designated priority and locally important habitat areas as described in  
 34 Table 40.440.010-1.

Table 40.440.010-1. Exempt and Reviewed Activities		
Proposal	Is a clearing review required?	Are any additional fees or review timelines required?
Land division or lot reconfiguration entirely outside habitat areas, except as subject to Section 40.440.010(B)(3)	No. Exempt	Fees pursuant to Chapter 6.110A
Land division or lot reconfiguration containing habitat areas, except as subject to Section 40.440.010(B)(3)	Exempt if impacted lots establish building and clearing envelopes outside of habitat	Fees pursuant to Chapter 6.110A. Adjustment to allow smaller lots necessary for critical lands protection

<b>Table 40.440.010-1. Exempt and Reviewed Activities</b>		
<b>Proposal</b>	<b>Is a clearing review required?</b>	<b>Are any additional fees or review timelines required?</b>
		can be provided without additional fees if consistent with overall zoning density as per Section 40.440.020(C)(1)
Any activities on lots not in habitat areas, except as subject to Section 40.440.010(B)(3)	Exempt	None
Any activities on portions of lots not containing habitat areas, except as subject to Section 40.440.010(B)(3)	Exempt	None
Remodeling, replacement of, or additions to existing homes and associated appurtenances that expand the original footprint by no more than 900 square feet within the outer 50 percent of the riparian habitat area and do not require clearing of native trees or shrubs.	Exempt	None
Maintenance of existing yards and landscaping in habitat areas	Exempt	None
Forest practices in habitat areas that are regulated by the Washington Department of Natural Resources under the Forest Practices Rules or regulated under Clark County Code Section 40.260.080, Forest Practices, except conversions or conversion option harvest plans (COHPs)	Exempt	None
Emergency clearing to abate immediate danger to persons or property. For emergency clearing of hazard trees, remove only that portion of a hazard tree as is minimally necessary to remediate the hazard. Cut wood should be left in the habitat area	Exempt	None
Clearing necessary for the emergency repair of utility or public facilities; provided, that notification of emergency work that causes substantial degradation to functions and values is reported in a timely manner	Exempt	None
Clearing for operation, maintenance or repair of existing utilities or public facilities that does not further increase the impact to, or encroach further	Exempt	None

<b>Table 40.440.010-1. Exempt and Reviewed Activities</b>		
<b>Proposal</b>	<b>Is a clearing review required?</b>	<b>Are any additional fees or review timelines required?</b>
within the habitat area		
Clearing of defined nuisance vegetation in habitat areas which utilizes methods that minimize disturbance of soils and non-nuisance vegetation. Replanting with native vegetation should be pursued to prevent re-infestation	Exempt	None
Clearing as minimally necessary for placement of fencing, private wells, septic systems or individual lot sewer, water, electrical or utility connections in habitat areas, where practical alternatives do not exist	Exempt	None
Clearing as minimally necessary for stream bank restoration, for native replanting or enhancements in habitat areas	Exempt	None
Clearing as minimally necessary for routine road maintenance activities in habitat areas consistent with Regional Road Maintenance ESA Program Guidelines	Exempt	None
Clearing as minimally necessary for soil, water, vegetation or resource conservation projects having received an environmental permit from a public agency in habitat areas	Exempt	None
Clearing as minimally necessary for creating a 4-foot or narrower path using natural, wood-based, or vegetated pervious surfacing in habitat areas	Exempt	None
Clearing as minimally necessary for surveying or testing in habitat areas	Exempt	None
Clearing or development in riparian habitat areas which is at least one hundred (100) feet from the waterline and separated by a continuous public or private roadway serving three (3) or more lots	Exempt	None
Non-development clearing activities in habitat areas consistent with a recorded stewardship plan for which any mitigation specified in the plan is timely completed	Exempt	None

<b>Table 40.440.010-1. Exempt and Reviewed Activities</b>		
<b>Proposal</b>	<b>Is a clearing review required?</b>	<b>Are any additional fees or review timelines required?</b>
Existing agricultural uses within non-riparian habitat areas	Exempt	None
Existing agricultural uses within riparian habitat areas	Reviewed under Section 40.440.040(B)(1)(b)	None
New home or other construction in habitat areas	Review required	No additional timelines. Applicable review (building permit, etc.) must comply with ordinance standards. Fees pursuant to Title 6
All other vegetation clearing in habitat areas	Review required	Fees pursuant to Title 6. Applicable review, if any, must comply with ordinance standards. If no other review involved, clearing request will be reviewed administratively

(Amended: Ord. 2005-04-15; Ord. 2006-06-09; Ord. 2006-07-09; Ord. 2006-08-03; Ord. 2014-12-05)

**Section 3. Amendatory.** Sec. 1 (Exh. A) of Ord. 2003-11-01 and codified as CCC 40.450.030, and as most recently amended by Sec. 8 of Ord. 2019-03-05, are each hereby amended to read as follows:

### **40.450.030 Standards**

A. General. The standards apply whenever a nonexempt project (see Section 40.450.010(B)) is proposed on a parcel of real property containing a nonexempt wetland or wetland buffer (see Section 40.450.010(C)). The standard provisions shall be implemented in conjunction with the processing of the development permits listed in Section 40.450.010(B).

1. For the purpose of computing the processing limitation period applicable to a development permit application, the application shall not be deemed fully complete until completion (if required) of the wetland determination pursuant to Section 40.450.030(C), the wetland delineation pursuant to Section 40.450.030(D), and the buffer designation pursuant to Section 40.450.030(E)(1). This subsection shall not be construed in any way to delay vesting under Washington law.

2. Administrative appeals of determinations made under this section must be filed in conjunction with, and within the limitation period applicable to, an available administrative appeal of the development permit application; provided, that an aggrieved party may appeal preliminary decisions deciding an exemption, determining or delineating a wetland, determining a buffer, or otherwise finally applying the provisions of this chapter in the same manner, and within the limitation period applicable to, appeals from responsible official decisions under Chapter 40.510.

(Amended: Ord. 2019-03-05)

B. Predetermination.

Prior to submittal of a development permit application, a person may request from the responsible official a written predetermination of whether wetlands exist on any parcel less than forty (40) acres. An applicant may also

1 choose to submit a digital file of delineated wetland boundaries consistent with Section 40.450.030(D)(3) or request  
 2 staff to digitize the information. The predetermination shall be binding on the responsible official for a period of three  
 3 (3) years; provided, that such predetermination shall be subject to administrative appeal upon its application in  
 4 conjunction with a triggering application. The fee for a predetermination is contained in Chapter 6.110A.

5 (Amended: Ord. 2019-03-05)

6 C. Wetland Determination.

7 In conjunction with the submittal of a development permit application, the responsible official shall  
 8 determine the probable existence of a wetland on the parcel involved in the development permit application. If  
 9 wetlands or wetland buffers are found to exist on a parcel, wetland delineation is required.

10 (Amended: Ord. 2019-03-05)

11 D. Wetland Delineation.

12 1. Methodology. The location of a wetland and its boundary shall be determined through the performance of a  
 13 field investigation utilizing the methodology contained in the Wetlands Delineation Manual. If a wetland is  
 14 located off site and is inaccessible, the best available information shall be used to determine the wetland  
 15 boundary and category.

16 2. Information Requirements. Wetland boundaries shall be staked and flagged in the field and a delineation  
 17 report shall be submitted to the department. The report shall include the following information:

- 18 a. USGS quadrangle map with site clearly defined;
- 19 b. Topographic map of area;
- 20 c. National wetland inventory map showing site;
- 21 d. Soil Conservation Service soils map showing site;
- 22 e. Site map, at a scale no smaller than one (1) inch equals one hundred (100) feet (1" = 100', a scaling  
 23 ratio of 1:1,200), if practical, showing the following information:
  - 24 (1) Wetland boundaries,
  - 25 (2) Sample sites and sample transects,
  - 26 (3) Boundaries of forested areas,
  - 27 (4) Boundaries of wetland classes **(Cowardin)** if multiple classes exist;
  - 28 f. Discussion of methods and results with special emphasis on technique used from the Wetlands  
 29 Delineation Manual;
  - 30 g. Acreage of each wetland on the site **based on the survey if the acreage will impact the buffer size**  
 31 **determination or the project design;**
  - 32 h. All completed field data sheets per the Wetlands Delineation Manual, numbered to correspond to  
 33 each sample site.

34 3. Digital File Submittal. Upon submittal of the wetland delineation report an application shall provide a digital  
 35 file containing the layers specified in Table 40.450.030-1 that conforms to all applicable requirements discussed  
 36 in Section 40.540.060. If the applicant chooses, the county will prepare the digital file based upon the wetland  
 37 boundary survey map. The applicant shall provide payment for the preparation of the digital file in accordance

1 with Section 6.110A.020(2)(B)(III). Additionally, the responsible official shall forward the digital file to the  
 2 Department of Assessment and GIS.

Table 40.450.030-1. DXF Layers		
Layer Description	Layer Name	Feature Type
Parcel Lines	Parcels	Line
Wetland Boundary	Wetland	Line
Wetland Buffers	Wetbuff	Line
Building Envelopes	Envelope	Line
PLSS Corner	PLSS	Point
Wetland Flags and Data Plots	Wetflag	Point
Parcel Lot Numbers and Parent Parcel Number	Lotnum	Text
Wetland Category	Category	Text
Buffer Distance	Buffdist	Text

3  
 4 4. Responsibility. The wetland delineation is the responsibility of the applicant. The responsible official shall  
 5 verify the accuracy of the boundary delineation within ten (10) working days of receiving the delineation report.  
 6 This review period may be extended when excessively dry conditions prohibit the confirmation of the wetland  
 7 delineation. If the delineation is found to not accurately reflect the boundary of the wetland, the responsible  
 8 official shall issue a report, within twenty (20) working days of receiving the applicant’s delineation report, citing  
 9 evidence (for example, soil samples) that demonstrates where the delineation is in error. The applicant may then  
 10 either revise the delineation and submit another report or administratively appeal.

11 (Amended: Ord. 2019-03-05)

12 E. Buffers. Wetland buffer widths shall be determined by the responsible official in accordance with the  
 13 standards below:

14 1. All buffers shall be measured horizontally outward from the delineated wetland boundary or, in the case of a  
 15 stream with no adjacent wetlands, the ordinary high water mark as surveyed in the field.

16 2. Buffer widths are established by comparing the wetland rating category, **wetland rating habitat score**, and the  
 17 intensity of land uses proposed on development sites per Tables 40.450.030-2, 40.450.030-3 and 40.450.030-4.  
 18 For Category IV wetlands, the required water quality buffers, per Table 40.450.030-2, are adequate to protect  
 19 habitat functions.

Table 40.450.030-2. Buffers Required to Protect Water Quality Functions			
Wetland Rating	Low Intensity Use	Moderate Intensity Use	High Intensity Use
Category I or II	50 ft.	75 ft.	100 ft.
Category III	40 ft.	60 ft.	80 ft.
Category IV	25 ft.	40 ft.	50 ft.

20

Table 40.450.030-3. Buffers Required to Protect Habitat Functions in Category I, II and III Wetlands			
Habitat Score in the Rating	Low Intensity Use	Moderate Intensity Use	High Intensity Use

Form			
5 points or less	See Table 40.450.030-2	See Table 40.450.030-2	See Table 40.450.030-2
6 or 7 points	75 ft.	110 ft.	150 ft.
8 or 9 points	150 ft.	225 ft.	300 ft.
Wetlands of High Conservation Value with a Habitat Score of 7 Points or Less	125 ft.	190 ft.	250 ft.

1

Table 40.450.030-4. Land Use Intensity Matrix <sup>1</sup>						
	Parks and Recreation	Streets and Roads	Stormwater Facilities	Utilities	Commercial/Industrial	Residential <sup>2</sup>
Low	Natural fields and grass areas, viewing areas, split rail fencing	NA	Outfalls, spreaders, constructed wetlands, bioswales, vegetated detention basins, overflows	Underground and overhead utility lines, manholes, power poles (without footings)	NA	Density at or lower than 1 unit per 5 acres
Moderate	Impervious trails, engineered fields, fairways	Residential driveways and access roads	Wet ponds	Maintenance access roads	NA	Density between 1 unit per acre and higher than 1 unit per 5 acres
High	Greens, tees, structures, parking, lighting, concrete or gravel pads, security fencing	Public and private streets, security fencing, retaining walls	Maintenance access roads, retaining walls, vaults, infiltration basins, sedimentation forebays and structures, security fencing	Paved or concrete surfaces, structures, facilities, pump stations, towers, vaults, security fencing, etc.	All site development	Density higher than 1 unit per acre

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3

4

<sup>1</sup> The responsible official shall determine the intensity categories applicable to proposals should characteristics not be specifically listed in Table 40.450.030-4.

5

<sup>2</sup> Measured as density averaged over a site, not individual lot sizes.

6

7

3. In urban plats and subdivisions, wetlands and wetland buffers shall be placed within a nonbuildable tract with the following exceptions:

8

a. Creation of a nonbuildable tract would result in violation of minimum lot depth standards; or

9

b. The responsible official determines a tract is impractical.

10

11

12

c. Where the responsible official determines the exceptions in Section 40.450.030(E)(3)(a) or (b) apply, residential lots may extend into wetlands and wetland buffers; provided, that all the requirements of Section 40.450.030(F) are met.

13

4. Adjusted Buffer Width.

14

15

a. Adjustments Authorized by Wetland Permits. Adjustments to the required buffer width are authorized by Section 40.450.040(D) upon issuance of a wetland permit.

16

17

b. Functionally Isolated Buffer Areas. Areas which are functionally separated from a wetland and do not protect the wetland from adverse impacts shall be treated as follows:

1 (1) Preexisting roads and, structures, or vertical separation shall be excluded from buffers otherwise  
2 required by this chapter;

3 (2) Distinct portions of wetlands with reduced habitat functions that are components of wetlands with  
4 an overall habitat rating score greater than five (5) points shall not be subject to the habitat function  
5 buffers designated in Table 40.450.030-3 if all of the following criteria are met:

6 (a) The area of reduced habitat function is at least one (1) acre in size;

7 (b) The area supports less than five (5) native plant species and does not contain special habitat  
8 features listed in Section H1.5 of the rating form;

9 (c) The area of reduced habitat function has low or no interspersion of habitats as defined in  
10 Section H1.4 of the rating form;

11 (d) The area does not meet any WDFW priority habitat or species criteria; and

12 (e) The required habitat function buffer is provided for all portions of the wetland that do not  
13 have reduced habitat function.

14 c. Maximum Buffer Area. Except for streams, buffers shall be reduced as necessary so that total buffer  
15 area (on and off site) does not exceed two (2) times the total wetland area (on- and off-site); provided, the  
16 minimum buffer width at any point shall not be less than the water quality buffer widths for low intensity  
17 uses contained in Table 40.450.030-2.

18 (Amended: Ord. 2014-12-05; Ord. 2019-03-05)

19 F. Standard Requirements. Any action granting or approving a development permit application shall be  
20 conditioned on all the following:

21 1. Marking Buffer During Construction. The location of the outer extent of the wetland buffer shall be marked  
22 in the field and such markings shall be maintained throughout the duration of the permit.

23 2. Permanent Marking of Buffer Area. A permanent physical demarcation along the upland boundary of the  
24 wetland buffer area shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or  
25 hedge row, fencing, or other prominent physical marking approved by the responsible official. In addition, small  
26 signs shall be posted at an interval of one (1) per lot or every one hundred (100) feet, whichever is less, and  
27 perpetually maintained at locations along the outer perimeter of the wetland buffer approved by the responsible  
28 official worded substantially as follows:

29 Wetland and Buffer –

30 Please retain in a natural state

31 3. A conservation covenant shall be recorded in a form approved by the Prosecuting Attorney as adequate to  
32 incorporate the other restrictions of this section and to give notice of the requirement to obtain a wetland permit  
33 prior to engaging in regulated activities within a wetland or its buffer.

34 4. In the cases of plats, short plats, and recorded site plans, include on the face of such instrument the boundary  
35 of the wetland and its buffer and a reference to the separately recorded conservation covenant provided for in  
36 Section 40.450.030(F)(3).

37 G. Standard Requirements – Waivers. The responsible official shall waive the requirements of Sections  
38 40.450.030(D) and (F) in certain cases described below if the applicant designates development envelopes which are  
39 clearly outside of any wetland or buffer. The responsible official may require partial wetland delineation to the extent  
40 necessary to ensure eligibility for this waiver:



- 1 1. Residential building permits and home businesses;
- 2 2. Land divisions in the rural area:
  - 3 a. Development envelopes shall be required for a fully complete preliminary application;
  - 4 b. Development envelopes shall be shown on the final plat; and
  - 5 c. A note referencing the development envelopes shall be placed on the final plat.
- 6 3. Site plan reviews where the responsible official determines that all development is clearly separated from the  
7 wetlands and wetland buffers:
  - 8 a. Development envelopes shall be required for a fully complete preliminary application;
  - 9 b. Development envelopes shall be shown on the final site plan; and
  - 10 c. A note referencing the development envelopes shall be placed on the final site plan.

11 (Amended: Ord. 2005-04-12; Ord. 2006-05-27; Ord. 2012-07-03)

12  
13 **Section 4. Amendatory.** Sec. 1 (Exh. A) of Ord. 2003-11-01 and codified as CCC 40.450.040, and as most recently  
14 amended by Sec. 19 of Ord. 2019-05-07, are each hereby amended to read as follows:

#### 15 **40.450.040 Wetland Permits**

##### 16 A. General.

- 17 1. A wetland permit is required for any development activity that is not exempt pursuant to Section  
18 40.450.010(C) within wetlands and wetland buffers.
- 19 2. Shoreline Master Program. Within shoreline jurisdiction, development may be allowed for those uses in the  
20 Shoreline Master Program either through a statement of exemption pursuant to Section 40.460.230(C) or through  
21 an application for a shoreline permit (substantial development, conditional use, or variance) to include a wetlands  
22 review pursuant to Section 40.460.530(G) and Sections 40.450.020, 40.450.030, and 40.450.040.
- 23 3. Standards for wetland permits are provided in Sections 40.450.040(B), (C) and (D).
- 24 4. All wetland permits require approval of a preliminary and final enhancement/mitigation plan in accordance  
25 with the provisions of Section 40.450.040(E) unless the preliminary enhancement/mitigation plan requirement is  
26 waived under the provisions of Section 40.450.040(E)(2).
- 27 5. Wetland permit application, processing, preliminary approval, and final approval procedures are set out in  
28 Sections 40.450.040(F) through (I).
- 29 6. Provisions for programmatic permits are provided by Section 40.450.040(K).
- 30 7. Provisions for emergency wetland permits are provided by Section 40.450.040(L).

31 (Amended: Ord. 2012-07-16; Ord. 2019-03-05)

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

- 1 1. The proposed activity shall not cause significant degradation of wetland functions;
- 2 2. The proposed activity shall comply with all state, local and federal laws, including those related to sediment
- 3 control, pollution control, floodplain restrictions, Chapter 40.386, Stormwater and Erosion Control, and on-site
- 4 wastewater disposal.

5 (Amended: Ord. 2015-11-24; Ord. 2019-03-05)

6 C. Buffer Standards and Authorized Activities. The following additional standards apply for regulated activities

7 in a wetland buffer:

8 1. Reduced Width Based on Modification of Land Use Intensity. The required buffer width shall be decreased if

9 design techniques are used that reduce the land use intensity category delineated in Table 40.450.030-4. Eligible

10 design measures include the following:

11 a. General Site Design Measures. High intensity buffers may be reduced to moderate intensity buffers

12 if all of the following mitigation measures are applied to the greatest extent practicable:

13 (1) Buffer Enhancement. Improve the function of the buffer such that buffer areas with reduced

14 function can function properly. This could include the removal and management of noxious weeds

15 and/or invasive vegetation or specific measures to improve hydrologic or habitat function.

16 (2) Shielding of High Intensity Uses.

17 (a) Lights. Direct all lights away from wetlands;

18 (b) Noise. Locate activity that generates noise away from wetlands;

19 (c) Pets and Human Disturbance. Use privacy fencing; plant dense vegetation to delineate

20 buffer edge and to discourage disturbance using vegetation appropriate for the eco-region; place

21 wetland and its buffer in a separate tract.

22 (3) Surface Water Management.

23 (a) Existing Runoff. Retrofit stormwater detention and treatment for roads and existing

24 development to the extent determined proportional by the responsible official, and disperse direct

25 discharge of channelized flows from lawns and landscaping;

26 (b) Change in Water Regime. Infiltrate and/or disperse stormwater runoff from impervious

27 surfaces and drainage from lawns and landscaping treated in accordance with Chapter 40.386 into

28 the buffer at multiple locations.

29 ~~b. Low Impact Development Design. High intensity buffers may be reduced to moderate or low-~~

30 ~~intensity buffers under the following circumstances:~~

31 ~~(1) Limiting stormwater runoff volumes to avoid impacts to receiving waters and wetlands adjacent to~~

32 ~~the site.~~

33 ~~(a) Reduction to moderate intensity buffers, by:~~

34 ~~(i) Meeting the standards for full dispersion in Chapter 40.386 over seventy five~~

35 ~~percent (75%) of the site; or~~

36 ~~(ii) Infiltration of fifty percent (50%) of the stormwater runoff from the site; or~~

37 ~~(iii) Using low impact development BMPs pursuant to Chapter 40.386 to reduce~~

38 ~~stormwater runoff volume generated from the site to no more than fifty percent (50%) of the~~

39 ~~runoff volume generated by using standard collection and treatment BMPs.~~

1 ~~(b) — Reduction to low intensity buffers, by:~~

2 ~~(i) — Meeting the standards for full dispersion in Chapter 40.386 for the entire site; or~~

3 ~~(ii) — Infiltration of all stormwater runoff from the site; or~~

4 ~~(iii) — Using low impact development BMPs pursuant to Chapter 40.386 to match the~~  
5 ~~predevelopment stormwater runoff volume from the site.~~

6 (2) Enhanced Stormwater Management. Reduction of high land use intensity buffer to moderate land  
7 use intensity buffer for implementation of stormwater treatment measures that exceed the standards of  
8 Chapter 40.386. This could include measures such as pretreatment or tertiary treatment of runoff and  
9 limiting discharge from the site to predevelopment runoff flow and volume.

10 **be.** Habitat Corridors. Establishment of a minimum one hundred (100) foot wide functioning or  
11 enhanced vegetated corridor between the wetland and any other priority habitat areas as defined by the  
12 Washington State Department of Fish and Wildlife reduces a high land use intensity buffer to a moderate  
13 land use intensity buffer provided both of the following conditions are met:

14 (1) Applies only to wetlands with habitat function scores higher than ~~five (5)~~ **four (4)** on the rating  
15 system form;

16 (2) The habitat corridor must be protected for the entire distance between the wetland and the priority  
17 habitat area by some type of permanent legal protection such as a covenant or easement.

18 **ce.** The responsible official may determine that proposed measures, other than those specifically listed  
19 in Section 40.450.040(C)(1)(a) through (c), will effectively reduce land use intensity and protect or enhance  
20 and values of wetlands and, therefore, allow buffer modifications where appropriate.

21 2. Minimum Buffer. In the case of buffer averaging and buffer reduction via Section 40.450.040(C)(1), the  
22 minimum buffer width at its narrowest point shall not be less than the low intensity land use water quality buffer  
23 widths contained in Table 40.450.030-2.

24 3. Buffer Averaging. The boundary of the buffer zone may be modified by averaging buffer widths. If buffer  
25 averaging is used, the following conditions must be met:

26 a. A maximum of twenty-five percent (25%) of the total required buffer area on the site (after all  
27 reductions are applied) may be averaged; and

28 b. The total area contained in the buffer, after averaging, shall be at least functionally equivalent and  
29 equal in size to the area contained within the buffer prior to averaging.

30 4. Stormwater Facilities.

31 a. Dispersion Facilities. Stormwater dispersion facilities that comply with the standards of Chapter  
32 40.386 shall be allowed in all wetland buffers. Stormwater outfalls for dispersion facilities shall comply  
33 with the standards in subsection (C)(4)(b) of this section. Enhancement of wetland buffer vegetation to meet  
34 dispersion requirements may also be considered as buffer enhancement for the purpose of meeting the buffer  
35 averaging or buffer reduction standards in this section.

36 b. Other stormwater facilities are only allowed in buffers of wetlands with low habitat function (less  
37 than six (6) points on the habitat section of the rating system form); provided, the facilities shall be built on  
38 the outer edge of the buffer and not degrade the existing buffer function and are designed to blend with the  
39 natural landscape. Unless determined otherwise by the responsible official, the following activities shall be  
40 considered to degrade a wetland buffer when they are associated with the construction of a stormwater  
41 facility:

- 1 (1) Removal of trees greater than four (4) inches diameter at four and one-half (4 1/2) feet above the  
2 ground or greater than twenty (20) feet in height;
- 3 (2) Disturbance of plant species that are listed as rare, threatened or endangered by the county or any  
4 state or federal management agency;
- 5 (3) The construction of concrete structures other than manholes, inlets, and outlets that are exposed  
6 above the normal water surface elevation of the facility;
- 7 (4) The construction of maintenance and access roads;
- 8 (5) Slope grading steeper than four to one (4:1) horizontal to vertical above the normal water surface  
9 elevation of the stormwater facility;
- 10 (6) The construction of pretreatment facilities such as forebays, sediment traps, and pollution control  
11 manholes;
- 12 (7) The construction of trench drain collection and conveyance facilities;
- 13 (8) The placement of fencing; and
- 14 (9) The placement of rock and/or riprap, except for the construction of flow spreaders, or the protection  
15 of pipe outfalls and overflow spillways; provided, that buffer functions for areas covered in rock and/or  
16 riprap are replaced.

17 5. Road and Utility Crossings. Crossing buffers with new roads and utilities is allowed provided all the  
18 following conditions are met:

- 19 a. Buffer functions, as they pertain to protection of the adjacent wetland and its functions, are replaced;  
20 and
- 21 b. Impacts to the buffer and wetland are minimized.

22 6. Other Activities in a Buffer. Regulated activities not involving stormwater management, road and utility  
23 crossings, or a buffer reduction per 40.450.040(C)(1) via enhancement are allowed in the buffer if all the  
24 following conditions are met:

- 25 a. The activity is temporary and will cease or be completed within three (3) months of the date the  
26 activity begins;
- 27 b. The activity will not result in a permanent structure in or under the buffer;
- 28 c. The activity will not result in a reduction of buffer acreage or function;
- 29 d. The activity will not result in a reduction of wetland acreage or function.

30 (Amended: Ord. 2009-01-01; Ord. 2014-12-05; Ord. 2015-11-24; Ord. 2019-03-05)

31 D. Standards – Wetland Activities. The following additional standards apply to the approval of all activities  
32 permitted within wetlands under this section:

33 1. Sequencing. Applicants shall demonstrate that a range of project alternatives have been given substantive  
34 consideration with the intent to avoid or minimize impacts to wetlands. Documentation must demonstrate that the  
35 following hierarchy of avoidance and minimization has been pursued:

- 36 a. Avoid impacts to wetlands unless the responsible official finds that:

- 1 (1) For Category I and II wetlands, avoiding all impact is not in the public interest or will deny all  
2 reasonable economic use of the site;
- 3 (2) For Category III and IV wetlands, avoiding all impact will result in a project that is either:
- 4 (a) Inconsistent with the Clark County Comprehensive Growth Management Plan;
- 5 (b) Inconsistent with county-wide critical area conservation goals; or
- 6 (c) Not feasible to construct.
- 7 b. Minimize impacts to wetlands if complete avoidance is infeasible. The responsible official must  
8 find that the applicant has limited the degree or magnitude of impact to wetlands by using appropriate  
9 technology and by taking affirmative steps to reduce impact through efforts such as:
- 10 (1) Seeking easements or agreements with adjacent land owners or project proponents where  
11 appropriate;
- 12 (2) Seeking reasonable relief that may be provided through application of other county zoning and  
13 design standards;
- 14 (3) Site design; and
- 15 (4) Construction techniques and timing.
- 16 c. Compensate for wetland impacts that will occur, after efforts to minimize have been exhausted. The  
17 responsible official must find that:
- 18 (1) The affected wetlands are restored to the conditions existing at the time of the initiation of the  
19 project;
- 20 (2) Unavoidable impacts are mitigated in accordance with this subsection; and
- 21 (3) The required mitigation is monitored and remedial action is taken when necessary to ensure the  
22 success of mitigation activities.
- 23 2. Location of Wetland Mitigation. Wetland mitigation for unavoidable impacts shall be located using the  
24 following prioritization:
- 25 a. On-site. Locate mitigation according to the following priority:
- 26 (1) Within or adjacent to the same wetland as the impact;
- 27 (2) Within or adjacent to a different wetland on the same site;
- 28 b. Off-site. Locate mitigation within the same watershed, as shown on Figure 40.450.040-1, or use an  
29 established wetland mitigation bank; the service area determined by the mitigation bank review team and  
30 identified in the executed mitigation bank instrument;
- 31 c. In-kind. Locate or create wetlands with similar landscape position and the same hydro-geomorphic  
32 (HGM) classification based on a reference to a naturally occurring wetland system; and
- 33 d. Out-of-kind. Mitigate in a different landscape position and/or HGM classification based on a  
34 reference to a naturally occurring wetland system.
- 35 3. Types of Wetland Mitigation. The various types of wetland mitigation allowed are listed below in the general  
36 order of preference.

1 a. Restoration. The manipulation of the physical, chemical, or biological characteristics of a site with  
2 the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of  
3 tracking net gains in wetland acres, restoration is divided into:

4 (1) Reestablishment. The manipulation of the physical, chemical, or biological characteristics of a site  
5 with the goal of returning natural or historic functions to a former wetland. Reestablishment results in a  
6 gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches,  
7 or breaking drain tiles.

8 (2) Rehabilitation. The manipulation of the physical, chemical, or biological characteristics of a site  
9 with the goal of returning natural or historic functions to a degraded wetland. Rehabilitation results in a  
10 gain in wetland function, but does not result in a gain in wetland acres. Activities could involve  
11 breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

12 b. Creation (Establishment). The manipulation of the physical, chemical, or biological characteristics  
13 of a site with the goal of developing a wetland on an upland or deepwater site where a wetland did not  
14 previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of  
15 upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the  
16 growth of hydrophytic plant species.

17 c. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland  
18 site to heighten, intensify, or improve the specific function(s) or to change the growth stage or composition  
19 of the vegetation present. Enhancement is undertaken for specified purposes such as water quality  
20 improvement, flood water retention, or wildlife habitat. Enhancement results in a change in some wetland  
21 functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres.  
22 Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site  
23 elevations or the proportion of open water to influence hydroperiods, or some combination of these  
24 activities.

1  
2

Figure 40.450.040-1  
Clark County Watershed Map



3  
4  
5  
6  
7

(Amended: Ord. 2007-06-05; Ord. 2014-12-05)

d. Protection/Maintenance (Preservation). Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also

1 includes activities commonly associated with the term preservation. Preservation does not result in a gain of  
 2 wetland acres, but may result in improved wetland functions.

3 4. Wetland Mitigation Ratios.

4 a. Standard Wetland Mitigation Ratios. The following mitigation ratios for each of the mitigation  
 5 types described in Sections 40.450.040(D)(3)(a) through (c) apply:

Table 40.450.040-1. Standard Wetland Mitigation Ratios (In Area)					
Wetland to Be Replaced	Reestablishment or Creation	Rehabilitation	Reestablishment or Creation and Rehabilitation	Reestablishment or Creation and Enhancement	Enhancement
Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I, Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1
Category I, Based on Score for Functions	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1
Category I, Natural Heritage Site	Not Considered Possible	6:1 Rehabilitate a Natural Heritage Site	N/A	N/A	Case-by-Case

6  
 7 b. Preservation. The responsible official has the authority to approve preservation of existing wetlands  
 8 as wetland mitigation under the following conditions:

- 9 (1) The wetland area being preserved is a Category I or II wetland or is within a WDFW priority habitat  
 10 or species area;
- 11 (2) The preservation area is at least one (1) acre in size;
- 12 (3) The preservation area is protected in perpetuity by a covenant or easement that gives the county  
 13 clear regulatory and enforcement authority to protect existing wetland and wetland buffer functions with  
 14 standards that exceed the protection standards of this chapter;
- 15 (4) The preservation area is not an existing or proposed wetland mitigation site; and
- 16 (5) The following preservation/mitigation ratios apply:

Table 40.450.040-2. Ratios for Wetland Preservation Ratios for of Category I and II Wetlands (In Area)				
Habitat Function of Wetland to Be Replaced	In Addition to Standard Mitigation		As the Only Means of Mitigation	
	Full and Functioning Buffer	Reduced and/or Degraded Buffer	Full and Functioning Buffer	Reduced and/or Degraded Buffer
Low (<6 points)	10:1	14:1	20:1	30:1
Moderate (6 – 7 points)	13:1	17:1	30:1	40:1
High (>7 points)	16:1	20:1	40:1	50:1

17  
 18 c. The responsible official has the authority to reduce wetland mitigation ratios under the following  
 19 circumstances:



- 1 (1) Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions  
2 have a very high likelihood of success based on prior experience;
- 3 (2) Documentation by a qualified wetland specialist demonstrates that the proposed actions for  
4 compensation will provide functions and values that are significantly greater than the wetland being  
5 affected;
- 6 (3) The proposed actions for compensation are conducted in advance of the impact and are shown to be  
7 successful;
- 8 (4) In wetlands where several HGM classifications are found within one (1) delineated wetland  
9 boundary, the areas of the wetlands within each HGM classification can be scored and rated separately  
10 and the mitigation ratios adjusted accordingly, if all the following apply:
- 11 (a) The wetland does not meet any of the criteria for wetlands with "Special Characteristics,"  
12 as defined in the rating system;
- 13 (b) The rating and score for the entire wetland is provided as well as the scores and ratings for  
14 each area with a different HGM classification;
- 15 (c) Impacts to the wetland are all within an area that has a different HGM classification from  
16 the one used to establish the initial category; and
- 17 (d) The proponents provide adequate hydrologic and geomorphic data to establish that the  
18 boundary between HGM classifications lies at least fifty (50) feet outside of the footprint of the  
19 impacts.
- 20 5. Indirect Wetland Impacts Due to Loss of Buffer Function or Stormwater Discharges. Wetland mitigation  
21 shall be required in accordance with the wetland mitigation standards in this subsection for the following indirect  
22 wetland impacts:
- 23 a. Buffer loss resulting from wetland fills permitted under this section;
- 24 b. Reduction of wetland buffers beyond the maximum reduction allowed under Section  
25 40.450.040(C)(2); provided, that such reductions are limited as follows:
- 26 (1) Road and utility crossings in the wetland buffer approved in accordance with Section  
27 40.450.040(C)(5); and
- 28 (2) The total indirect wetland impact from buffer reductions is less than one-quarter (1/4) acre.
- 29 c. Unavoidable loss of wetland function due to stormwater discharges that do not meet the wetland  
30 protections standards in Chapter 40.386.
- 31 6. Wetland Buffers Required for Mitigation. Wetland mitigation shall, at a minimum, be protected by the water  
32 quality function wetland buffers required in Table 40.450.030-2:
- 33 a. If the wetland mitigation will provide habitat functions that require larger buffers per Table  
34 40.450.030-2, wetland mitigation credit shall be reduced to account for loss of wetland buffer area and  
35 function if the required buffers are not provided;
- 36 b. Reductions to the required buffers may be applied in accordance with Sections 40.450.040(C) and  
37 (D)(5); and
- 38 cb. All wetland buffers shall be included within the mitigation site and subject to the conservation  
39 covenant required under Section 40.450.030(F)(3).
- 40 7. Alternate Wetland Mitigation.

- 1 a. Wetland Mitigation Banking.
- 2 (1) Construction, enhancement or restoration of wetlands to use as mitigation for future wetland  
3 development impacts is permitted subject to the following:
- 4 (a) A wetland permit shall be obtained prior to any mitigation banking. If a wetland permit is  
5 not obtained prior to mitigation bank construction, mitigation credit shall not be awarded. On  
6 projects proposing off-site wetland banking in addition to required wetland mitigation, a separate  
7 wetland permit shall be required for each activity. The performance and maintenance bond  
8 requirements of Sections 40.450.040(H)(3)(c) and (d) shall not be applicable, provided there are  
9 no requests for mitigation credit prior to the county determining the mitigation banking is  
10 successful. If mitigation banking is not fully functioning, as defined in the wetland permit, at the  
11 time mitigation credit is requested, Sections 40.450.040(H)(3)(c) and (d) shall apply;
- 12 (b) Federal and state wetland regulations, if applicable, may supersede county requirements;
- 13 (2) The mitigation credit allowed will be determined by the county, based on the wetland category,  
14 condition and mitigation ratios as specified in Section 40.450.040(D)(4). Prior to granting mitigation  
15 banking credit, all wetland mitigation banking areas must comply with Sections 40.450.030(E)(4)(b) and  
16 (c), and, if applicable, Section 40.450.040(H)(3);
- 17 (3) On projects proposing off-site wetland banking in addition to required wetland mitigation, a  
18 separate permit fee will be required for each activity;
- 19 (4) Purchase of banked wetland credits is permitted to mitigate for wetland impacts in the same  
20 watershed provided the applicant has minimized wetland impacts, where reasonably possible, and the  
21 following requirements are met:
- 22 (a) Documentation, in a form approved by the Prosecuting Attorney, adequate to verify the  
23 transfer of wetland credit shall be submitted, and
- 24 (b) A plat note along with information on the title shall be recorded in a form approved by the  
25 Prosecuting Attorney as adequate to give notice of the requirements of this section being met by  
26 the purchase of banked wetland credits;
- 27 b. Cumulative Effects Fund. The county may accept payment of a voluntary contribution to an  
28 established cumulative effects fund for off-site watershed-scale habitat and wetland conservation in lieu of  
29 wetland mitigation of unavoidable impacts in the following cases:
- 30 (1) Residential building and home business permits where on-site enhancement and/or preservation is  
31 not adequate to meet the requirements of Section 40.450.040(D)(4);
- 32 (2) Approved reasonable use exceptions where sufficient on-site wetland and wetland buffer mitigation  
33 is not practical;
- 34 (3) Small impacts affecting less than one-tenth (1/10) acre of wetland where on-site enhancement  
35 and/or preservation is not adequate to meet the requirements of Section 40.450.040(D)(4); or
- 36 (4) As an additional mitigation measure when all other mitigation options have been applied to the  
37 greatest extent practicable.
- 38 8. Stormwater Facilities. Stormwater facilities are allowed in wetlands with habitat scores less than six (6) on  
39 the rating form, in compliance with the following requirements:
- 40 a. Stormwater detention and retention necessary to maintain wetland hydrology are authorized;  
41 provided, that the responsible official determines that wetland functions will not be degraded; and

1           b. Stormwater runoff is treated for water quality in accordance with the requirements of Chapter  
2           40.386 prior to discharge into the wetland.

3           9. Utility Crossings. Crossing wetlands by utilities is allowed, provided the activity is not prohibited by Section  
4           40.450.040(D)(1), and provided all the following conditions are met:

5           a. The activity does not result in a decrease in wetland acreage or classification;

6           b. The activity results in no more than a short-term six (6) month decrease in wetland functions; and

7           c. Impacts to the wetland are minimized.

8           10. Other Activities in a Wetland. Activities not involving stormwater management, utility crossings, or wetland  
9           mitigation are allowed in a wetland, provided the activity is not prohibited by Section 40.450.040(D)(1), and  
10          provided all the following conditions are met:

11          a. The activity shall not result in a reduction of wetland acreage or function; and

12          b. The activity is temporary and shall cease or be completed within three (3) months of the date the  
13          activity begins.

14          (Amended: Ord. 2009-01-01; Ord. 2014-12-05; Ord. 2015-11-24; Ord. 2019-03-05)

15    E. Mitigation Plans.

16          1. General. Mitigation plans are required for activities in a buffer or wetland. Content requirements which are  
17          inappropriate and inapplicable to a project may be waived by the responsible official upon request of the  
18          applicant at or subsequent to the pre-application consultation provided for in Section 40.450.040(F)(1).

19          2. Preliminary Mitigation Plan. The purpose of the preliminary plan is to determine the feasibility of the project  
20          before extensive resources are devoted to the project. The responsible official may waive the requirement for a  
21          preliminary mitigation plan when a wetland permit is not associated with a development permit application  
22          (listed in Section 40.450.010(B)). The preliminary mitigation plan consists of two (2) parts: baseline information  
23          for the site and a conceptual plan. If off-site wetland mitigation is proposed, baseline information for both the  
24          project site and mitigation site is required.

25          a. Baseline information shall include:

26                  (1) Wetland delineation report as described in Section 40.450.030(D)(2);

27                  (2) Copies of relevant wetland jurisdiction determination letters, if available, such as determinations of  
28                  prior converted crop lands, correspondence from state and federal agencies regarding prior wetland  
29                  delineations, etc.;

30                  (3) Description and maps of vegetative conditions at the site;

31                  (4) Description and maps of hydrological conditions at the site;

32                  (5) Description of soil conditions at the site based on a preliminary on-site analysis;

33                  (6) A topographic map of the site; and

34                  (7) A functional assessment of the existing wetland and buffer.

35                  (a) Application of the rating system in Section 40.450.020(B) will generally be considered  
36                  sufficient for functional assessment;

- 1 (b) The responsible official may accept or request an alternate functional assessment  
2 methodology when the applicant's proposal requires detailed consideration of specific wetland  
3 functions;
- 4 (c) Alternate functional assessment methodologies used shall be scientifically valid and  
5 reliable.
- 6 b. The contents of the conceptual mitigation plan shall include:
- 7 (1) Goals and objectives of the proposed project;
- 8 (2) A wetland buffer width reduction plan, if width reductions are proposed, that includes:
- 9 (a) The land use intensity, per Table 40.450.030-4, of the various elements of the development  
10 adjacent to the wetlands;
- 11 (b) The wetland buffer width(s) required by Tables 40.450.030-2 and 40.450.030-3;
- 12 (c) The proposed buffer width reductions, including documentation that proposed buffer width  
13 reductions fully protect the functions of the wetland in compliance with Section 40.450.040(C);
- 14 (3) A wetland mitigation plan that includes:
- 15 (a) A sequencing analysis for all wetland impacts;
- 16 (b) A description of all wetland impacts that require mitigation under this chapter; and
- 17 (c) Proposed mitigation measures and mitigation ratios;
- 18 (4) Map showing proposed wetland and buffer. This map should include the existing and proposed  
19 buffers and all proposed wetland impacts regulated under this chapter;
- 20 (5) Site plan;
- 21 (6) Discussion and map of plant material to be planted and planting densities;
- 22 (7) Preliminary drainage plan identifying location of proposed drainage facilities including detention  
23 structures and water quality features (e.g., swales);
- 24 (8) Discussion of water sources for all wetlands on the site;
- 25 (9) Project schedule;
- 26 (10) Discussion of how the completed project will be managed and monitored; and
- 27 (11) A discussion of contingency plans in case the project does not meet the goals initially set for the  
28 project.
- 29 3. Final Mitigation Plan. The contents of the final mitigation plan shall include:
- 30 a. The approved preliminary mitigation plan and all conditions imposed on that plan. If the  
31 preliminary mitigation plan requirement is waived, the final plan shall include the content normally required  
32 for the preliminary plan listed in Sections 40.450.040(E)(2)(a), (E)(2)(b)(1), and (E)(2)(b)(2).
- 33 b. Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals  
34 and objectives of the mitigation project are being met. Such criteria may include water quality standards,  
35 survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or  
36 other ecological, geological or hydrological criteria.

1 c. Detailed Construction Plans. Written specifications for the mitigation project shall be provided. The  
2 specifications shall include: the proposed construction sequence, grading and excavation details, water and  
3 nutrient requirements for planting, specification of substrate stockpiling techniques, and planting  
4 instructions, as appropriate. These written specifications shall be accompanied by detailed site diagrams,  
5 scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and  
6 any other drawings appropriate to show construction techniques or anticipated final outcome.

7 d. Monitoring Program. The mitigation plan shall include a description of a detailed program for  
8 monitoring the success of the mitigation project.

9 (1) The mitigation project shall be monitored for a period necessary to establish that the mitigation is  
10 successful, but not for a period of less than five (5) years. Creation and forested wetland mitigation  
11 projects shall be monitored for a period of at least ten (10) years;

12 (2) Monitoring shall be designed to measure the performance standards outlined in the mitigation plan  
13 and may include but not be limited to:

14 (a) Establishing vegetation plots to track changes in plant species composition and density  
15 over time;

16 (b) Using photo stations to evaluate vegetation community response;

17 (c) Sampling surface and subsurface waters to determine pollutant loading, and changes from  
18 the natural variability of background conditions (pH, nutrients, heavy metals);

19 (d) Measuring base flow rates and stormwater runoff to model and evaluate water quality  
20 predictions, if appropriate;

21 (e) Measuring sedimentation rates, if applicable; and

22 (f) Sampling fish and wildlife populations to determine habitat utilization, species abundance  
23 and diversity;

24 (3) A monitoring protocol shall be included outlining how the monitoring data will be evaluated by  
25 agencies that are tracking the progress of the project;

26 (4) Monitoring reports shall be submitted annually, or on a pre-arranged alternate schedule, for the  
27 duration of monitoring period;

28 (5) Monitoring reports shall analyze the results of monitoring, documenting milestones, successes,  
29 problems, and recommendations for corrective and/or contingency actions to ensure success of the  
30 mitigation project.

31 e. Associated Plans and Other Permits. To ensure consistency with the final mitigation plan, associated  
32 plans and permits shall be submitted, including, but not limited to:

33 (1) Engineering construction plans;

34 (2) Final site plan or proposed plat;

35 (3) Final landscaping plan;

36 (4) Habitat permit;

37 (5) WDFW HPA;

38 (6) USACE Section 404 permit; and

- 1 (7) WDOE Administrative Order or Section 401 certification.
- 2 f. Evidence of Financial and Scientific Proficiency. A description of how the mitigation project will be  
3 managed during construction and the scientific capability of the designer to successfully implement the  
4 proposed project. In addition, a demonstration of the financial capability of the applicant to successfully  
5 complete the project and ensure it functions properly at the end of the specific monitoring period.
- 6 g. Contingency Plan. Identification of potential courses of action, and any corrective measures to be  
7 taken when monitoring or evaluation indicates project performance standards are not being met.
- 8 F. Wetland Permit – Application.
- 9 1. Pre-Permit Consultation. Any person intending to apply for a wetland permit is encouraged, but not required,  
10 to meet with the department during the earliest possible stages of project planning in order to discuss wetland  
11 impact avoidance, minimization, compensatory mitigation, and the required contents of a mitigation plan before  
12 significant commitments have been made to a particular project design. Effort put into pre-permit consultations  
13 and planning will help applicants create projects which will be more quickly and easily processed.
- 14 2. Applications. Applications for wetland permits shall be made to the department on forms furnished by the  
15 department. Unless the responsible official waives one (1) or more of the following information requirements,  
16 applications shall include:
- 17 a. Wetland delineations and buffer width designations pursuant to Sections 40.450.020 and  
18 40.450.030;
- 19 b. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than one  
20 (1) inch equals one hundred (100) feet (1" = 100', a scaling ratio of 1:1,200) showing the location, width,  
21 depth and length of all existing and proposed structures, roads, stormwater facilities, sewage treatment, and  
22 installations within the wetland and its buffer;
- 23 c. The exact sites and specifications for all development activities proposed within wetlands and  
24 wetland buffers, including the amounts and methods;
- 25 d. A proposed preliminary mitigation plan meeting the requirements of Section 40.450.040(E). If the  
26 preliminary plan requirement has been waived, a final mitigation plan shall be required in its place.
- 27 3. Fees. At the time of application, the applicant shall pay a filing fee pursuant to Chapter 6.110A.  
28 (Amended: Ord. 2004-06-11)
- 29 G. Wetland Permit – Processing.
- 30 1. Procedures. Wetland permit applications shall be processed using the application procedures in Chapter  
31 40.510 unless specifically modified herein:
- 32 a. Type I Wetland Permit. The following wetland permits shall be reviewed under the Type I review  
33 process described in Section 40.510.010:
- 34 (1) Buffer modification only;
- 35 (2) Wetland impacts resulting in less than 0.10 acre of direct wetland impact;
- 36 (3) Wetland permits associated with residential building permits, regardless of impact;
- 37 (4) Wetland permits associated with home business permits, regardless of impact;
- 38 (5) Re-authorization of approved wetland permits;

- 1 (6) Programmatic wetland permits that are SEPA exempt.
- 2 b. Type II Wetland Permit. The following wetland permits shall be reviewed under the Type II review  
3 process described in Section 40.510.020:
- 4 (1) Wetland impacts resulting in 0.10 acre, or more, of direct wetland impact, other than residential  
5 building and home business permits;
- 6 (2) Programmatic wetland permits that require SEPA review;
- 7 (3) Programmatic permit applications subject to Type II review shall not be subject to the distribution  
8 requirements of Section 40.510.020(E)(2)(a)(3). Within fourteen (14) calendar days after the date an  
9 application is accepted as fully complete, the county shall publish in a newspaper of general circulation a  
10 summary of the notice, including the date, time and manner of making comments, the nature and location  
11 of the proposal and instructions for obtaining further information.
- 12 c. Type III Wetland Permit. Reasonable use exceptions, other than residential and home business  
13 permits, made under Section 40.450.010(B)(4), shall be reviewed under the Type III review process  
14 described in Section 40.510.030.
- 15 d. Modifications to conservation covenants required under Section 40.450.030(F)(3) shall be  
16 consistent with the standards of this chapter and will be processed subject to the following:
- 17 (1) Modification to a covenant approved by a Type I decision shall be subject to a Type I review  
18 process.
- 19 (2) Modification to a covenant approved by a Type II decision shall be subject to a Type I review  
20 process if the responsible official finds the requested change:
- 21 (a) Does not increase the potential adverse impact to wetlands or buffers; and
- 22 (b) Does not involve an issue of broad public interest, based on the record of the decision; and
- 23 (c) Does not require further SEPA review.
- 24 (3) Modification to a covenant approved by a Type II decision shall be subject to a Type II review  
25 process if it is not subject to Type I review.
- 26 (4) Modification to a covenant approved by a Type III decision shall be subject to a Type I review  
27 process if the responsible official finds the modification:
- 28 (a) Provides an increased benefit to wetlands or wetland buffers; and
- 29 (b) Does not involve an issue of broad public interest, based on the record of the decision; and
- 30 (c) Does not require further SEPA review.
- 31 (5) Modification to a covenant approved by a Type III decision shall be subject to a Type II review  
32 process if the responsible official finds the requested change in the decision:
- 33 (a) Does not increase the potential adverse impact to wetlands or wetland buffers allowed by  
34 the covenant or SEPA determination; and
- 35 (b) Does not involve an issue of broad public interest, based on the record of the decision.
- 36 (6) Modification to a covenant approved by a Type III decision shall be subject to a Type III review  
37 process if it is not subject to Type I or II review.

1 (7) Modification requests submitted with other applications will be processed as specified in Section  
2 40.500.010(D)(2).

3 e. Removal of wetland covenants shall be approved by Clark County Council.

4 2. Consolidation. The department shall, to the extent practicable and feasible, consolidate the processing of  
5 wetland permits with other county regulatory programs which affect activities in wetlands, such as SEPA review,  
6 subdivision, grading, and site plan approval, so as to provide a timely and coordinated permit process. Where no  
7 other county permit or approval is required for the wetland activity, the wetland permit shall be processed in  
8 accordance with Section 40.450.040(G)(1).

9 3. Notification. In addition to notices otherwise required pursuant to Section 40.450.040(G)(1), notice of Type  
10 II and Type III wetland permit applications shall be given to federal and state agencies that have jurisdiction over,  
11 or an interest in, the affected wetlands.

12 (Amended: Ord. 2008-06-02; Ord. 2009-12-01; Ord. 2019-05-07)

13 H. Wetland Permit – Preliminary Approval.

14 1. Decision Maker. A wetland permit application which has been consolidated with another permit or approval  
15 request which requires a public hearing (e.g., preliminary plat) shall be heard and decided in accordance with the  
16 procedures applicable to such other request. Any other wetland permit application shall be acted on by the  
17 responsible official within the timeline specified in Chapter 40.510 for the required permit type.

18 2. Findings. A decision preliminarily approving or denying a wetland permit shall be supported by findings of  
19 fact relating to the standards and requirements of this chapter.

20 3. Conditions. A decision preliminarily approving a wetland permit shall incorporate at least the following as  
21 conditions:

22 a. The approved preliminary mitigation plan;

23 b. Applicable conditions provided for in Section 40.450.030(E)(4);

24 c. Posting of a performance assurance pursuant to Section 40.450.040(J); and

25 d. Posting of a maintenance assurance pursuant to Section 40.450.040(J).

26 4. Administrative Appeal. A consolidated wetland permit decision may be administratively appealed in  
27 conjunction with, and within the same limitation period, applicable to the other county permit or approval;  
28 provided, that wetland permits preliminarily issued or denied by the responsible official may be appealed in the  
29 same manner, and within the same limitation period, applicable to a Type II process under Section 40.510.020.

30 5. Duration. Wetland permit preliminary approval shall be valid for a period of three (3) years from the date of  
31 issuance or termination of administrative appeals or court challenges, whichever occurs later, unless:

32 a. A longer period is specified in the permit; or

33 b. The applicant demonstrates good cause to the responsible official's satisfaction for an extension not  
34 to exceed an additional one (1) year.

35 I. Wetland Permit – Final Approval.

36 1. Issuance. The responsible official shall issue final approval of the wetland permit authorizing  
37 commencement of the activity permitted thereby upon:

38 a. Submittal and approval of a final mitigation plan pursuant to Section 40.450.040(E)(3);



- 1           b.     Installation and approval of field markings as required by Section 40.450.030(F)(2);
- 2           c.     The recording of a conservation covenant as required by Section 40.450.030(F)(3);
- 3           d.     The posting of a performance assurance as required by Section 40.450.040(H)(3);
- 4     2. Duration.
- 5           a.     Wetland or Wetland Buffer Impacts. Final approval shall be valid for the period specified in the
- 6           final wetland permit, or the associated development approval. Extension of the permit shall only be granted
- 7           in conjunction with extension of an associated permit;
- 8           b.     Compensatory Mitigation. The compensatory mitigation requirements of the permit shall remain in
- 9           effect for the duration of the monitoring and maintenance period specified in the approval.

10     (Amended: Ord. 2007-11-13)

11     J.     Wetland Permit Financial Assurances.

- 12     1. Types of Financial Assurances. The responsible official shall accept the following forms of financial
- 13     assurances:
- 14           a.     An escrow account secured with an agreement approved by the responsible official;
- 15           b.     A bond provided by a surety for estimates that exceed five thousand dollars (\$5,000);
- 16           c.     A deposit account with a financial institution secured with an agreement approved by the
- 17           responsible official;
- 18           d.     A letter of commitment from a public agency; and
- 19           e.     Other forms of financial assurance determined to be acceptable by the responsible official.
- 20     2. Financial Assurance Estimates. The applicant shall submit itemized cost estimates for the required financial
- 21     assurances. The responsible official may adjust the estimates to ensure that adequate funds will be available to
- 22     complete the specified compensatory mitigation upon forfeiture. In addition the cost estimates must include a
- 23     contingency as follows:
- 24           a.     Estimates for bonds shall be multiplied by one hundred fifty percent (150%);
- 25           b.     All other estimates shall be multiplied by one hundred ten percent (110%).
- 26     3. Waiver of Financial Assurances. For Type I wetland permits, the responsible official may waive the
- 27     requirement for one or both financial assurances if the applicant can demonstrate to the responsible official's
- 28     satisfaction that posting the required financial assurances will constitute a significant hardship.
- 29     4. Acceptance of Work and Release of Financial Assurances.
- 30           a.     Release of Performance Assurance. Upon request, the responsible official shall release the
- 31           performance assurance when the following conditions are met:
- 32                 (1) Completion of construction and planting specified in the approved compensatory mitigation plan;
- 33                 (2) Submittal of an as-built report documenting changes to the compensatory mitigation plan that
- 34                 occurred during construction;
- 35                 (3) Field inspection of the completed site(s); and

- 1 (4) Provision of the required maintenance assurance.
- 2 b. Release of Maintenance Assurance. Upon request, the responsible official shall release the  
3 maintenance assurance when the following conditions are met:
- 4 (1) Completion of the specified monitoring and maintenance program;
- 5 (2) Submittal of a final monitoring report demonstrating that the goals and objectives of the  
6 compensatory mitigation plan have been met as demonstrated through:
- 7 (a) Compliance with the specific performance standards established in the wetland permit; or
- 8 (b) Functional assessment of the mitigation site(s); and
- 9 (c) Field inspection of the mitigations site(s).
- 10 c. Incremental Release of Financial Assurances. The responsible official may release financial  
11 assurances incrementally only if specific milestones and associated costs are specified in the compensatory  
12 mitigation plan and the document legally establishing the financial assurance.
- 13 5. Transfer of Financial Assurances. The responsible official may release financial assurances at any time if  
14 equivalent assurances are provided by the original or a new permit holder.
- 15 6. Forfeiture. If the permit holder fails to perform or maintain compensatory mitigation in accordance with the  
16 approved wetland permit, the responsible official may declare the corresponding financial assurance forfeit  
17 pursuant to the following process:
- 18 a. The responsible official shall, by registered mail, notify the wetland permit holder/agent that is  
19 signatory to the financial assurance and the financial assurance holder of nonperformance with the terms of  
20 the approved wetlands permit;
- 21 b. The written notification shall cite a reasonable time for the permit holder, or legal successor, to  
22 comply with provisions of the permit and state the county's intent to forfeit the financial assurance should  
23 the required work not be completed in a timely manner;
- 24 c. Should the required work not be completed timely, the county shall declare the assurance forfeit;
- 25 d. Upon forfeiture of a financial assurance, the proceeds thereof shall be utilized either to correct the  
26 deficiencies which resulted in forfeiture or, if such correction is deemed by the responsible official to be  
27 impractical or ineffective, to enhance other wetlands in the same watershed or contribute to an established  
28 cumulative effects fund for watershed scale habitat and wetland conservation.
- 29 K. Programmatic Permits for Routine Maintenance and Operations of Utilities and Public Facilities. The  
30 responsible official may issue programmatic wetland permits for routine maintenance and operations of utilities and  
31 public facilities within wetlands and wetland buffers, and for wetland enhancement programs. It is not the intent of the  
32 programmatic permit process to deny or unreasonably restrict a public agency or utility's ability to provide services to  
33 the public. Programmatic permits only authorize activities specifically identified in and limited to the permit approval  
34 and conditions.
- 35 1. Application Submittal Requirements. Unless waived by the responsible official with specific findings in the  
36 approval document in accordance with Section 40.450.040(K)(2), applications for programmatic wetland permits  
37 shall include a programmatic permit plan that includes the following:
- 38 a. A discussion of the purpose and need for the permit;
- 39 b. A description of the scope of activities in wetlands and wetland buffers;
- 40 c. Identification of the geographical area to be covered by the permit;

- 1 d. The range of functions and values of wetlands potentially affected by the permit;
- 2 e. Specific measures and performance standards to be taken to avoid, minimize and mitigate impacts  
3 on wetland functions and values including:
- 4 (1) Procedures for identification of wetlands and wetland buffers;
- 5 (2) Maintenance practices proposed to be used;
- 6 (3) Restoration measures;
- 7 (4) Mitigation measures and assurances;
- 8 (5) Annual reporting to the responsible official that documents compliance with permit conditions and  
9 proposes any additional measures or adjustments to the approved programmatic permit plan;
- 10 (6) Reporting to the responsible official any specific wetland or wetland buffer degradations resulting  
11 from maintenance activities when the degradation occurs or within a timely manner;
- 12 (7) Responding to any department requests for information about specific work or projects;
- 13 (8) Procedures for reporting and/or addressing activities outside the scope of the approved permit; and
- 14 (9) Training all employees, contractors and individuals under the supervision of the applicant who are  
15 involved in permitted work.
- 16 2. Findings. A decision preliminarily approving or denying a programmatic wetland permit shall be supported  
17 by findings of fact relating to the standards and requirements of this chapter.
- 18 3. Approval Conditions. Approval of a programmatic wetland permit shall incorporate at least the following as  
19 conditions:
- 20 a. The approved programmatic permit plan;
- 21 b. Annual reporting requirements; and
- 22 c. A provision stating that duration of the permit.
- 23 4. Duration and Re-authorization.
- 24 a. The duration of a programmatic permit is for five (5) years, unless:
- 25 (1) An annual performance based re-authorization program is approved within the permit; or
- 26 (2) A shorter duration is supported by findings.
- 27 b. Requests for re-authorization of a programmatic permit must be received prior to the expiration of  
28 the original permit.
- 29 (1) Re-authorization is reviewed and approved through the process described in Section  
30 40.450.040(K)(1).
- 31 (2) Permit conditions and performance standards may be modified through the re-authorization process.
- 32 (3) The responsible official may temporarily extend the original permit if the review of the  
33 re-authorization request extends beyond the expiration date.
- 34 L. Wetland Permit – Emergency.

- 1 1. Authorization. Notwithstanding the provisions of this chapter or any other laws to the contrary, the  
2 responsible official may issue prospectively or, in the case of imminent threats, retroactively a temporary  
3 emergency wetlands permit if:
- 4 a. The responsible official determines that an unacceptable threat to life or loss of property will occur  
5 if an emergency permit is not granted; and
- 6 b. The anticipated threat or loss may occur before a permit can be issued or modified under the  
7 procedures otherwise required by this act and other applicable laws.
- 8 2. Conditions. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible  
9 but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities  
10 under this act and shall:
- 11 a. Be limited in duration to the time required to complete the authorized emergency activity, not to  
12 exceed ninety (90) days; and
- 13 b. Require, within this ninety (90) day period, the restoration of any wetland altered as a result of the  
14 emergency activity, except that if more than the ninety (90) days from the issuance of the emergency permit  
15 is required to complete restoration, the emergency permit may be extended to complete this restoration.
- 16 3. Notice. Notice of issuance of an emergency permit shall be published in a newspaper having general  
17 circulation in Clark County not later than ten (10) days after issuance of such permit.
- 18 4. Termination. The emergency permit may be terminated at any time without process upon a determination by  
19 the responsible official that the action was not or is no longer necessary to protect human health or the  
20 environment.
- 21 M. Revocation. In addition to other remedies provided for elsewhere in this chapter, the responsible official may  
22 suspend or revoke wetland permit(s) issued in accordance with this chapter and associated development permits,  
23 pursuant to the provisions of Title 32 of the Clark County Code, if the applicant or permittee has not complied with any  
24 or all of the conditions or limitations set forth in the permit, has exceeded the scope of work set forth in the permit, or  
25 has failed to undertake the project in the manner set forth in the permit.
- 26 N. Enforcement. At such time as a violation of this chapter has been determined, enforcement action shall be  
27 commenced in accordance with the enforcement provisions of Title 32 of this code, and may also include the  
28 following:
- 29 1. Applications for county land use permits on sites that have been cited or issued an administrative notice and  
30 order under Title 32 of this code, or have been otherwise documented by the responsible official for activities in  
31 violation of this chapter, shall not be processed for a period of six (6) years provided:
- 32 a. The county has the authority to apply the permit moratorium to the property; and
- 33 b. The county records the permit moratorium;
- 34 c. The responsible official may reduce or wave the permit moratorium duration upon approval of a  
35 wetland permit under Section 40.450.040.
- 36 2. Compensatory mitigation requirements under Sections 40.450.040(C) and (D) may be increased by the  
37 responsible official as follows:
- 38 a. All or some portion of the wetland or wetland buffer impact cannot be permitted or restored in place;  
39 and
- 40 b. Compensatory mitigation for the impact is delayed more than one year from the time of the original  
41 citation or documentation of the violation.

1 (Amended: Ord. 2006-05-27)

2

### 3 **Shoreline Master Program Code Amendments**

4 **Section 5. Amendatory.** Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.210, and as most recently  
5 amended by Sec. 1 of Ord. 2014-12-10, are each hereby amended to read as follows:

#### 6 **40.460.210 Applicability**

7 A. This Program shall apply to all of the shorelands and waters within the unincorporated Clark County limits that  
8 fall under the jurisdiction of Chapter 90.58 RCW. Such shorelands shall include:

- 9 1. Those lands extending two hundred (200) feet in all directions as measured on a horizontal plane from the  
10 ordinary high water mark (OHWM);
- 11 2. Floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways;
- 12 3. The full extent of floodplains; and
- 13 4. All wetlands and river deltas associated with the streams and lakes that are subject to the provisions of this  
14 Program; the same to be designated as to location by Ecology.

15 ~~An unofficial copy of the Shoreline Map for the county and all urban growth areas is shown in Appendix B the~~  
16 ~~most recently adopted Clark County Comprehensive Growth Management Plan.~~

17 B. The following rivers and streams, listed by drainage basin and with tributaries identified, have shorelines  
18 subject to this Program. The upstream point (twenty (20) cubic feet per second (cfs)) is based on the Determination of  
19 Upstream Boundaries for Western Washington Streams and Rivers Under Requirements of the Shoreline  
20 Management Act of 1971, U.S. Geological Survey Report 96-4208:

21 Hagen Creek: from the 20 cfs point (Sec. 36, T3N, R4E) downstream to the Skamania County line.

22 Columbia River: from the Skamania County line downstream to the Cowlitz County line.

23 Lawton Creek: from the 20 cfs point (Sec. 24, T1N, R4E) downstream to its confluence with the Columbia  
24 River.

25 Gibbons Creek: from the 20 cfs point (Sec. 16, T1N, R4E) downstream to its confluence with the Columbia  
26 River.

27 Washougal River: from the Skamania County line downstream to the Washougal city limits.

28 Cougar Creek: from the 20 cfs point (Sec. 26, T2N, R4E) downstream to its confluence with the Washougal  
29 River.

30 Little Washougal River: from the 20 cfs point (Sec. 8, T2N, R4E) downstream to its confluence with the  
31 Washougal River.

32 East Fork Little Washougal River: from the 20 cfs point (Sec. 9, T2N, R4E) downstream to its  
33 confluence with the Little Washougal River.

34 Boulder Creek: from the 20 cfs point (Sec. 4, T2N, R4E) downstream to its confluence with the Little  
35 Washougal River.

- 1 Lacamas Creek: from its 20 cfs point (Sec. 35, T3N, R3E) downstream to the Camas city limits.
- 2 North Fork Lacamas Creek: from its 20 cfs point (Sec. 35, T3N, R3E) downstream to the confluence with  
3 Lacamas Creek.
- 4 Matney Creek: from its 20 cfs point (Sec. 15, T2N, R3E) downstream to its confluence with Lacamas Creek.
- 5 Fifth Plain Creek: from its 20 cfs point (Sec. 6, T2N, R3E) downstream to its confluence with Lacamas  
6 Creek.
- 7 Burnt Bridge Creek: those shorelines outside the Vancouver city limits (1) near the intersection of NE St. Johns  
8 Blvd. and Highway 500 (Sec. 24, T2N, R1E), and (2) downstream from the I-5 highway crossing (Sec. 15, T2N, R2E).
- 9 Salmon Creek: from its 20 cfs point (Sec. 10, T3N, R3E) downstream to the Battle Ground city limits (Sec. 12,  
10 T3N, R2E); from the Battle Ground city limits (Sec. 14, T3N, R2E) downstream to its confluence with Lake River.
- 11 Rock Creek: from its 20 cfs point (Sec. 33, T4N, R3E) downstream to its confluence with Salmon Creek.
- 12 Morgan Creek: from its 20 cfs point (Sec. 13, T3N, R2E) downstream to its confluence with Salmon Creek.
- 13 Curtin (Glenwood) Creek: from its 20 cfs point (Sec. 32, T3N, R2E) downstream to its confluence with  
14 Salmon Creek.
- 15 Mill Creek: from its 20 cfs point (Sec. 7, T3N, R2E) downstream to its confluence with Salmon Creek.
- 16 Gee Creek: downstream from the Ridgefield city limits (Sec. 13, T4N, R1W) to its confluence with the Columbia  
17 River.
- 18 East Fork Lewis River: from the Skamania County line downstream to its confluence with the North Fork Lewis  
19 River.
- 20 Copper Creek: from the Skamania County line downstream to its confluence with the East Fork Lewis River.
- 21 King Creek: from its 20 cfs point (Sec. 26, T4N, R4E) downstream to its confluence with the East Fork Lewis  
22 River.
- 23 Rock Creek: from its 20 cfs point (Sec. 23, T3N, R4E) downstream to its confluence with the East Fork  
24 Lewis River.
- 25 Coyote Creek: from its 20 cfs point (Sec. 10, T3N, R4E) downstream to its confluence with Rock Creek.
- 26 Cedar Creek: from its 20 cfs point (Sec. 17, T3N, R4E) downstream to its confluence with Rock Creek.
- 27 Big Tree Creek: from its 20 cfs point (Sec. 31, T5N, R4E) downstream to its confluence with the East Fork  
28 Lewis River.
- 29 Yacolt Creek: from its 20 cfs point (Sec. 11, T4N, R3E) downstream to its confluence with Big Tree  
30 Creek.
- 31 Rock Creek: from its 20 cfs point (Sec. 36, T5N, R2E) downstream to its confluence with the East Fork  
32 Lewis River.
- 33 Mason Creek: from its 20 cfs point (Sec. 8, T4N, R2E) downstream to its confluence with the East Fork  
34 Lewis River.
- 35 Lockwood Creek: from its 20 cfs point (Sec. 1, T4N, R1E) downstream to its confluence with the East Fork  
36 Lewis River.

- 1 North Fork Lewis River, south side: from the Skamania County line downstream to its confluence with the East  
2 Fork Lewis River.
- 3 Siouxon Creek: from the Skamania County line downstream to its confluence with the North Fork Lewis  
4 River.
- 5 North Siouxon Creek: from Skamania County line downstream to its confluence with Siouxon Creek.
- 6 Canyon Creek: from the Skamania County line downstream to its confluence with the North Fork Lewis  
7 River.
- 8 Fly Creek: from its 20 cfs point (Sec. 1, T4N, R4E) downstream to its confluence with Canyon Creek.
- 9 Cedar Creek: from its 20 cfs point (Sec. 19, T5N, R4E) downstream to its confluence with the North Fork  
10 Lewis River.
- 11 Chelatchie Creek: from its 20 cfs point (Sec. 12, T5N, R3E) downstream to its confluence with Cedar  
12 Creek.
- 13 Unnamed Tributary to Chelatchie Creek: from its 20 cfs point (Sec. 10, T5N, R3E) downstream to its  
14 confluence with Chelatchie Creek.
- 15 Pup Creek: from its 20 cfs point (Sec. 10 T5N, R2E) downstream to its confluence with Cedar Creek.
- 16 Lewis River south side: downstream from the confluence of the East Fork and the North Fork to its confluence  
17 with the Columbia River.
- 18 Lake River: from its origin at Vancouver Lake to its confluence with the Columbia River.
- 19 Whipple Creek: from its 20 cfs point (Sec. 7, T3N, R1E) downstream to its confluence with Lake River.
- 20 C. The following are lakes with shorelines subject to this Program:
- 21 Lacamas Lake;
- 22 Round Lake;
- 23 Vancouver Lake;
- 24 Unnamed Lake 02 (west of Vancouver Lake);
- 25 Post Office Lake;
- 26 Green Lake;
- 27 Battle Ground Lake;
- 28 Campbell Lake;
- 29 Unnamed Lake 03 (south of Canvasback Lake);
- 30 Canvasback Lake;
- 31 Hathaway Lake;
- 32 Lancaster Lake;
- 33 Mud Lake;

- 1 Unnamed Lake 01 (south of Horseshoe Lake);  
 2 Horseshoe Lake;  
 3 Lake Merwin;  
 4 Yale Lake;  
 5 Carty Lake.  
 6 (Amended: Ord. 2014-12-10)

7 D. Maps indicating the extent of shoreline jurisdiction and shoreline designations are guidance only. They are to be  
 8 used in conjunction with best available science, field investigations and on-site surveys to accurately establish the  
 9 location and extent of shoreline jurisdiction when a project is proposed. All areas meeting the definition of a shoreline  
 10 of the state or a shoreline of statewide significance, whether mapped or not, are subject to the provisions of this  
 11 Program.

12 E. This Program shall apply to every person, individual, firm, partnership, association, organization, corporation,  
 13 local or state governmental agency, public or municipal corporation, or other non-federal entity that develops, owns,  
 14 leases, or administers lands, wetlands, or waters that fall under the jurisdiction of the Act; and within the external  
 15 boundaries of federally owned lands (including, but not limited to, private in-holdings in national wildlife refuges).

16 F. Non-federal agency actions undertaken on federal lands must comply with this Program and the Act.

17 G. Shoreline development occurring in or over navigable waters may require a shoreline permit in addition to other  
 18 approvals required from state and federal agencies.

19 H. The provisions of RCW 35.21.160 are recognized, which state that jurisdictions along lakes or waterways have  
 20 shoreline jurisdiction that extends to the middle of such lakes or waterways.

21 I. This Program shall apply whether the proposed development or activity is exempt from a shoreline permit or not.  
 22 (Added: Ord. 2012-07-16)

23  
 24 **Section 6. Amendatory.** Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.220, and as most recently  
 25 amended by Sec. 3 of Ord. 2018-11-06, are each hereby amended to read as follows:

26 **40.460.220 Shoreline Substantial Development Permit Required**

27 A. General Requirements.

28 1. Substantial development as defined by this Program and RCW 90.58.030(3)(e) shall not be undertaken by  
 29 any person on the shorelines of the state without first obtaining a substantial development permit from the  
 30 Shoreline Administrator, unless the use or development is specifically identified as exempt from a substantial  
 31 development permit, in which case a letter of exemption is required.

32 2. The Shoreline Administrator may grant a substantial development permit only when the development  
 33 proposed is consistent with the policies and procedures of Chapter 90.58 RCW, the provisions of Chapter 173-27  
 34 WAC, and this Program.

35 3. Within an urban growth area a shoreline substantial development permit is not required on land that is  
 36 brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the OHWM  
 37 pursuant to WAC 173-27-215(4) and Section 40.460.510(K).



1 (Amended: Ord. 2018-11-06)

2 B. Developments Not Subject to the Act.

3 1. Native American tribes' actions on tribal lands and federal agencies' actions on federal lands are not  
4 required, but are encouraged, to comply with the provisions of this Program and the Act. Nothing in this Program  
5 shall affect any rights established by treaty to which the United States is a party.

6 2. Environmental excellence programs entered into under Chapter 43.21K RCW.

7 3. Any project with a certification from the Governor pursuant to Chapter 80.50 RCW (certification from the  
8 State Energy Facility Site Evaluation Council).

9 (Amended: Ord. 2012-07-16; Ord. 2018-11-06)

10 C. Developments Not Required to Obtain Shoreline Permits or Local Reviews.

11 Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or  
12 other review conducted by a local government to implement this chapter do not apply to the following developments,  
13 pursuant to WAC 173-27-044:

14 1. Any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order  
15 issued pursuant to Chapter 70.105D RCW or to Ecology when it conducts a remedial action under Chapter  
16 70.105D RCW.

17 2. Washington State Department of Transportation (WSDOT) safety and maintenance projects and activities  
18 meeting the conditions of RCW 90.58.356.

19 3. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person  
20 installing site improvements for stormwater treatment in an existing boatyard facility to meet requirements of a  
21 National Pollutant Discharge Elimination System stormwater general permit.

22 (Added: Ord. 2018-11-06)

23

24 **Section 7. Amendatory.** Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.230, and as most recently  
25 amended by Sec. 4 of Ord. 2018-11-06, are each hereby amended to read as follows:

26 **40.460.230 Exemptions from a Shoreline Substantial Development Permit**

27 A. General Requirements.

28 1. Except as specifically exempted by statute, all proposed uses and development occurring within shoreline  
29 jurisdiction must conform to Chapter 90.58 RCW, the Act, and this Program.

30 2. A use or development that is listed as a conditional use pursuant to this Program or is an unclassified use or  
31 development must obtain a conditional use permit (Section 40.460.270) even if the development or use does not  
32 require a substantial development permit.

33 3. When a development or use is proposed that does not meet the bulk, dimensional, and/or performance  
34 standards of this Program, such development or use shall only be authorized by approval of a shoreline variance  
35 (Section 40.460.260) even if the development or use does not require a substantial development permit.

36 4. If any part of a proposed development requires a shoreline substantial development permit, then a shoreline  
37 substantial development permit is required for the entire proposed development project.

1 5. Exemptions from the requirement to obtain a shoreline substantial development permit shall be construed  
2 narrowly. Only those developments that meet the precise terms of one (1) or more of the listed exemptions may  
3 be granted exemptions from the substantial development permit process. The burden of proof that a development  
4 or use is exempt is on the applicant for the development action.

5 (Amended: Ord. 2018-11-06)

6 B. List of Exemptions.

7 The following activities shall not be considered substantial developments but shall obtain a statement of  
8 exemption, as provided for in Section 40.460.230(C):

9 1. Any development of which the total cost or fair market value does not exceed seven thousand forty-seven  
10 dollars (\$7,047) or as adjusted by the State Office of Financial Management, if such development does not  
11 materially interfere with the normal public use of the water or shorelines of the state. For purposes of determining  
12 whether or not a permit is required, the total cost or fair market value shall be based on the value of development  
13 that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(e). The total cost or fair market value  
14 of the development shall include the fair market value of any donated, contributed, or found labor, equipment or  
15 materials.

16 2. Subject to the provisions of Section 40.460.250, normal maintenance or repair of existing legally  
17 established structures or developments, including those that have been damaged by accident, fire, or elements.  
18 The features of the repaired structure or development, including but not limited to its size, shape, configuration,  
19 location, and external appearance, must be comparable to the original structure or development, and the repair  
20 must not cause substantial adverse effects to shoreline resources or environment. The replacement of demolished  
21 existing single-family residences and their appurtenances is not considered normal maintenance and repair.

22 3. Construction of a normal protective bulkhead common to single-family residences. A “normal protective”  
23 bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the  
24 ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant  
25 structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the  
26 purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more  
27 than one (1) cubic yard of fill per one (1) foot of wall may be used as backfill. When an existing bulkhead is being  
28 repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward  
29 of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated  
30 such that an ordinary high water mark has been established by the presence and action of water landward of the  
31 bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach  
32 nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when  
33 any structural elements are consistent with the above requirements and when the project has been approved by the  
34 Department of Fish and Wildlife (WDFW).

35 4. Emergency construction necessary to protect property from damage by the elements. An “emergency” is an  
36 unanticipated and imminent threat to public health, safety, or the environment that requires immediate action  
37 within a time too short to allow full compliance with this chapter. Emergency construction does not include  
38 development of new permanent protective structures where none previously existed. Where new protective  
39 structures are deemed by the Shoreline Administrator to be the appropriate means to address the emergency  
40 situation, upon abatement of the emergency situation the new structure shall be removed or any permit that would  
41 have been required, absent an emergency, pursuant to Chapter 90.58 RCW, these regulations, or this Program,  
42 shall be obtained. All emergency construction shall be consistent with the policies and requirements of this  
43 chapter, Chapter 90.58 RCW, and this Program. As a general matter, flooding or other seasonal events that can be  
44 anticipated and may occur but that are not imminent are not an emergency.

45 5. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including  
46 agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation  
47 structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any  
48 size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by

1 leveling or filling other than that which results from normal cultivation shall not be considered normal or  
2 necessary farming or ranching activities.

3 6. Construction or modification of navigational aids such as channel markers and anchor buoys.

4 7. Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence or  
5 appurtenance for their own use or for the use of their family, which residence does not exceed a height of  
6 thirty-five (35) feet above average grade level, and which meets all requirements of the county, other than  
7 requirements imposed pursuant to Chapter 90.58 RCW. Construction authorized under this exemption shall be  
8 located landward of the ordinary high water mark.

9 8. Construction of a dock, including a community dock, designed for pleasure craft only, for the private  
10 noncommercial use of the owner, lessee, or contract purchaser of a single-family or multiple-family residence.  
11 This exception applies if either:

12 (a) The dock is a new dock, and the fair market value of the dock does not exceed ~~ten~~ eleven thousand two  
13 hundred dollars (\$110,200) or an adjustment to that figure made by the State Office of Financial Management;  
14 or

15 (b) The dock is a replacement dock that is constructed to replace an existing dock and is of equal or lesser  
16 square footage than the replaced dock, and the replacement dock has a fair market value that does not exceed  
17 twenty-two thousand five hundred (\$220,500) dollars or an adjustment to that figure made by the State Office of  
18 Financial Management.

19 However, if subsequent construction occurs within five (5) years of completion of the prior construction that was  
20 exempt pursuant to this provision, and the combined fair market value of the subsequent and prior construction  
21 exceeds the applicable amount specified in either subsection (B)(8)(a) or (b) of this section, the subsequent  
22 construction shall be considered a substantial development.

23 9. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that  
24 now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making  
25 use of system waters, including return flow and artificially stored ground water from the irrigation of lands.

26 10. The marking of property lines or corners on state-owned lands, when such marking does not significantly  
27 interfere with normal public use of the surface of the water.

28 11. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on  
29 September 8, 1975, that were created, developed or utilized primarily as a part of an agricultural drainage or  
30 diking system.

31 12. Site exploration and investigation activities that are prerequisite to preparation of an application for  
32 development authorization under this chapter, if:

33 a. The activity does not interfere with the normal public use of surface waters;

34 b. The activity will have no significant adverse impact on the environment including but not limited to  
35 fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

36 c. The activity does not involve the installation of any structure, and upon completion of the activity the  
37 vegetation and land configuration of the site are restored to conditions existing before the activity; and

38 d. A private entity seeking development authorization under this section first posts a performance bond  
39 or provides other evidence of financial responsibility to the local jurisdiction to assure that the site is  
40 restored to preexisting conditions.

1 13. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the  
 2 use of an herbicide or other treatment methods applicable to weed control published by the Departments of  
 3 Agriculture or Ecology jointly with other state agencies under Chapter 43.21C RCW.

4 14. Watershed restoration projects as defined in RCW 89.08.460.

5 15. a. A public or private project that is designed to improve fish or wildlife habitat or fish passage when  
 6 all of the following apply:

7 (1) The project has been approved by WDFW;

8 (2) The project has received hydraulic project approval (HPA) by WDFW pursuant to Chapter 77.55  
 9 RCW; and

10 (3) Clark County has determined that the project is substantially consistent with the local Shoreline  
 11 Master Program. Clark County shall make such determination in a timely manner and provide it by letter  
 12 to the applicant.

13 b. Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to  
 14 be consistent with local Shoreline Master Programs and do not require a statement of exemption.

15 16. Other than conversions to nonforest land use, forest practices regulated under Chapter 76.09 RCW are not  
 16 subject to additional regulations under the Act or this Program (Section 40.460.630(E)).

17 17. The external or internal retrofitting of an existing structure for the exclusive purpose of compliance with  
 18 the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) or to otherwise provide physical  
 19 access to the structure by individuals with disabilities (RCW 90.58.030(3)(e)(xiii)).

20 (Amended: Ord. 2015-12-12; Ord. 2018-11-06)

21 C. Statements of Exemption.

22 1. Any person claiming exemption from the substantial development permit requirements shall make an  
 23 application to the Shoreline Administrator for such an exemption in the manner prescribed by the Shoreline  
 24 Administrator, except that no written statement of exemption is required either for a project designed to improve  
 25 fish or wildlife habitat or fish passage pursuant to WAC 173-27-040(2)(p)(iii)(A), or for emergency development  
 26 pursuant to WAC 173-27-040(2)(d).

27 2. The Shoreline Administrator is authorized to grant or deny requests for statements of exemption from the  
 28 shoreline substantial development permit requirement for uses and developments within shorelines that are  
 29 specifically listed in Section 40.460.230(B). The statement shall be in writing and shall indicate the specific  
 30 exemption of this Program that is being applied to the development, and shall provide a summary of the Shoreline  
 31 Administrator's analysis of the consistency of the project with this Program and the Act. The letter shall be sent to  
 32 the applicant and maintained on file in the offices of the Shoreline Administrator.

33 3. Statements of exemption may contain conditions and/or mitigating measures of approval to achieve  
 34 consistency and compliance with the provisions of this Program and the Act.

35 4. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The Shoreline  
 36 Administrator's decision on a statement of exemption is not subject to administrative appeal.

37 5. Exempt activities shall not be conducted until a statement of exemption has been obtained from the  
 38 Shoreline Administrator.

39 (Amended: Ord. 2012-07-16; Ord. 2015-12-12; Ord. 2018-01-01)

1 **Section 8. Amendatory.** Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.250, and as most recently  
 2 amended by Sec. 3 of Ord. 2015-12-12, are each hereby amended to read as follows:

### 3 **40.460.250 Nonconforming Uses and Development**

4 A. Existing uses, structures and lots legally established prior to the effective date of this Program are allowed to  
 5 continue. Where lawful uses, structures and lots exist that could not be established under the terms of this Program,  
 6 such uses, structures and lots are deemed nonconforming and are subject to the provisions of this section, unless  
 7 specific exceptions are provided for in Section 40.460.250(B).

8 B. Nonconforming Uses.

9 1. Additional development of any property on which a nonconforming use exists shall require that all new  
 10 uses conform to this Program and the Act.

11 2. Change of ownership, tenancy, or management of a nonconforming use shall not affect its nonconforming  
 12 status; provided, that the use does not change or intensify.

13 3. If a nonconforming use is converted to a conforming use, a nonconforming use may not be resumed.

14 4. When the operation of a nonconforming use is vacated or abandoned for a period of twelve (12)  
 15 consecutive months, the nonconforming use rights shall be deemed extinguished and the future use of such  
 16 property shall be in accordance with the permitted and conditional use regulations of this Program.

17 5. If a conforming building housing a nonconforming use is damaged by fire, flood, explosion, or other  
 18 natural disaster and the damage is less than seventy-five percent (75%) of the replacement cost of the structure or  
 19 development, such use may be resumed at the time the building is repaired; provided, such restoration shall be  
 20 undertaken within twelve (12) months following said damage.

21 6. Normal maintenance and repair of a structure housing a nonconforming use may be permitted provided all  
 22 work is consistent with the provisions of Section 40.530.010 and this Program.

23 7. Legally established floating homes and on-water residences are considered conforming uses, subject to the  
 24 requirements in Section 40.460.630(K)(13).

25 (Amended: Ord. 2015-12-12)

26 C. Nonconforming Structures.

27 1. A nonconforming building or structure may be maintained or repaired, provided such improvements do not  
 28 extend or expand the nonconformity of such building or structure and are consistent with the provisions of this  
 29 Program, unless required by other law or ordinance.

30 2. If a nonconforming structure or development is damaged by fire, flood, explosion, or other natural disaster  
 31 and the damage is less than seventy-five percent (75%) of the replacement cost of the structure or development, it  
 32 may be restored or reconstructed to those configurations existing at the time of such damage, provided:

33 a. The reconstructed or restored structure will not cause additional adverse effects to adjacent properties  
 34 or to the shoreline environment;

35 b. The rebuilt structure or portion of structure shall not expand the original footprint or height of the  
 36 damaged structure;

37 c. No degree of relocation shall occur, except to increase conformity or to increase ecological function,  
 38 in which case the structure shall be located in the least environmentally damaging location possible;

1 d. The submittal of applications for permits necessary to restore the development is initiated within  
 2 twelve (12) months of the damage. The Shoreline Administrator may waive this requirement in situations  
 3 with extenuating circumstances;

4 e. The reconstruction is commenced within one (1) year of the issuance of permit;

5 f. The Shoreline Administrator may allow a one (1) year extension provided consistent and substantial  
 6 progress is being made; and

7 g. Any residential structures, including multifamily structures, may be reconstructed up to the size,  
 8 placement and density that existed prior to the damage, so long as other provisions of this Program are met.

9 (Amended: Ord. 2015-12-12)

10 D. Nonconforming Lots.

11 Legally established, nonconforming, undeveloped lots located landward of the ordinary high water mark are  
 12 buildable; provided, that all new structures or additions to structures on any nonconforming lot must meet all setback,  
 13 height and other construction requirements of the Program and the Act.

14 (Added: Ord. 2012-07-16)

15  
 16 **Section 9. Amendatory.** Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.430, and as most recently  
 17 amended by Sec. 3 of Ord. 2014-08-10, are each hereby amended to read as follows:

18 **40.460.430 Shoreline Designations**

19 A. The county classification system consists of shoreline designations that are consistent with and implement the  
 20 Act (Chapter 90.58 RCW), the Shoreline Master Program Guidelines (Chapter 173-26 WAC) and the Clark County  
 21 Comprehensive Growth Management Plan. These designations have been assigned consistent with the corresponding  
 22 criteria provided for each shoreline designation. In delineating shoreline designations, the county aims to ensure that  
 23 existing shoreline ecological functions are protected with the proposed pattern and intensity of development. Such  
 24 designations should be consistent with the policies for restoration of degraded shorelines. All the shoreline  
 25 designations, even if they are not applied within the city limits or urban growth area, are listed here to maintain  
 26 consistency countywide (see Sections 40.460.440(E) and 40.460.620), and are defined in the following subsections:

27 Aquatic;

28 Natural;

29 Urban Conservancy;

30 Medium Intensity;

31 High Intensity;

32 Rural Conservancy – Residential; and

33 Rural Conservancy – Resource Lands.

34 B. Aquatic Shoreline Designation.

35 1. Purpose.

1 The purpose of the “Aquatic” shoreline designation is to protect, restore, and manage the unique  
2 characteristics and resources of the areas waterward of the ordinary high water mark (OHWM).

3 2. Designation Criteria.

4 An Aquatic shoreline designation is assigned to lands and waters waterward of the ordinary high water mark.

5 3. Areas Designated.

6 The Aquatic shoreline designation applies to areas as shown on a copy of the Shoreline Map in ~~Appendix B~~  
7 the most recently adopted Clark County Comprehensive Growth Management Plan.

8 4. Management Policies.

9 In addition to the other applicable policies and regulations of this Program the following management  
10 policies shall apply:

11 a. New over-water structures should be allowed only for water-dependent uses, public access, recreation,  
12 or ecological restoration.

13 b. Shoreline uses and modifications should be designed and managed to prevent degradation of water  
14 quality and natural hydrographic conditions.

15 c. In-water uses should be allowed where impacts can be mitigated to ensure no net loss of shoreline  
16 ecological functions. Permitted in-water uses must be managed to avoid impacts to shoreline ecological  
17 functions. Unavoidable impacts must be minimized and mitigated.

18 d. On navigable waters or their beds, all uses and developments should be located and designed to:

19 (1) Minimize interference with surface navigation;

20 (2) Consider impacts to public views; and

21 (3) Allow for the safe, unobstructed passage of fish and wildlife, particularly species dependent on  
22 migration.

23 e. Multiple or shared use of over-water and water access facilities should be encouraged to reduce the  
24 impacts of shoreline development and increase effective use of water resources.

25 f. Structures and activities permitted should be related in size, form, design, and intensity of use to those  
26 permitted in the immediately adjacent upland area. The size of new over-water structures should be limited  
27 to the minimum necessary to support the structure’s intended use.

28 g. Natural light should be allowed to penetrate to the extent necessary to discourage salmonid predation  
29 and to support nearshore habitat unless other illumination is required by state or federal agencies.

30 h. Aquaculture practices should be encouraged in those waters and beds most suitable for such use.  
31 Aquaculture should be discouraged where it would adversely affect the strength or viability of native stocks  
32 or unreasonably interfere with navigation.

33 i. Shoreline uses, development, activities, and modifications in the Aquatic shoreline designation  
34 requiring use of adjacent landside property should be in a shoreline designation that allows that use,  
35 development, activity or modification.

36 C. Natural Shoreline Designation.

37 1. Purpose.

1 The purpose of the “Natural” shoreline designation is to protect those shoreline areas that are relatively free  
2 of human influence or that include intact or minimally degraded shoreline ecological functions intolerant of  
3 human use. These systems require that only very low-intensity uses be allowed in order to maintain the ecological  
4 functions and ecosystem-wide processes. Consistent with the policies of the designation, restoration of degraded  
5 shorelines within this environment is appropriate.

6 2. Designation Criteria.

7 The following criteria should be considered in assigning a Natural shoreline designation:

- 8 a. The shoreline ecological functions are substantially intact and have a high opportunity for preservation  
9 and low opportunity for restoration;
- 10 b. The shoreline is generally in public or conservancy ownership or under covenant, easement, or a  
11 conservation tax program;
- 12 c. The shoreline contains little or no development, or is planned for development that would have  
13 minimal adverse impacts to ecological functions or risk to human safety;
- 14 d. There are low-intensity agricultural uses, and no active forestry or mining uses;
- 15 e. The shoreline has a high potential for low-impact or passive or public recreation and is planned for  
16 park or open space uses as part of the comprehensive plan; or
- 17 f. The shoreline is considered to represent ecosystems and geologic types that have high scientific and  
18 educational value.

19 3. Areas Designated.

20 The Natural shoreline designation applies to areas as shown on a copy of the Shoreline Map in ~~Appendix B~~  
21 the most recently adopted Clark County Comprehensive Growth Management Plan.

22 4. Management Policies.

23 In addition to the other applicable policies and regulations of this Program the following management  
24 policies shall apply:

- 25 a. Any use that would substantially degrade shoreline ecological functions or natural character of the  
26 shoreline area should not be allowed.
- 27 b. Scientific, historical, cultural, educational research uses, and low-impact, passive recreational uses  
28 may be allowed; provided, that ecological functions remain intact.
- 29 c. Vegetation should remain undisturbed except for removal of noxious vegetation and invasive species.  
30 Proposed subdivision or lot line adjustments, new development or significant vegetation removal that would  
31 reduce the capability of vegetation to perform normal ecological functions should not be allowed.
- 32 d. Uses that would deplete physical or biological resources or impair views to or from the shoreline over  
33 time should be prohibited.
- 34 e. Only physical alterations that serve to protect a significant or unique physical, biological or visual  
35 shoreline feature that might otherwise be degraded or destroyed, or those alterations that are the minimum  
36 necessary to support a permitted use, should be allowed.
- 37 f. Only the following types of signs should be considered for location in the shorelines: interpretive,  
38 directional, navigational, regulatory, and public safety.

39 D. Urban Conservancy Shoreline Designation.



1 1. Purpose.

2 The purpose of the “Urban Conservancy” shoreline designation is to protect and restore shoreline ecological  
3 functions of open space, floodplains, and other sensitive lands, where they exist in urban and developed settings,  
4 while allowing a variety of compatible uses.

5 2. Designation Criteria.

6 The following criteria are used to consider an Urban Conservancy shoreline designation:

- 7 a. The shoreline is located within incorporated municipalities and designated urban growth areas;
- 8 b. The shoreline has moderate to high ecological function with moderate to high opportunity for  
9 preservation and low to moderate opportunity for restoration, or low to moderate ecological function with  
10 moderate to high opportunity for restoration;
- 11 c. The shoreline has open space or critical areas that should not be more intensively developed;
- 12 d. The shoreline is not highly developed and is likely in recreational use. The shoreline has the potential  
13 for development that is compatible with ecological restoration. The shoreline is planned for a park, as open  
14 space, or for a Master Planned Resort; or
- 15 e. The shoreline has moderate to high potential for low-impact, passive or active water-oriented  
16 recreation where shoreline ecological functions can be maintained or restored.

17 3. Areas Designated.

18 The Urban Conservancy shoreline designation applies to areas as shown on a copy of the Shoreline Map in  
19 Appendix B the most recently adopted Clark County Comprehensive Growth Management Plan.

20 4. Management Policies.

21 In addition to the other applicable policies and regulations of this Program the following management  
22 policies shall apply:

- 23 a. Uses that preserve the natural character of the area or promote preservation of open space or critical  
24 areas either directly or over the long term should be the primary allowed uses. Uses that result in restoration  
25 of shoreline ecological functions should be allowed if the use is otherwise compatible with the purpose of  
26 the Urban Conservancy shoreline designation and the setting.
- 27 b. Single-family residential development shall ensure no net loss of shoreline ecological functions and  
28 preserve the existing character of the shoreline consistent with the purpose of this designation.
- 29 c. Encourage regulations that limit lot coverage, provide adequate setbacks from the shoreline, promote  
30 vegetation conservation, reduce the need for shoreline stabilization and maintain or improve water quality to  
31 ensure no net loss of shoreline ecological functions.
- 32 d. Public access and public recreation objectives should be implemented whenever feasible and when  
33 significant ecological impacts can be mitigated.
- 34 e. Thinning or removal of vegetation should be limited to that necessary to:
- 35 (1) Remove noxious vegetation and invasive species;
- 36 (2) Provide physical or visual access to the shoreline; or
- 37 (3) Maintain or enhance an existing use consistent with critical areas protection and maintenance or  
38 enhancement of shoreline ecological functions.

1 f. Public access and public recreation facilities are a preferred use if they will not cause substantial  
2 ecological impacts and when restoration of ecological functions is incorporated.

3 g. Low-intensity water-oriented commercial uses may be permitted if compatible with surrounding uses.

4 E. Medium Intensity Shoreline Designation.

5 1. Purpose.

6 The purpose of the “Medium Intensity” shoreline designation is to accommodate primarily residential  
7 development and appurtenant structures, but to also allow other types of development that are consistent with this  
8 chapter. An additional purpose is to provide appropriate public access and recreational uses.

9 2. Designation Criteria.

10 The following criteria are used to consider a Medium Intensity shoreline:

11 a. The shoreline is located within incorporated municipalities and designated urban growth areas;

12 b. The shoreline has low to moderate ecological function with low to moderate opportunity for  
13 restoration;

14 c. The shoreline contains mostly residential development at urban densities and does not contain  
15 resource industries (agriculture, forestry, mining);

16 d. The shoreline is planned or platted for residential uses in the comprehensive plan; or

17 e. The shoreline has low to moderate potential for low impact, passive or active water-oriented recreation  
18 where ecological functions can be restored.

19 3. Areas Designated.

20 The Medium Intensity shoreline designation applies to areas as shown on a copy of the Shoreline Map in  
21 Appendix B the most recently adopted Clark County Comprehensive Growth Management Plan.

22 4. Management Policies.

23 In addition to the other applicable policies and regulations of this Program, the following management  
24 policies shall apply:

25 a. Encourage regulations that ensure no net loss of shoreline ecological functions as a result of new  
26 development such as limiting lot coverage, providing adequate setbacks from the shoreline, promoting  
27 vegetation conservation, reducing the need for shoreline stabilization and maintaining or improving water  
28 quality to ensure no net loss of ecological functions.

29 b. The scale and density of new uses and development should be compatible with sustaining shoreline  
30 ecological functions and processes, and the existing residential character of the area.

31 c. Public access and joint (rather than individual) use of recreational facilities should be promoted.

32 d. Access, utilities, and public services to serve proposed development within shorelines should be  
33 constructed outside shorelines to the extent feasible, and be the minimum necessary to adequately serve  
34 existing needs and planned future development.

35 e. Public or private outdoor recreation facilities should be provided with proposals for subdivision  
36 development and encouraged with all shoreline development if compatible with the character of the area.  
37 Priority should be given first to water-dependent and then to water-enjoyment recreation facilities.

1 f. Commercial development should be limited to water-oriented uses. Non-water-oriented commercial  
2 uses should only be allowed:

3 (1) As part of mixed use developments where the primary use is residential and where there is a  
4 substantial public benefit with respect to the goals and policies of this Program such as providing public  
5 access or restoring degraded shorelines;

6 (2) Where navigability is severely limited at the proposed site and the commercial use provides a  
7 significant public benefit with respect to the Act's objectives such as providing public access and  
8 ecological restoration; or

9 (3) If the site is physically separated from the shoreline by another property or public right-of-way.

10 (Amended: Ord. 2014-08-10)

11 F. High Intensity Shoreline Designation.

12 1. Purpose.

13 The purpose of the "High Intensity" shoreline designation is to provide for high intensity water-oriented  
14 commercial, transportation, and industrial uses while protecting existing shoreline ecological functions and  
15 restoring ecological functions in areas that have been previously degraded.

16 2. Designation Criteria.

17 The following criteria are used to consider a High Intensity shoreline designation:

18 a. The shoreline is located within incorporated municipalities and designated urban growth areas;

19 b. The shoreline has low to moderate ecological function with low to moderate opportunity for  
20 ecological restoration or preservation;

21 c. The shoreline contains mostly industrial, commercial, port facility, mixed use, or multifamily  
22 residential development at high urban densities and may contain industries that are not designated  
23 agriculture, forestry, or mineral resource lands in the comprehensive plan;

24 d. The shoreline may be or has been identified as part of a state or federal environmental remediation  
25 program;

26 e. The shoreline is planned or platted for high intensity uses in the comprehensive plan; or

27 f. The shoreline may support public passive or active water-oriented recreation where ecological  
28 functions can be restored.

29 3. Areas Designated.

30 The High Intensity shoreline designation applies to areas as shown on a copy of the Shoreline Map in  
31 ~~Appendix B~~ the most recently adopted Clark County Comprehensive Growth Management Plan.

32 4. Management Policies.

33 In addition to the other applicable policies and regulations of this Program, the following management  
34 policies shall apply:

35 a. Encourage regulations that ensure no net loss of shoreline ecological functions as a result of new  
36 development.

1 b. Promote infill and redevelopment in developed shoreline areas and encourage environmental  
 2 remediation and restoration of the shoreline, where applicable with the goal of achieving full utilization of  
 3 designated high intensity shorelines.

4 c. Encourage the transition of uses from non-water-oriented to water-oriented uses.

5 d. Water-oriented uses are encouraged; however, new non-water-oriented uses may be allowed if that  
 6 use has limited access to the shoreline and when included in a master plan or part of a mixed use  
 7 development.

8 (Amended: Ord. 2014-08-10)

9 G. Rural Conservancy – Residential Shoreline Designation.

10 1. Purpose.

11 The purpose of the “Rural Conservancy – Residential” shoreline designation is to protect shoreline ecological  
 12 functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for  
 13 sustained resource use, achieve natural floodplain processes, and provide recreational opportunities. Examples of  
 14 uses that are appropriate in a Rural Conservancy – Residential shoreline designation include low-impact, passive  
 15 recreation uses, water-oriented commercial development, and low-intensity residential development.

16 2. Designation Criteria.

17 The following criteria are used to consider a Rural Conservancy – Residential shoreline designation:

- 18 a. The shoreline is located outside of incorporated municipalities and designated urban growth areas;
- 19 b. The shoreline has moderate to high ecological function with moderate to high opportunity for  
 20 preservation and low to moderate opportunity for restoration or low to moderate ecological function with  
 21 moderate to high opportunity for restoration;
- 22 c. The shoreline is not highly developed and most development is low-density residential;
- 23 d. The shoreline is planned or platted Rural Center, Rural, or Master Planned Resort;
- 24 e. The shoreline has moderate to high potential for public, water-oriented recreation where ecological  
 25 functions can be maintained or restored; or
- 26 f. The shoreline has high scientific or educational value or unique historic or cultural resources value.

27 3. Areas Designated.

28 The Rural Conservancy – Residential shoreline designation applies to areas as shown on a copy of the  
 29 Shoreline Map in Appendix B the most recently adopted Clark County Comprehensive Growth Management  
 30 Plan.

31 4. Management Policies.

32 In addition to the other applicable policies and regulations of this Program the following management  
 33 policies shall apply:

- 34 a. Uses in the Rural Conservancy – Residential shoreline designation should be limited to those that  
 35 sustain the shoreline area’s physical and biological resources and do not substantially degrade shoreline  
 36 ecological functions or the rural or natural character of the shoreline area.
- 37 b. Residential development shall ensure no net loss of shoreline ecological functions and preserve the  
 38 existing character of the shoreline consistent with the purpose of this designation.

1 c. Encourage regulations that limit lot coverage, provide adequate setbacks from the shoreline, promote  
 2 vegetation conservation, reduce the need for shoreline stabilization and maintain or improve water quality to  
 3 ensure no net loss of shoreline ecological functions.

4 d. Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time  
 5 are preferred uses, provided significant adverse impacts to the shoreline are avoided and unavoidable  
 6 impacts are minimized and mitigated.

7 e. Water-oriented commercial uses should be allowed in rural centers and Master Planned Resorts only.

8 f. Developments and uses that would substantially degrade or permanently deplete the biological  
 9 resources of the area should not be allowed.

10 H. Rural Conservancy – Resource Lands Shoreline Designation.

11 1. Purpose.

12 The purpose of the “Rural Conservancy – Resource Lands” shoreline designation is to protect shoreline  
 13 ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to  
 14 provide for sustained resource use, achieve natural floodplain processes, and provide recreational opportunities.  
 15 Examples of uses that are appropriate in a Rural Conservancy – Resource Lands shoreline designation include  
 16 low-impact outdoor recreation uses, timber harvesting on a sustained-yield basis, agricultural uses, and other  
 17 natural resource-based uses.

18 2. Designation Criteria.

19 The following criteria are used to consider a Rural Conservancy – Resource Lands shoreline designation:

20 a. The shoreline is located outside of incorporated municipalities and designated urban growth areas;

21 b. The shoreline has moderate to high ecological function with moderate to high opportunity for  
 22 preservation and low to moderate opportunity for restoration or low to moderate ecological function with  
 23 moderate to high opportunity for restoration;

24 c. The shoreline is not highly developed, but consists primarily of resource operations (agriculture,  
 25 forestry, mining) and recreation, but may contain Master Planned Resorts;

26 d. The shoreline is planned or platted Rural Industrial, Forest, Agriculture, Agri-Wildlife, or has a  
 27 surface mining overlay;

28 e. The shoreline has a moderate to high potential for low-intensity, passive water-oriented recreation  
 29 where resource industry-related safety concerns are minimal or mitigated and ecological functions can be  
 30 maintained or restored; or

31 f. The shoreline has moderate to high scientific or educational value or unique historic or cultural  
 32 resources value.

33 3. Areas Designated.

34 The Rural Conservancy – Resource Lands shoreline designation applies to areas as shown on a copy of the  
 35 Shoreline Map in Appendix B the most recently adopted Clark County Comprehensive Growth Management  
 36 Plan.

37 4. Management Policies.

38 In addition to the other applicable policies and regulations of this Program the following management  
 39 policies shall apply:

1 a. Agriculture, commercial forestry, and mining should be allowed in Rural Conservancy – Resource  
2 Lands provided they are allowed in the underlying zoning designation, and adverse impacts to the shoreline  
3 are avoided and unavoidable impacts are minimized and mitigated.

4 b. Encourage regulations that ensure new shoreline uses, development, and activities to sustain the  
5 shoreline area’s physical and biological resources do not substantially degrade shoreline ecological  
6 functions or the rural or natural character of the shoreline area, and achieve no net loss of shoreline  
7 ecological functions.

8 c. Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time  
9 are preferred uses, provided adverse impacts to the shoreline are avoided and unavoidable impacts are  
10 minimized and mitigated.

11 d. Allow open space and recreational uses consistent with protection of shoreline ecological functions  
12 and personal safety considerations.

13 e. Only water-oriented commercial uses that support permitted uses should be allowed.

14 f. Residential development shall ensure no net loss of shoreline ecological functions and preserve the  
15 existing character of the shoreline consistent with the purpose of this designation.

16 (Added: Ord. 2012-07-16)

17  
18 **Section 10. Amendatory.** Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.440, are each hereby  
19 amended to read as follows:

20 **40.460.440 Official Shoreline Map**

21 A. Map Established.

22 1. The location and extent of areas under the jurisdiction of this Program, and the boundaries of various  
23 shoreline designations affecting the lands and water of the county, shall be as shown on the map entitled,  
24 “Official Shoreline Map, Clark County, Washington.” The official shoreline map and all the notations,  
25 references, amendments, and other information shown on the map are hereby made a part of this Program, as if  
26 such information set forth on the map were fully described herein.

27 2. In the event that new shoreline areas are discovered (including but not limited to associated wetlands) that  
28 are not mapped and/or designated on the official shoreline map, these areas are automatically assigned an Urban  
29 Conservancy designation for lands within cities and urban growth areas, or Rural Conservancy – Residential if on  
30 lands outside urban growth areas until the shoreline can be re-designated through a Program amendment.

31 3. In the event of a mapping error, the county will rely upon common boundary descriptions and the criteria  
32 contained in RCW 90.58.030(2) and Chapter 173-22 WAC pertaining to determinations of shorelands, as  
33 amended, rather than the incorrect or outdated map.

34 B. File Copies.

35 The Official Shoreline Map will be recorded with the Clark County Auditor’s office and kept in electronic format  
36 at the office of the Clark County Department of GIS and at Ecology. ~~Unofficial~~ Copies of the map may be prepared  
37 for administrative purposes. To facilitate use of this Program an ~~“unofficial copy”~~ is included in ~~Appendix B~~ the most  
38 recently adopted Clark County Comprehensive Growth Management Plan.

39 C. Map Amendments.

The Official Shoreline Map is an integral part of this Program and may not be amended except upon approval by the county and Ecology, as provided under the Act.

D. Boundary Interpretation.

If disagreement develops as to the exact location of a shoreline designation boundary line shown on the Official Shoreline Map, the following rules shall apply:

1. Boundaries indicated as approximately following lot, tract, or section lines shall be so construed;
2. Boundaries indicated as approximately following roads or railways shall be respectively construed to follow their centerlines;
3. Boundaries indicated as approximately parallel to or extensions of features indicated in subsection (D)(1) or (2) of this section shall be so construed;
4. Whenever existing physical features are inconsistent with boundaries on the Official Shoreline Map, the Shoreline Administrator shall interpret the boundaries with deference to actual conditions. Appeals of such interpretation may be filed according to the applicable appeal procedures described in Section 40.460.700, Administration and Enforcement.

E. Shoreline Designation Changes and Urban Growth Boundary Revisions.

When a portion of shoreline jurisdiction is brought into or removed from an urban growth area, a new shoreline designation may need to be assigned. Shoreline designations shall be assigned in accordance with Table 40.460.440-1, Shoreline Designations for Urban/Rural Boundary Revisions. Where more than one designation could be appropriate according to Table 40.460.440-1, the shoreline designation criteria in this chapter shall be applied and the best-fitting shoreline designation assigned. Shoreline designation assignments shall occur concurrently with the annexation or other legislative action to remove a portion of shoreline jurisdiction from a city or urban growth area and to amend the shoreline map and shall be effective upon approval by Ecology (see Section 40.460.440(B)).

**Table 40.460.440-1. Shoreline Designations for Urban<sup>1</sup>/Rural<sup>2</sup> Boundary Revisions**

SENDING Jurisdiction Shoreline Designation	Transfer From/To	RECEIVING Jurisdiction Shoreline Designation(s)
Aquatic	Rural/Urban Urban/Rural	Aquatic Aquatic
Natural	Rural/Urban Urban/Rural	Natural Natural
Rural Conservancy – Residential	Rural/Urban	Urban Conservancy Medium Intensity
Rural Conservancy – Resource Lands	Rural/Urban	Urban Conservancy Medium Intensity High Intensity
Urban Conservancy	Urban/Rural	Rural Conservancy – Residential Rural Conservancy – Resource Lands
Medium Intensity	Urban/Rural	Rural Conservancy – Residential
High Intensity	Urban/Rural	Rural Conservancy – Resource Lands

<sup>1</sup>Urban = City or Urban Growth Area

<sup>2</sup>Rural = Unincorporated Clark County outside Urban Growth Areas

(Added: Ord. 2012-07-16)

1 **Section 11. Amendatory.** Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.510, are each hereby  
 2 amended to read as follows:

### 3 **40.460.510 General Shoreline Use and Development Regulations**

- 4 A. Shoreline uses and developments that are water-dependent shall be given priority.
- 5 B. Shoreline uses and developments shall fully mitigate for impacts and shall not cause impacts that require  
 6 remedial action or loss of shoreline ecological functions on the subject property or other properties.
- 7 C. Shoreline uses and developments shall be located and designed in a manner such that shoreline stabilization is  
 8 not necessary at the time of development and will not be necessary in the future for the subject property or other  
 9 nearby shoreline properties unless it can be demonstrated that stabilization is the only alternative that protects public  
 10 safety and existing primary structures.
- 11 D. Non-water-oriented uses shall not adversely impact or displace water-oriented shoreline uses.
- 12 E. Single-family residential uses shall be allowed on all shorelines not subject to a preference for commercial or  
 13 industrial water-dependent uses, and shall be located, designed and used in accordance with applicable policies and  
 14 regulations of this Program. However, single-family residences are prohibited in the Aquatic and Natural shoreline  
 15 designations.
- 16 F. On navigable waters or their beds, all uses and developments should be located and designed to:
- 17 1. Minimize interference with surface navigation;
- 18 2. Consider impacts to public views; and
- 19 3. Allow for the safe, unobstructed passage of fish and wildlife, particularly species dependent on migration.
- 20 G. Hazardous materials shall be disposed of and other steps be taken to protect the ecological integrity of the  
 21 shoreline area in accordance with the other policies and regulations of this Program as amended and all other  
 22 applicable federal, state, and local statutes, regulations, codes, and ordinances.
- 23 H. In-water work shall be scheduled to protect biological productivity (including but not limited to fish runs,  
 24 spawning, and benthic productivity). In-water work shall not occur in areas used for commercial fishing during a  
 25 fishing season unless specifically addressed and mitigated for in the permit.
- 26 I. The effect of proposed in-stream structures on bank margin habitat, channel migration, and floodplain processes  
 27 should be evaluated during permit review.
- 28 J. Previous approvals of master plans for projects in shoreline jurisdiction should be accepted. New phases of  
 29 projects for which no master plan has yet been approved, or for which major changes are being proposed, or new  
 30 projects for which master plans are being submitted shall be subject to the policies and regulations of this Program.
- 31 K. Within urban growth areas, ~~Ecology~~Clark County may grant relief from use and development regulations of this  
 32 Program, consistent with the criteria and procedures in WAC 173-27-215, when the following apply:
- 33 1. A shoreline restoration project identified in the SMP Restoration Plan causes or would cause a landward  
 34 shift in the OHWM creating a hardship meeting specific criteria in RCW 90.58.580(1)(a);
- 35 2. The proposed relief meets specific criteria in RCW 90.58.580(1)(b); and
- 36 3. The application for relief is submitted to Ecology in writing requesting approval or disapproval as part of a  
 37 normal review of a shoreline substantial development permit, conditional use permit, or variance. If the proposal



1 is not connected to a shoreline permit review, the county may provide a copy of a complete application to  
 2 Ecology along with the applicant's request for relief pursuant to RCW 90.58.580(1)(c).

3 (Added: Ord. 2012-07-16)

4  
 5 **Section 12. Amendatory.** Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.530, and as most recently  
 6 amended by Sec. 7 of Ord. 2018-11-06, are each hereby amended to read as follows:

7 **40.460.530 Critical Areas Protection**

8 A. General Provisions.

9 1. Critical areas as defined in Chapters 40.410 through 40.450 which are located within the shoreline  
 10 jurisdiction are protected under this section.

11 2. Any allowed use, development, or activity proposed on a parcel with a critical area located in the shoreline  
 12 jurisdiction shall be regulated under the provisions of this Program.

13 3. Any allowed use, development, or activity meeting the definition of a development exempt from the  
 14 shoreline substantial development permit process outlined in WAC 173-27-040 and Section 40.460.230 shall be  
 15 consistent with the policies and provisions of this Program for critical areas protection.

16 4. Provisions of the critical areas regulations that are not consistent with the Act and supporting WAC  
 17 chapters shall not apply in shoreline jurisdiction.

18 5. Habitat that cannot be replaced or restored within twenty (20) years shall be preserved.

19 6. Where construction of a single-family residence is proposed, this activity is considered exempt from  
 20 obtaining a shoreline substantial development permit when the construction is located landward of the ordinary  
 21 high water mark and does not include placement of fill in wetlands. Construction of single-family residences  
 22 requiring fill in wetlands must obtain a shoreline substantial development permit in addition to other shoreline  
 23 approvals as applicable.

24 7. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or  
 25 altered, or land divided without full compliance with this Program and this title.

26 8. Unless otherwise stated, critical area buffers within the shoreline jurisdiction shall be protected and/or  
 27 enhanced in accordance with this Program and this title.

28 9. Shoreline uses and developments and their associated structures and equipment shall be located, designed  
 29 and operated using best management practices to protect critical areas.

30 10. The applicant shall demonstrate all reasonable efforts have been taken to avoid and, where unavoidable,  
 31 minimize and mitigate impacts such that no net loss of critical area and shoreline ecological function is achieved.  
 32 Mitigation shall occur in the following order of priority:

33 a. Avoiding the impact altogether by not taking a certain action or parts of an action;

34 b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using  
 35 appropriate technology or by taking affirmative steps to avoid or reduce impacts;

36 c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

37 d. Reducing or eliminating the impact over time by preservation and maintenance operations;

1 e. Compensating for the impact by replacing, enhancing, or providing substitute resources or  
2 environments; and

3 f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

4 11. In addition to compensatory mitigation, unavoidable adverse impacts may be addressed through  
5 restoration efforts.

6 (Amended: Ord. 2018-11-06)

7 B. Applicable Critical Areas.

8 For purposes of this Program, the following critical areas will be protected under this Program. An amendment to  
9 these regulations will apply in shoreline jurisdiction only if it is adopted as an SMP amendment or update.

10 1. Critical aquifer recharge areas, defined in Chapter 40.410 ~~as adopted by Ordinance 2005-04-15, dated April~~  
11 ~~26, 2005; Ordinance 2009-03-02; and Ordinance 2018-01-03~~ most recently amended by Ordinance 2020-03-01,  
12 dated March 10, 2020;

13 2. Flood hazard areas, defined in Chapter 40.420 ~~as adopted by Ordinance 2012-07-15, dated July 24, 2012;~~  
14 ~~and Ordinance 2018-01-03~~ most recently amended by Ordinance 2019-05-07, dated May 21, 2019;

15 3. Geologic hazard areas, defined in Chapter 40.430 ~~as adopted by Ordinance 2005-04-15, dated April 26,~~  
16 ~~2005; Ordinance 2006-09-13; Ordinance 2009-01-01; Ordinance 2012-02-03; and Ordinance 2012-07-16~~ most  
17 recently amended by Ordinance 2019-05-07, dated May 21, 2019;

18 4. Habitat conservation areas, defined in Chapter 40.440 ~~as adopted by Ordinance 2006-08-03, dated August~~  
19 ~~1, 2006; Ordinance 2012-07-16; and Ordinance 2014-12-05~~ most recently amended by Ordinance 2019-05-07,  
20 dated May 21, 2019; and

21 5. Wetlands, defined in Chapter 40.450 ~~as adopted by Ordinance 2006-05-27, dated May 26, 2006; Ordinance~~  
22 ~~2012-07-03; Ordinance 2012-07-16; and Ordinance 2014-12-05~~ most recently amended by Ordinance  
23 2019-05-07, dated May 21, 2019.

24 (Amended: Ord. 2015-12-12; Ord. 2018-11-06)

25 C. Critical Aquifer Recharge Areas.

26 1. General Provisions. This chapter applies to all critical aquifer recharge areas as defined in Section  
27 40.410.010(C) within shoreline jurisdiction. Chapter 40.410, Critical Aquifer Recharge Areas, ~~Ordinance~~  
28 ~~2005-04-15, dated April 26, 2005; Ordinance 2009-03-02; and Ordinance 2018-01-03,~~ is hereby adopted in  
29 whole as part of this Program pursuant to Section 40.460.530(B)(1).

30 (Amended: Ord. 2015-12-12; Ord. 2018-11-06)

31 D. Flood Hazard Areas.

32 1. General Provisions.

33 a. The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA)  
34 in a report entitled "Flood Insurance Study, Clark County, Washington and Incorporated Areas" effective  
35 January 19, 2018, and accompanying flood insurance rate maps (FIRMs) and any revisions thereto are  
36 hereby adopted by reference and declared to be a part of this Program. The Flood Insurance Study and the  
37 FIRMs are on file with the Public Works Department. In addition, Map 27, Potential Channel Migration  
38 Zone (CMZ) Areas (Inventory and Characterization Report Volume 1, Lewis and Salmon-Washougal  
39 Watersheds and Rural Areas), is incorporated herein by reference.

- 1           b. This chapter applies to all development in identified special flood hazard areas as defined in Section  
2           40.420.010(C) within shoreline jurisdiction, including channel migration zones.
- 3           c. A statement of exemption pursuant to Section 40.460.230(C) or an application for a shoreline permit  
4           (substantial development, variance, or conditional use) pursuant to Sections 40.460.220, 40.460.260 or  
5           40.460.270 is required, and a flood hazard review will be part of the approvals required under this Program.
- 6           d. The degree of flood protection required by this section is considered reasonable for regulatory  
7           purposes, and is based upon scientific and engineering considerations. Larger floods can and will occur on  
8           rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply  
9           that land outside flood hazard areas, or uses permitted within such areas, will be free from flooding or flood  
10          damages. This chapter shall not create liability on the part of Clark County, any officer or employee thereof,  
11          or the Federal Emergency Management Agency for any flood damages that result from reliance on this  
12          chapter or any administrative decision lawfully made thereunder.
- 13         2. Regulated Activities.
- 14           a. Within special flood hazard areas, development may be allowed for those uses allowed in this Program  
15           pursuant to Section 40.460.530(D)(1)(c).
- 16           b. All uses not allowed by this Program are prohibited, except as follows:
- 17                 (1) In accordance with Chapter 86.16 RCW, repairs, reconstruction, or improvements to a lawfully  
18                 established structure:
- 19                         (a) Which do not increase the ground floor area; and
- 20                         (b) That are not substantial improvements as defined in Section 40.420.010(C).
- 21                 (2) Floodway encroachments are prohibited unless certification by a licensed professional engineer  
22                 registered in the state of Washington is provided demonstrating through hydrologic and hydraulic  
23                 analyses performed in accordance with standard engineering practice that encroachments shall not result  
24                 in any increase in flood levels during the occurrence of the base flood discharge. If it has been adequately  
25                 demonstrated that the encroachment will not result in increased flood levels, all new non-residential  
26                 construction and substantial improvements shall comply with all applicable flood hazard reduction  
27                 provisions of this Program.
- 28         3. Standards.
- 29           a. Construction in special flood hazard areas is subject to the standards specified in Section 40.420.020.
- 30           b. Structural flood hazard reduction measures are allowed only when necessary to protect existing  
31           development.
- 32           c. When necessary, in-stream structures shall be located, designed, and maintained in such a manner that  
33           minimizes flood potential and the damage affected by flooding.
- 34           d. Fills are prohibited in floodplains except where the applicant clearly demonstrates that the  
35           geohydraulic characteristics will not be altered in a way that increases flood velocity or risk of damage to  
36           life or property, and flood storage capacity will not be reduced (see Section 40.460.560(B)).
- 37           e. Fill shall be avoided in critical areas or buffers where possible. Pile or pier supports or other support  
38           methods shall be utilized instead of fills whenever feasible, particularly for permitted development in  
39           floodways or wetlands.
- 40           f. Dikes and levees shall not be placed in the floodway except for current deflectors necessary for  
41           protection of bridges and roads.

1 g. Removal of beaver dams to control or limit flooding shall be avoided where feasible and allowed only  
2 in coordination with WDFW and receipt of all applicable state permits.

3 (Amended: Ord. 2018-11-06)

4 E. Geologic Hazard Areas.

5 1. General Provisions.

6 a. Geologic hazard areas include steep slope hazard areas, landslide hazard areas, seismic hazard areas,  
7 and volcanic hazard areas as defined in Section 40.430.010.

8 b. Approximate locations of geologic hazard areas are identified on adopted maps which are on file with  
9 the County Auditor. Where the maps and definitions of geologic hazard areas conflict, the definitions shall  
10 prevail.

11 c. Where development proposals require a geologic hazard area review under Section 40.430.030, the  
12 review will be part of the approvals required under this Program.

13 2. Regulated Activities.

14 a. All construction, development, earth movement, clearing, or other site disturbance which requires a  
15 permit, approval or other authorization from the County in or within one hundred (100) feet of a geologic  
16 hazard area shall comply with the requirements of this Program.

17 b. Class IV G forest practices (conversions) are regulated under this Program.

18 3. Standards.

19 a. Required buffers and setbacks for development activities in geologic hazard areas are specified in  
20 Section 40.430.020.

21 b. The Shoreline Administrator may approve buffers and setbacks which differ from those required by  
22 Section 40.430.020(D)(1) if the applicant submits a geologic hazard area study described in Section  
23 40.430.030(C), which technically demonstrates and illustrates that the alternative buffer provides protection  
24 which is greater than or equal to that provided by the buffer required in Section 40.430.020(D)(1).

25 c. The Shoreline Administrator may increase buffers or setbacks where necessary to meet requirements  
26 of the International Building Code.

27 F. Habitat Conservation Areas.

28 1. General Provisions.

29 a. Designated habitat areas are those defined in Section 40.100.070 and those described below:

30 (1) Water bodies defined as waters of the state (RCW 90.48.020), including waters, bed, and bank;

31 (2) DNR Classification System Type S, F, Np, and Ns water bodies as defined and mapped based on  
32 WAC 222-16-030 (Forest Practices Rules);

33 (3) Riparian Priority Habitat Areas. Areas extending landward on each side of the stream or water  
34 body from the ordinary high water mark to the edge of the one hundred (100) year floodplain, or the  
35 following distances, if greater:

36 (a) DNR Type S waters, two hundred fifty (250) feet;

37 (b) DNR Type F waters, two hundred (200) feet;

1 (c) DNR Type Np waters, one hundred (100) feet; and

2 (d) DNR Type Ns waters, seventy-five (75) feet;

3 (4) Other Priority Habitats and Species (PHS) Areas (PHS) as defined in the most current WDFW  
 4 Priority Habitats and Species List. Areas identified by and consistent with WDFW priority habitats and  
 5 species criteria, including areas within one thousand (1,000) feet of individual species points mapped by  
 6 WDFW sites. The county shall defer to WDFW in regards to classification, mapping and interpretation of  
 7 priority habitat species. Determination of habitat categories applicable to a site shall be based on the  
 8 definitions and Best Available Science that were current at the time the application under review is  
 9 vested pursuant to Chapter 40.510.

10 b. In the event of inconsistencies, official habitat area definitions shall prevail over county-wide maps in  
 11 determining applicability of this section. The county shall follow the recommendations of WDFW in the  
 12 interpretation of site-specific conditions as they relate to the definition of priority habitat and species.

13 c. The portion of the riparian priority habitat area nearest to the OHWM shall be set aside for vegetation  
 14 conservation and protection of the water body within the shoreline jurisdiction.

15 d. Where development proposals require a habitat review under Section 40.440.030, the review will be  
 16 part of the approvals required under this Program.

17 e. The reasonable use provisions in Chapter 40.440 do not apply to habitat conservation areas regulated  
 18 under this Program.

19 2. Regulated Activities.

20 a. All construction, development, earth movement, clearing, or other site disturbance proposals within a  
 21 habitat area which require a permit, approval, or other authorization from the county shall be reviewed  
 22 pursuant to Chapter 40.440 and shall comply with the requirements of this section.

23 b. Proposed new single-family residential development occurring immediately outside but within three  
 24 hundred (300) feet of designated priority species habitat polygons or within one hundred (100) feet of  
 25 designated nonriparian priority habitat polygons shall require consultation with WDFW prior to issuance of  
 26 a development permit. In such cases, further review under this section is not required unless WDFW finds  
 27 that there are potential adverse impacts.

28 c. Agricultural activities within designated riparian habitat areas are subject to the provisions of this  
 29 section and Section 40.440.040(B).

30 d. Class IV G forest practices (conversions) are regulated under this Program.

31 3. Standards.

32 a. Any alterations within designated habitat areas in shoreline jurisdiction require review and approval  
 33 prior to clearing or development and prior to issuance of any County permit or statement of exemption.

34 b. Alterations within the designated habitat areas shall:

35 (1) Avoid impacts to the habitat conservation areas during project planning and development to the  
 36 extent possible;

37 (2) Substantially maintain the level of habitat functions and values as characterized and documented  
 38 using best available science;

39 (3) Minimize habitat disruption or alteration beyond the extent required to undertake the proposal;  
 40 and

1 (4) Compensate for impacts to the habitat conservation areas to meet the standard of no net loss of  
 2 shoreline ecological functions. Mitigation measures and proposals must demonstrate use of best  
 3 available science.

4 c. In the event that impacts to habitat areas cannot be avoided, development and approval of a mitigation  
 5 plan in accordance with the provisions of Sections 40.440.020(A)(3) through (8) is required.

6 (Amended: Ord. 2015-12-12)

7 G. Wetlands.

8 1. General Provisions.

9 a. Where development proposals require a wetlands review under Section 40.450.030, the review will be  
 10 part of the approvals required under this Program. Such review is required for any development activity that  
 11 is within wetlands and wetland buffers subject to this Program, unless specifically authorized by a statement  
 12 of exemption. Requirements for wetland permit applications are provided in Sections 40.450.040(B), (C),  
 13 and (D).

14 b. This section shall not apply to wetlands created from nonwetland sites including, but not limited to,  
 15 irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment  
 16 facilities, stormwater facilities, farm ponds, landscape amenities and unintentionally created wetlands  
 17 created as a result of the construction of a public or private road, street, or highway after July 1, 1990;  
 18 provided, that wetlands created as mitigation shall not be exempt.

19 c. A wetland determination is required in conjunction with the submittal of a development permit  
 20 application. The Shoreline Administrator shall determine the probable existence of a wetland on the parcel  
 21 involved in the development permit application. If wetlands or wetland buffers are found to exist on a parcel,  
 22 wetland delineation is required.

23 d. The location of a wetland and its boundary shall be determined through the performance of a field  
 24 investigation utilizing the methodology contained in the Wetlands Delineation Manual and as specified in  
 25 Chapter 40.450. If a wetland is located off site and is inaccessible, the best available information shall be  
 26 used to determine the wetland boundary and category. Methodology is specified in Section 40.450.030(D).

27 e. All buffers shall be measured horizontally outward from the delineated wetland boundary.

28 f. Wetland buffer widths shall be determined by the Shoreline Administrator in accordance with the  
 29 standards in Section 40.450.030, except as follows:

30 (1) The exceptions to urban plat requirements in Section 40.450.030(E)(3) do not apply in the  
 31 Shoreline Management Area; and

32 (2) The adjusted buffer width standards in Section 40.450.030(E)(4)(a) shall be limited to a  
 33 maximum width reduction of 25% from the required buffer at any location within the Shoreline  
 34 Management Area; and

35 (3) The adjusted buffer width standards in Sections 40.450.030(E)(4)(b)(2) and  
 36 40.450.030(E)(4)(c) do not apply in the Shoreline Management Area.

37 g. The wetland buffer reductions allowed in Section 40.450.040(C)(1) shall only be approved within the  
 38 Shoreline Management Area if all applicable land use intensity modification measures listed in that section  
 39 are proposed.

40 h. All wetland reviews require approval of a preliminary and a final enhancement/mitigation plan in  
 41 accordance with the provisions of Section 40.450.040(E) unless the preliminary enhancement/mitigation  
 42 plan requirement is waived under the provisions of Section 40.450.040(E)(2).

1 **ih.** Wetland reviews under this Program shall be according to the application, processing, preliminary  
 2 approval, and final approval procedures set out in Section 40.450.040(F) through (I) and are part of the  
 3 approvals required under this Program.

4 **ji.** Provisions for programmatic permits are included in Section 40.450.040(K).

5 **kj.** Provisions for emergency wetland permits are included in Section 40.450.040(L).

6 **lk.** The reasonable use provisions in Chapter 40.450 do not apply to wetlands regulated under this  
 7 Program.

8 **m.** Section 40.460.530(A)(10), regarding avoidance, minimization and mitigation sequence of impacts  
 9 to critical areas and shoreline ecological functions, applies to wetland buffers.

10 2. Regulated Activities.

11 No development or activity in wetlands or wetland buffers subject to this Program shall be allowed unless it  
 12 is demonstrated that:

13 a. The proposed development or activity will not result in a net loss of wetland functions to the point of  
 14 net loss of shoreline ecological function; and

15 b. The proposed development or activity complies with all state, local and federal laws, including those  
 16 related to sediment control, pollution control, floodplain restrictions, stormwater management, wetlands  
 17 protection, and on-site wastewater disposal.

18 3. Standards.

19 a. Stormwater Facilities.

20 (1) Stormwater dispersion practices and facilities that comply with the standards of Chapter 40.386  
 21 shall be allowed in all wetland buffers where no net loss of shoreline ecological functions can be  
 22 demonstrated. Stormwater outfalls for dispersion facilities shall comply with the standards in Section  
 23 40.460.530(G)(3)(b).

24 (2) Other stormwater facilities are only allowed in buffers of wetlands with low habitat function (less  
 25 than ~~five~~<sup>six</sup> (5~~6~~) points on the habitat section of the rating system form) per Section  
 26 40.450.040(C)(4)(b); provided, the facilities shall be built on the outer twenty-five percent (25%) of the  
 27 buffer and not degrade the existing buffer function and are designed to blend with the natural landscape.

28 b. Road and utility crossings into and through wetlands and wetland buffers are allowed provided all the  
 29 following conditions are met:

30 (1) Buffer functions, as they pertain to protection of the adjacent wetland and its functions, are  
 31 replaced;

32 (2) Impacts to the buffer and wetland are first avoided and minimized; and

33 (3) The activity does not result in a decrease in wetland acreage or classification.

34 c. Regulated activities not involving stormwater management, road and utility crossings, or a buffer  
 35 reduction via enhancement are allowed in the buffer if all the following conditions are met:

36 (1) The activity is temporary and will cease or be completed within three (3) months of the date the  
 37 activity begins;

38 (2) The activity will not result in a permanent structure in the buffer;

- 1 (3) The activity will not result in a reduction of buffer acreage or shoreline ecological function; and  
2 (4) The activity will not result in a reduction of wetland acreage or shoreline ecological function.
- 3 d. Wetland mitigation for unavoidable impacts shall be required using the following prioritization:
- 4 (1) On-Site. Locate mitigation according to the following priority:  
5 (a) Within or adjacent to the same wetland as the impact;  
6 (b) Within or adjacent to a different wetland on the same site;
- 7 (2) Off-Site. Locate mitigation within the same watershed, as shown on Section 40.450.040, Figure  
8 40.450.040-1, or use an established wetland mitigation bank; the service area determined by the  
9 mitigation bank review team and identified in the executed mitigation bank instrument;
- 10 (3) In-Kind. Locate or create wetlands with similar landscape position and the same  
11 hydro-geomorphic (HGM) classification based on a reference to a naturally occurring wetland system;  
12 and
- 13 (4) Out-of-Kind. Mitigate in a different landscape position and/or HGM classification based on a  
14 reference to a naturally occurring wetland system.
- 15 e. The various types of wetland mitigation allowed are listed below in the general order of preference.
- 16 (1) Re-establishment, which is the manipulation of the physical, chemical or biological  
17 characteristics of a site with the goal of returning natural or historic functions to a former wetland.  
18 Re-establishment results in a gain in wetland acres (and functions). Activities could include removing  
19 fill material, plugging ditches, or breaking drain tiles.
- 20 (2) Rehabilitation, which is the manipulation of the physical, chemical or biological characteristics of  
21 a site with the goal of returning natural or historic functions to a degraded wetland. Re-establishment  
22 results in a gain in wetland function, but does not result in a gain in wetland acres. Activities could  
23 involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.
- 24 (3) Creation (Establishment). The manipulation of the physical, chemical, or biological  
25 characteristics of a site with the goal of developing a wetland on an upland or deepwater site where a  
26 wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically  
27 involve excavation of upland soils to elevations that will produce a wetland hydro-period, create hydric  
28 soils, and support the growth of hydrophytic plant species.
- 29 (4) Enhancement. The manipulation of the physical, chemical, or biological characteristics of a  
30 wetland site to heighten, intensify, or improve the specific function(s) or to change the growth stage or  
31 composition of the vegetation present. Enhancement is undertaken for specified purposes such as water  
32 quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in some  
33 wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in  
34 wetland acres. Activities typically consist of planting vegetation, controlling non-native or invasive  
35 species, modifying site elevations or the proportion of open water to influence hydro-periods, or some  
36 combination of these activities.
- 37 f. The mitigation ratios for each of the mitigation types described in Section 40.460.530(G)(3)(e) are  
38 specified in Section 40.450.040(D)(4). Section 40.450.040(D)(4)(c)(4) does not apply to this program.
- 39 g. The Shoreline Administrator has the authority to approve preservation of existing wetlands as wetland  
40 mitigation under the following conditions:



1 (1) The wetland area being preserved is a Category I or II wetland or is within a WDFW priority  
2 habitat or species area;

3 (2) The preservation area is at least one (1) acre in size;

4 (3) The preservation area is protected in perpetuity by a covenant or easement that gives the county  
5 clear regulatory and enforcement authority to protect existing wetland and wetland buffer functions with  
6 standards that exceed the protection standards of this chapter; and

7 (4) The preservation area is not an existing or proposed wetland mitigation site.

8 h. Wetland mitigation shall be required in accordance with the wetland mitigation standards in this  
9 section for the following indirect wetland impacts:

10 (1) Buffer loss resulting from wetland fills permitted under this section;

11 (2) Reduction of wetland buffers beyond the maximum reduction allowed under Section  
12 ~~40.460.530(G)(1)(f)~~40.450.040(C)(2); provided, that such reductions are limited as follows:

13 (a) Road and utility crossings in the wetland buffer approved in accordance with Section  
14 40.450.040(C)(5); and

15 (b) The total indirect wetland impact from buffer reductions is less than one-quarter (1/4) acre;  
16 and

17 (3) Unavoidable loss of wetland function due to stormwater discharges that do not meet the wetland  
18 protection standards in Chapter 40.386.

19 i. Wetland mitigation shall be protected by the water quality function wetland buffers required in Table  
20 40.450.030-2.

21 (1) Reductions to the required buffers may be applied in accordance with Sections 40.450.040(C) and  
22 (D)(5) within the limitations allowed under Section 40.460.530(G)(1)(f).

23 (2) All wetland buffers shall be included within the mitigation site and subject to the conservation  
24 covenant required under Section 40.450.030(F)(3).

25 j. Alternate Wetland Mitigation in the form of credits from an approved in-lieu-fee program or as  
26 provided in Section 40.450.040(D)(7) which includes:

27 (1) Wetland mitigation banking; and

28 (2) Contributions to the county's cumulative effects fund.

29 (Amended: Ord. 2012-07-16; Ord. 2015-12-12)

30  
31 **Section 13. Amendatory.** Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.630, and as most recently  
32 amended by Sec. 8 of Ord. 2018-11-06, are each hereby amended to read as follows:

33 **40.460.630 Use-Specific Development Regulations**

34 A. Agriculture.

- 1 1. Agricultural practices shall prevent erosion of soils and bank materials within shoreline areas and minimize  
2 siltation, turbidity, pollution, and other environmental degradation of watercourses and wetlands.
- 3 2. Stream banks and water bodies shall be protected from damage due to concentration and overgrazing of  
4 livestock by providing the following:
  - 5 a. Suitable bridges, culverts or ramps for stock crossing;
  - 6 b. Ample supplies of clean water in tanks on dry land for stock watering; and
  - 7 c. Fencing or other grazing controls to prevent damage to riparian vegetation, bank compaction or bank  
8 erosion.
- 9 3. New confinement lots, feeding operations, lot wastes, stockpiles of manure solids, manure lagoons, and  
10 storage of noxious chemicals are prohibited.
- 11 4. The disposal of farm wastes, chemicals, fertilizers and associated containers and equipment within  
12 shoreline jurisdiction is prohibited. Composted organic wastes may be used for fertilization or soil improvement.
- 13 5. New uses proposed as part of a conversion of agricultural lands shall comply with the provisions of this title  
14 and this Program.
- 15 6. For purposes of this Program, the definitions in RCW 90.58.065 and in Section 40.460.800 for agricultural  
16 activities, agricultural equipment and facilities, and agricultural products control.  
17 (Amended: Ord. 2018-11-06)
- 18 B. Aquaculture.
  - 19 1. No aquatic species shall be introduced into county waters without prior written approval of the appropriate  
20 state or federal regulatory agency for the species proposed for introduction. Such approval(s) shall be submitted  
21 in writing to the county as part of the shoreline permit application.
  - 22 2. Aquaculture facilities shall only be permitted where impacts to existing uses can be fully mitigated.
  - 23 3. Fish net-pens shall not occupy more than one (1) surface acre of water, excluding booming and anchoring  
24 equipment, and shall not be located within one (1) mile of any other aquaculture facility.
  - 25 4. No processing of any aquaculture product, except for the sorting or culling of the cultured species and the  
26 washing or removal of surface materials or species after harvest, shall occur in or over the water. All other  
27 processing activities and facilities shall be located on land.
  - 28 5. If uncertainty exists regarding potential impacts of a proposed aquaculture activity, baseline and periodic  
29 operational monitoring by a county-approved consultant (unless otherwise provided for) may be required, at the  
30 applicant's expense, and shall continue until adequate information is available to determine the success of the  
31 project and/or the magnitude of any probable significant adverse environmental impacts. Permits for such  
32 activities shall include specific performance measures and provisions for adjustment or termination of the project  
33 at any time if monitoring indicates significant, adverse environmental impacts that cannot be adequately  
34 mitigated.
  - 35 6. Aquacultural uses and facilities not involving substantial substrate modification shall be located at least six  
36 hundred (600) feet from any wildlife refuge lands; those involving substantial substrate modification shall be  
37 located at least fifteen hundred (1,500) feet from such areas. Lesser distances may be authorized without a  
38 variance if it is demonstrated by the applicant that the fish and wildlife habitat resources will be protected, and if  
39 the change is supported by the reviewing resource agencies. Greater distances may be required if recommended  
40 by the reviewing resource agencies.

1 7. Aquacultural structures and activities that are not water-dependent (including, but not limited to,  
2 warehouses for storage of products, parking and loading facilities) shall be located landward of the OHWM and  
3 landward of water-dependent portions of the project, and shall minimize detrimental impacts to the shoreline.

4 8. For aquaculture projects using over-water structures, storage of necessary tools and apparatus waterward of  
5 the OHWM shall be limited to containers of not more than three (3) feet in height, as measured from the surface  
6 of the raft or dock. Materials which are not necessary for the immediate and regular operation of the facility shall  
7 not be stored waterward of the OHWM.

8 9. No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation. All  
9 wastes shall be disposed of in a manner that will ensure strict compliance with all applicable waste disposal  
10 standards.

11 10. When feasible, the cleaning of nets and other apparatus shall be accomplished by air drying, spray  
12 washing or hand washing, rather than chemical treatment and application.

13 11. Prior to use of any agents such as antibiotics, vaccines, growth stimulants, or anti-fouling agents, approval  
14 must be obtained from all appropriate state and federal agencies, including but not limited to the U.S. Food and  
15 Drug Administration, Ecology, WDFW, and the Department of Agriculture, as required, and proof thereof is  
16 submitted to the county.

17 12. Only nonlethal, nonabusive predator control methods shall be used. Double netting for seals, overhead  
18 netting for birds, and three (3) foot high fencing or netting for otters are approved methods of predator control.  
19 The use of other nonlethal, nonabusive predator control measures shall be contingent upon receipt of written  
20 approval from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required.

21 13. Activities associated with the use of net-pens for finfish aquaculture shall be consistent with RCW  
22 77.125.050.

23 (Amended: Ord. 2018-11-06)

24 C. Boating Uses.

25 1. General Requirements.

26 a. All boating uses, development, and facilities shall protect the rights of navigation.

27 b. Boating facilities shall be sited and designed to ensure no net loss of shoreline ecological functions,  
28 and shall meet DNR requirements and other state guidance if located in or over state-owned aquatic lands.

29 c. Boating facilities shall locate on stable shorelines in areas where:

30 (1) There is adequate water mixing and flushing;

31 (2) Such facilities will not adversely affect flood channel capacity or otherwise create a flood hazard;

32 (3) Water depths are adequate to minimize spoil disposal, filling, beach enhancement, and other  
33 channel maintenance activities; and

34 (4) Water depths are adequate to prevent the structure from grounding out at the lowest low water or  
35 else stoppers are installed to prevent grounding out.

36 d. Boating facilities shall not be located:

37 (1) Along braided or meandering river channels where the channel is subject to change in alignment;

38 (2) On point bars or other accretion beaches;

- 1 (3) Where new or maintenance dredging will be required; or
- 2 (4) In areas with important bank margin habitat for aquatic species or where wave action caused by  
3 boating use would increase bank erosion rates.
- 4 e. Boating uses and facilities shall be located far enough from public swimming beaches, fishing and  
5 aquaculture harvest areas, and waterways used for commercial navigation to alleviate any adverse impacts,  
6 safety concerns and potential use conflicts.
- 7 f. In-water work shall be scheduled to protect biological productivity (including but not limited to fish  
8 runs, spawning, and benthic productivity). In-water work shall not occur in areas used for commercial  
9 fishing during a fishing season unless specifically addressed and mitigated for in the permit.
- 10 g. Accessory uses at boating facilities shall be:
- 11 (1) Limited to water-oriented uses, including uses that provide physical or visual shoreline access for  
12 substantial numbers of the general public; and
- 13 (2) Located as far landward as possible while still serving their intended purposes.
- 14 h. Parking and storage areas shall be landscaped or screened to provide visual and noise buffering  
15 between adjacent dissimilar uses or scenic areas.
- 16 i. Boating facilities shall locate where access roads are adequate to handle the traffic generated by the  
17 facility and shall be designed so that lawfully existing or planned public shoreline access is not  
18 unnecessarily blocked, obstructed nor made dangerous.
- 19 j. Joint-use moorage with ten (10) or more berths is regulated under this section as a marina (Section  
20 40.460.630(C)(3)). Joint-use moorage with fewer than ten (10) berths is regulated under this section as a  
21 moorage facility (Section 40.460.630(C)(4)).
- 22 k. All marinas and public launch facilities shall provide restrooms/hand-sanitizing facilities for boaters'  
23 use that are designed, constructed and maintained to be clean, well lit, safe and convenient for public use.  
24 One (1) restroom and hand-sanitizing facility shall be provided for every seventy-five (75) marina moorage  
25 sites or twenty (20) boat launch parking spaces.
- 26 l. Installation of boat waste disposal facilities such as pump-outs and portable dump stations shall be  
27 required at all marinas and shall be provided at public boat launches to the extent possible. The locations of  
28 such facilities shall be considered on an individual basis in consultation with the Washington Departments  
29 of Health, Ecology, Natural Resources, Parks, and WDFW, as necessary.
- 30 m. All utilities shall be placed at or below dock levels, or below ground, as appropriate.
- 31 n. All signage shall adhere to the standards for signs in this Program and Chapter 40.310, except that a  
32 marina or boat launch may have one (1) advertising sign oriented towards the water that does not exceed  
33 twenty-four (24) square feet in area and fifteen (15) feet in height above the OHWM.
- 34 o. When appropriate, marinas and boat launch facilities shall install public safety signs, to include the  
35 locations of fueling facilities, pump-out facilities, and locations for proper waste disposal.
- 36 p. Boating facilities shall be constructed of materials that will not adversely affect water quality or  
37 aquatic plants and animals over the long term. Materials used for submerged portions, decking and other  
38 components that may come in contact with water shall be approved by applicable state agencies for use in  
39 water to avoid discharge of pollutants from wave splash, rain or runoff. Wood treated with creosote, copper  
40 chromium, arsenic, pentachlorophenol or other similarly toxic materials is prohibited for use in moorage  
41 facilities.

- 1 q. Boating facilities in waters providing a public drinking water supply shall be constructed of untreated  
2 materials, such as untreated wood, approved plastic composites, concrete, or steel.
- 3 r. Vessels shall be restricted from extended mooring on waters of the state except as allowed by state  
4 regulations; and provided, that a lease or permission is obtained from the state and impacts to navigation and  
5 public access are mitigated.
- 6 2. Boat Launch Facilities.
- 7 a. A private boat launch shall be allowed on a parcel or lot only when public boat launches are  
8 unavailable within one-half (1/2) mile upstream or downstream of any property line.
- 9 b. No more than one (1) private boat launch facility or structure shall be permitted on a single residential  
10 parcel or lot.
- 11 c. Boat launch and haul-out facilities, such as ramps, marine travel lifts and marine railways, and minor  
12 accessory buildings shall be designed and constructed in a manner that minimizes adverse impacts on fluvial  
13 processes, biological functions, aquatic and riparian habitats, water quality, navigation and neighboring  
14 uses.
- 15 d. Boat launch facilities shall be designed and constructed using methods/technology that have been  
16 recognized and approved by state and federal resource agencies as the best currently available.
- 17 3. Marinas.
- 18 a. Marinas shall be designed to:
- 19 (1) Provide thorough flushing of all enclosed water areas;
- 20 (2) Allow the free movement of aquatic life in shallow water areas; and
- 21 (3) Avoid and minimize any interference with geohydraulic processes and disruption of existing  
22 shore forms.
- 23 b. Open pile or floating breakwater designs shall be used unless it can be demonstrated that riprap or  
24 other solid construction would not result in any greater net impacts to shoreline ecological functions,  
25 processes, fish passage, or shore features.
- 26 c. Wet-moorage marinas shall locate a safe distance from domestic sewage or industrial waste outfalls.
- 27 d. To the maximum extent possible, marinas and accessory uses shall share parking facilities.
- 28 e. New marina development shall provide public access amenities, such as viewpoints, interpretive  
29 displays and public access to accessory water-enjoyment uses such as restaurants.
- 30 f. If a marina is to include gas and oil handling facilities, such facilities shall be separate from main  
31 centers of activity in order to minimize the fire and water pollution hazard, and to facilitate fire and pollution  
32 control. Marinas shall have adequate facilities and procedures for fuel handling and storage, and the  
33 containment, recovery, and mitigation of spilled petroleum, sewage, and other potentially harmful or  
34 hazardous materials, and toxic products.
- 35 g. Live-aboards are restricted to marinas, may occupy up to twenty percent (20%) of the slips at a marina  
36 and shall be connected to utilities that provide potable water and wastewater conveyance to an approved  
37 disposal facility. Live-aboards are not allowed at joint-use moorages.
- 38 h. The marina operator shall be responsible for the collection and dumping of sewage, solid waste, and  
39 petroleum waste.

- 1 i. No commercial or sport fish-processing discharge or discarding of unused bait, scrap fish, or viscera  
2 shall be permitted within any marina.
- 3 4. Moorage Facilities: Docks, Piers, and Mooring Buoys.
- 4 a. Mooring buoys shall be used instead of docks and piers whenever feasible.
- 5 b. Existing, legally established, private recreational docks, piers, and floats for individual lots in existing  
6 subdivisions and for existing individual single-family developments are considered nonconforming uses  
7 and structures. If such dock or float is abandoned, becomes hazardous, or is removed for any reason, it may  
8 be replaced with only one (1) joint-use facility that complies with the policies and regulations of this  
9 Program. All required permits and approvals shall be obtained prior to commencing construction.
- 10 c. All moorage facilities shall be constructed and maintained in a safe and sound condition. Those that  
11 are abandoned or unsafe shall be removed or repaired promptly by the owner.
- 12 d. Docks and piers for water-dependent commercial and industrial uses shall be allowed to the outer  
13 harbor line or combined U.S. Pierhead/Bulkhead line but no more than that required for the draft of the  
14 largest vessel expected to moor at the facility. These provisions are also applicable to multiple-use facilities  
15 where the majority use is water-dependent and public access can safely be provided.
- 16 e. Fixed piers shall not be permitted for residential use on rivers. Docks for residential use on a river shall  
17 be securely anchored to pilings to allow for changes in river level, and shall be designed to withstand the one  
18 hundred (100) year flood or be seasonably removable.
- 19 f. Commercial covered moorage facilities may be permitted only where vessel construction or repair  
20 work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary  
21 over water, including a demonstration that adequate landside sites are not feasible.
- 22 g. Covered moorage facilities associated with any residential development shall be prohibited.
- 23 h. Provisions for waste discharge shall be made in all proposals for public moorage facilities, and shall  
24 include oil containment barriers when required by the U.S. Coast Guard under provisions of the Clean Water  
25 Act.
- 26 i. Bulk storage (nonportable storage in fixed tanks) for gasoline, oil and other petroleum products for any  
27 use or purpose is prohibited on docks and piers.
- 28 j. Residential docks and piers shall be allowed, as follows:
- 29 (1) A new private dock or pier serving an individual lot is prohibited, unless it can be demonstrated  
30 that such dock or pier will result in no net loss of shoreline ecological function.
- 31 (2) New joint-use docks and piers serving two or more lots each with water frontage are allowed if no  
32 marina or public boat launch is located within one-half (1/2) mile of the upstream property line or  
33 one-half (1/2) mile downstream from the downstream property line, and provided they meet the  
34 requirements of this Program.
- 35 (3) New land divisions with shoreline frontage shall provide for joint-use docks if the proposal  
36 includes construction of a dock. Proposed docks and piers shall include no more than one mooring space  
37 per dwelling unit. Where a new moorage facility is proposed within a residential waterfront development  
38 of more than four (4) units, only one (1) joint-use facility shall be allowed, but only after demonstrating  
39 that such use is appropriate for the water body. The applicant must also demonstrate that no public  
40 moorage facility is available to residents. This condition of approval with required access easements and  
41 dedications shall be identified on the face of the plat. In addition, the joint-use dock easement shall be  
42 recorded with the County Auditor.

- 1 (4) Only a single, joint-use moorage facility shall be permitted in association with hotels, motels, and  
2 multifamily residences. No more than one (1) mooring slip per unit shall be allowed.
- 3 k. Applicants for joint-use docks and piers shall demonstrate and document that adequate maintenance of  
4 the structure, activities, and associated landward area will be provided by identified responsible parties. The  
5 applicant shall file a legally enforceable joint use agreement or other legal instrument prior to the issuance of  
6 any building permits. The documents shall at minimum address the following:
- 7 (1) Apportionment of construction and maintenance expenses;  
8 (2) Easements and liability agreements; and  
9 (3) Use restrictions.
- 10 l. Docks and piers shall be designed and constructed to meet the following standards:
- 11 (1) The maximum dimensions of a dock or pier shall be no greater than necessary, and shall generally  
12 meet the following development standards. These dimensions may be adjusted by the Shoreline  
13 Administrator on a case-by-case basis to protect sensitive shoreline resources.
- 14 (a) Docks, piers, and ramps shall be no more than four (4) feet in width.  
15 (b) A dock or pier shall be long enough to obtain a depth as required by WDFW at its landward  
16 edge, and only as long as necessary to serve the intended use.
- 17 (c) The deck surface of docks and piers shall not exceed three (3) feet in height above the  
18 OHWM on the landward side, and shall extend one (1) foot above the water surface at all other  
19 locations.
- 20 (2) Over-water structures shall be located in water sufficiently deep to prevent the structure from  
21 grounding out at the lowest low water or stoppers should be installed to prevent grounding out.
- 22 (3) The portions of piers, elevated docks, and gangways that are over the nearshore/littoral area shall  
23 have unobstructed grating over the entire surface area. Floating docks and piers shall have unobstructed  
24 grating over at least fifty percent (50%) of the surface area.
- 25 (4) Piers/anchors and/or ramps shall extend waterward, perpendicular from the ordinary high water  
26 mark (OHWM), to a point where the water depth is sufficient to prevent damage to shallow-water  
27 habitat.
- 28 (5) Skirting shall not be placed on piers, ramps, or floats. Protective bumper material will be allowed  
29 along the outside edge of the float as long as the material does not extend below the bottom edge of the  
30 float frame or impede light penetration.
- 31 (6) If a bulkhead-like base is proposed for a fixed pier or dock where there is net positive littoral drift,  
32 the base shall be built landward of the OHWM or protective berms. When plastics or other  
33 nonbiodegradable materials are used in float, pier, or dock construction, precautions shall be taken to  
34 ensure their containment.
- 35 (7) Pilings must be structurally sound and cured prior to placement in the water. Pilings employed for  
36 docks, piers, or any other structure shall have a minimum vertical clearance of one foot above extreme  
37 high water. Pile spacing shall be the maximum feasible to minimize shading and avoid a "wall" effect  
38 that would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or  
39 result in structure damage from driftwood impact or entrapment.
- 40 (8) Docks used for motor boats should be located where the water will be deeper than seven (7) feet at  
41 the lowest low water to avoid prop scour.

1 (9) Docks and piers shall be set back a minimum of ten (10) feet from side property lines, except that  
 2 joint-use facilities may be located closer to or upon a side property line when agreed to by contract or  
 3 covenant with the owners of the affected properties. A copy of such agreement shall be recorded with the  
 4 County Auditor and filed with the shoreline permit application.

5 m. Recreational floats shall be designed and constructed to meet the following standards:

6 (1) They shall be located as close to the shore as possible, and no farther waterward than any existing  
 7 floats and established swimming areas.

8 (2) They shall be constructed so that the deck surface is a minimum of one (1) foot above the water  
 9 surface and with reflectors for night-time visibility.

10 (3) Floats serving the public, a multifamily development, or multiple property owners shall not  
 11 exceed one hundred (100) square feet; those serving only a legally established single-family residence  
 12 shall not exceed sixty-four (64) square feet.

13 n. Mooring buoys shall be placed as specified by WDFW, DNR, and the U.S. Coast Guard to balance the  
 14 goals of protecting nearshore habitat and minimizing obstruction to navigation. Anchors and other design  
 15 features shall meet WDFW standards.

16 o. Mooring buoys shall be discernible from a distance of at least one hundred (100) yards. Only one (1)  
 17 mooring buoy for each waterfront lot shall be permitted unless greater need is demonstrated by the applicant  
 18 and documented by the county. In cases such as those of a community park with recreational users or a  
 19 residential development with lot owners both on and away from the shoreline needing moorage, joint-use  
 20 facilities shall be used.

21 p. Mooring buoys for residential use on a river shall be securely anchored to pilings to allow for changes  
 22 in river level, and shall be designed to withstand the one hundred (100) year flood or be seasonably  
 23 removable.

24 (Amended: Ord. 2018-11-06)

25 D. Commercial Uses.

26 1. Water-oriented commercial uses are preferred over nonwater-oriented commercial uses.

27 2. An applicant for a new commercial use or development shall demonstrate that:

28 a. There will not be a net loss of shoreline ecological function by reason of the use or development; and

29 b. The use or development will have no significant adverse impacts to other shoreline resources or other  
 30 shoreline uses.

31 3. Loading, service areas, and other accessory uses and structures shall be located landward of a commercial  
 32 structure or underground whenever possible, but shall in no case be waterward of the structure. Loading and  
 33 service areas shall be screened from view with native plants.

34 4. Where allowed, nonwater-oriented commercial uses may be permitted:

35 a. As part of mixed use developments where the primary use is residential and where there is a  
 36 substantial public benefit with respect to the goals and policies of this Program such as providing public  
 37 access or restoring degraded shorelines;

38 b. Where navigability is severely limited at the proposed site and the commercial use provides a  
 39 significant public benefit with respect to the Act's objectives such as providing public access and ecological  
 40 restoration; or



1 c. If the site is physically separated from the shoreline by another property or public right-of-way.

2 5. Nonwater-oriented commercial uses may occupy:

3 a. Up to a total of twenty-five percent (25%) of the total frontage length of all parcels in the master  
4 planned development (regardless of ownership); or

5 b. Up to a total of twenty-five percent (25%) of the total project area within shoreline jurisdiction of all  
6 parcels in the master planned development (regardless of ownership).

7 (Amended: Ord. 2014-08-10; Ord. 2018-11-06)

8 E. Forest Practices.

9 1. Commercial harvest of timber undertaken on shorelines shall comply with the applicable policies and  
10 provisions of the Forests and Fish Report (U.S. Fish and Wildlife Service, et al., 1999) and the Forest Practices  
11 Act, Chapter 76.09 RCW as amended, and any regulations adopted pursuant thereto (WAC Title 222), as  
12 administered by the Department of Natural Resources.

13 2. Timber harvest conducted under a forest practice authorized under WAC Title 222 or Section 40.260.080 is  
14 not development as defined in Chapter 90.58 RCW and is not subject to the Shoreline Master Program. Other  
15 activities conducted under a forest practice, such as road improvement, maintenance or construction, culvert  
16 replacements, or placement of landings, are development subject to this chapter.

17 3. When timberland is to be converted to another use, such conversion shall be clearly indicated on the forest  
18 practices application. Failure to indicate the intent to convert the timberland to another use on the application will  
19 result in subsequent conversion proposals being reviewed pursuant to Conversion Option Harvest Plan. Failure to  
20 declare intent to convert on the application shall provide adequate grounds for denial of subsequent conversion  
21 proposals for a period of six (6) years from date of forest practices application approval per RCW  
22 76.09.060(3)(d), (e) and (f), RCW 76.09.460 and 76.09.470, subject to the provisions of Sections  
23 40.260.080(A)(4)(a)(2) and (C).

24 4. With respect to timber situated within two hundred (200) feet landward of the OHWM within shorelines of  
25 statewide significance, Ecology or the county shall allow only selective commercial timber cutting, so that no  
26 more than thirty percent (30%) of the merchantable trees may be harvested in any ten (10) year period of time;  
27 provided, that other timber harvesting methods may be permitted in those limited instances where the  
28 topography, soil conditions, or silviculture practices necessary for regeneration render selective logging  
29 ecologically detrimental; and provided further, that clear cutting of timber which is solely incidental to the  
30 preparation of land for other uses authorized by this chapter may be permitted. Exceptions to this standard shall  
31 be by conditional use permit only.

32 5. For the purposes of this Program, preparatory work associated with the conversion of land to nonforestry  
33 uses and/or developments shall not be considered forest practices and shall be reviewed in accordance with the  
34 provisions for the proposed nonforestry use and the general provisions of this Program, including vegetation  
35 conservation.

36 (Amended: Ord. 2018-11-06)

37 F. Industrial Uses.

38 1. General Requirements.

39 a. Water-oriented industrial uses and development are preferred over non-water-oriented industrial uses  
40 and development.

41 b. Water-related uses shall not displace existing water-dependent uses or occupy space designated for  
42 water-dependent uses identified in a substantial development permit or other approval.

- 1 c. Water-enjoyment uses shall not displace existing water-dependent or water-related uses or occupy  
2 space designated for water-dependent or water-related uses identified in a substantial development permit or  
3 other approval.
- 4 d. Waterward expansion of existing non-water-oriented industry is prohibited.
- 5 e. Proposed developments shall maximize the use of legally established existing industrial facilities and  
6 avoid duplication of dock or pier facilities before expanding into undeveloped areas or building new  
7 facilities. Proposals for new industrial and port developments shall demonstrate the need for expansion into  
8 an undeveloped area.
- 9 f. Proposed large-scale industrial developments or major expansions shall be consistent with an  
10 officially adopted comprehensive scheme of harbor improvement and/or long-range port development plan.
- 11 g. New facilities for shallow-draft shipping shall not be allowed to preempt deep-draft industrial sites.
- 12 h. Ship, boat-building, and repair yards shall employ best management practices (BMPs) with regard to  
13 the various services and activities they perform and their impacts on surrounding water quality.
- 14 i. Industrial water treatment and water reclamation facilities may be permitted only as conditional uses  
15 and only upon demonstrating that they cannot be located outside of shoreline jurisdiction. They shall be  
16 designed and located to be compatible with recreational, residential, or other public uses of the water and  
17 shorelands.
- 18 2. Log Storage.
- 19 a. Log booming, rafting and storage in the Aquatic shoreline designation shall comply with WAC  
20 332-30-145 or its successor.
- 21 b. Log storage shall be permitted in public waters only where:
- 22 (1) Water quality standards can be met at all times;
- 23 (2) Grounding will not occur;
- 24 (3) Associated activities will not hinder other beneficial uses of the water, such as small craft  
25 navigation; and
- 26 (4) Fish and wildlife habitat conservation areas can be avoided.
- 27 c. No log raft shall remain in the Aquatic shoreline designation for more than one (1) year, unless  
28 specifically authorized in writing.
- 29 d. Log storage facilities shall be sited to avoid and minimize the need for dredging in order to  
30 accommodate new barging and shall be located in existing developed areas to the greatest extent feasible. If  
31 a new log storage facility is proposed along an undeveloped shoreline, an alternatives analysis shall be  
32 required that demonstrates that it is not feasible to locate the facility within an existing developed area.
- 33 e. A debris management plan describing the removal and disposal of wood waste must be approved by  
34 the county. Debris monitoring reports shall be provided, where stipulated. Positive control, collection,  
35 treatment, and disposal methods for keeping leachate, bark, and wood debris (both floating and sinking  
36 particles) out of surface water and groundwater shall be employed at log storage areas, log dumps, raft  
37 building areas, and mill-side handling zones. In the event that bark or wood debris accidentally enters the  
38 water, it shall be immediately removed. Surface runoff from log storage areas shall be collected and  
39 discharged at only one point, if possible.

1 f. Existing in-water log storage and log booming facilities in critical habitats utilized by threatened or  
 2 endangered species classified under the Endangered Species Act (ESA) shall be re-evaluated if use is  
 3 discontinued for one (1) year, or if substantial repair or reconstruction is required. The evaluation shall  
 4 include an alternatives analysis in order to determine if logs can be stored upland and out of the water, or if  
 5 the site should be used for other purposes that would have lesser impacts on ESA-listed species. The  
 6 alternatives analysis shall include evaluation of the potential for moving all, or portions of, log storage and  
 7 booming to uplands.

8 g. Nonaquatic log storage areas shall meet the following requirements:

9 (1) The ground surface of any unpaved log storage area underlain by permeable soils shall be  
 10 separated from the highest seasonal water table by at least four (4) feet in order to reduce waste buildup  
 11 and impacts on groundwater and surface water;

12 (2) Stormwater shall be managed consistent with Chapters 13.26A and 40.386; and

13 (3) A berm must be located around the outer edge of the upland sort surface using rocks, or other  
 14 suitable materials to prevent loss of wood debris into the water.

15 (Amended: Ord. 2015-12-12)

16 G. Institutional Uses.

17 1. Water-oriented institutional uses and developments are preferred.

18 2. Where allowed, non-water-oriented institutional uses may be permitted as part of a mixed use  
 19 development; provided, that a significant public benefit such as public access and/or ecological restoration is  
 20 provided.

21 3. Loading, service areas, and other accessory uses shall be located landward of a primary structure or  
 22 underground whenever possible, but shall in no case be waterward of the structure. Loading and service areas  
 23 shall be screened from view with native plants.

24 4. Where institutional uses are allowed as a conditional use, the following must be demonstrated:

25 a. A water-dependent use is not reasonably expected to locate on the proposed site due to topography,  
 26 surrounding land uses, physical features of the site, or the site's separation from the water;

27 b. The proposed use does not displace a current water-oriented use and will not interfere with adjacent  
 28 water-oriented uses; and

29 c. The proposed use will be of substantial public benefit by increasing the public use, enjoyment, and/or  
 30 access to the shoreline consistent with protection of shoreline ecological function.

31 H. Mining.

32 1. An applicant for mining and associated activities within the shoreline jurisdiction shall demonstrate that the  
 33 proposed activities are dependent on a shoreline location consistent with this Program and WAC  
 34 173-26-201(2)(a).

35 2. Mining and associated activities shall be designed and conducted to result in no net loss of shoreline  
 36 ecological functions and processes, and will only be allowed if they will not cause:

37 a. Damage to or potential weakening of the structural integrity of the shoreline zone that would change  
 38 existing aquatic habitat or aquatic flow characteristics;

39 b. Changes in the water or exchange of water to or from adjacent water bodies that would damage  
 40 aquatic or shoreline habitat; and

- 1 c. Changes in groundwater or surface water flow that would be detrimental to aquatic habitat, shoreline  
2 habitat, or groundwater.
- 3 3. Mining within the active channel(s) or channel migration zone of a stream shall not be permitted unless:
- 4 a. Removal of specified quantities of sand and gravel or other materials at specific locations will not  
5 adversely affect in-stream habitat or the natural processes of gravel transport for the stream system as a  
6 whole.
- 7 b. The mining and any associated permitted activities, such as flood hazard reduction (Section  
8 40.460.530(C)), will not have significant adverse impacts to habitat for priority species nor cause a net loss  
9 of shoreline ecological functions.
- 10 4. The applicant shall obtain and fully comply with all necessary permits and approvals, including, but not  
11 limited to, hydraulic project approvals (HPA) from WDFW.
- 12 5. A reclamation plan that complies with the format and detailed minimum standards of Chapter 78.44 RCW  
13 and Chapter 332-18 WAC and that meets the provisions of this Program shall be included with any shoreline  
14 permit application for mining. The proposed subsequent use of mined property must be consistent with the  
15 provisions of the shoreline designation in which the property is located, and shall obtain and fully comply with all  
16 necessary permits and approvals. Reclamation of disturbed shoreline areas shall provide appropriate ecological  
17 functions consistent with the setting.
- 18 6. Aggregate washing and ponding of waste water are prohibited in floodways.
- 19 7. Disposal of overburden or other mining spoil or nonorganic solid wastes shall comply with fill policies and  
20 regulations of this Program and other applicable county regulations.
- 21 8. In considering renewal, extension or reauthorization of gravel bar and other in-channel mining operations  
22 in locations where they have previously been conducted, the county shall require compliance with this Program.
- 23 9. Where a lawfully established mining operation has resulted in the creation of a lake(s) greater than twenty  
24 (20) acres and such lake(s) is subject to the provisions of this Program and the Act, such lake(s) shall be given a  
25 shoreline designation of Rural Conservancy – Resource Lands or as otherwise adopted. Notwithstanding any  
26 other applicable regulations, such mining operations shall be permitted to continue and may be expanded subject  
27 to approval of a shoreline conditional use permit.
- 28 10. The provisions of this section do not apply to dredging of authorized navigation channels when conducted  
29 in accordance with WAC 173-26-231.
- 30 I. Parking.
- 31 1. Parking as a primary use is prohibited in all shoreline areas.
- 32 2. Where parking is allowed as accessory to a permitted use, it shall be located landward of the primary  
33 structure as far as possible or within the primary structure.
- 34 J. Recreational Uses.
- 35 1. Recreational developments shall provide for nonmotorized access to the shoreline such as pedestrian and  
36 bicycle paths.
- 37 2. The minimum width of public access easements for trails shall be twenty (20) feet when a trail is not  
38 located within a public right-of-way, unless the Shoreline Administrator determines that undue hardship would  
39 result, or that it is impractical or environmentally unsound. In such cases, easement width may be reduced only by  
40 the minimum extent necessary to meet public access standards.

- 1           3.    Recreation areas or facilities on the shoreline shall provide physical or visual public access to the shoreline.
- 2           4.    Parking areas shall be located upland away from the immediate shoreline, with pedestrian trails or
- 3           walkways providing access to the water.
- 4           5.    All permanent, substantial, recreational structures and facilities shall be located outside officially mapped
- 5           floodways. The Shoreline Administrator may grant administrative exceptions for nonintensive minor accessory
- 6           uses (including, but not limited to, picnic tables, playground equipment,) and water dependent structures that are
- 7           necessarily located within a floodway, such as boat ramps.
- 8           6.    Recreational sites with active uses shall be provided with restrooms and hand-sanitizing facilities in
- 9           accordance with public health standards and without adversely altering the natural features attractive for
- 10          recreational uses.
- 11          7.    Recreational facilities shall include features such as buffer strips, screening, fences, and signs, if needed to
- 12          protect the value and enjoyment of adjacent or nearby private properties and natural areas from trespass, overflow
- 13          and other possible adverse impacts.
- 14          8.    Where fertilizers and pesticides are used in recreational developments, waters in and adjacent to such
- 15          developments shall be protected from drainage and surface runoff.
- 16          9.    Golf course structures (clubhouses and maintenance buildings) that are non-water-oriented shall be located
- 17          no closer than one hundred (100) feet from the OHWM of any shorelines of the state.
- 18          10.   Tees, greens, fairways, golf cart routes, and other site development features shall be located no closer than
- 19          one hundred (100) feet from the OHWM of any shorelines of the state to the extent practicable. Where
- 20          unavoidable, such development shall be designed to minimize impacts to shoreline and critical areas and their
- 21          buffers and mitigate impacts by including ecological restoration and enhancement.
- 22          11.   Golf course water hazards and stormwater drainage basins shall be managed:
- 23           a.    For wildlife through appropriate plantings and measures to maintain or enhance water quality; and
- 24           b.    Consistent with Chapters 13.26A and 40.386.
- 25          12.   The setback for water-related and water-enjoyment recreational development in Natural, Urban
- 26          Conservancy, and Medium Intensity shoreline designations is fifty (50) feet, except trails which may meander
- 27          between twenty (20) and fifty (50) feet landward of the OHWM to:
- 28           a.    Respond to site characteristics such as natural topography and existing vegetation; or
- 29           b.    Take advantage of opportunities for visual or physical access to the shoreline; or
- 30           c.    Connect existing trail easements; or
- 31           d.    Create an interesting experience for trail users.
- 32          A trail project, any portion of which encroaches closer than fifty (50) feet, shall maintain no net loss of
- 33          shoreline ecological function and include shoreline restoration where feasible.
- 34          13.   The following trail types as described in the Vancouver-Clark Parks and Recreation Regional Trails and
- 35          Bikeway Systems Plan (2006) are preferred in the Natural shoreline designation:
- 36           a.    Type A3: Primitive Trails or Paths;
- 37           b.    Type C2: Walking Trails or Paths; and
- 38           c.    Type D1: Equestrian Trails or Paths.

1 14. When regional or local shared-use or other impervious surface trails are proposed in the Natural or Urban  
 2 Conservancy shoreline designations, to respond to Americans with Disabilities Act (ADA) requirements or other  
 3 circumstances or conditions, the project shall maintain no net loss of shoreline ecological functions and shall  
 4 include restoration where feasible.

5 (Amended: Ord. 2015-12-12)

6 K. Residential Uses.

7 1. Residential development shall include provisions to ensure preservation of native vegetation and to control  
 8 erosion during construction.

9 2. New residential construction shall be located so as not to require shoreline stabilization measures.

10 3. New residential development shall be prohibited in, over, or floating on the water.

11 4. New residential development shall be located and designed to a density that minimizes view obstructions to  
 12 and from the shoreline.

13 5. Clustering of residential units as permitted by this title shall be allowed where appropriate to minimize  
 14 physical and visual impacts on shorelines.

15 6. In those areas where only on-site sewage systems are available, density shall be limited to that which can  
 16 demonstrably accommodate protection of surface and groundwater quality.

17 7. New residential development, including sewage disposal systems, shall be prohibited in floodways and  
 18 channel migration zones.

19 8. Appurtenances, accessory uses, and facilities serving a residential structure shall be located outside  
 20 setbacks, critical areas, and buffers unless otherwise allowed under this Program to promote community access  
 21 and recreational opportunities. Normal appurtenances are limited to garages (up to three (3) cars), shops (up to  
 22 one thousand (1,000) square feet), decks, driveways, utilities, and fences.

23 9. Residential lots that are boundary line-adjusted or newly created through a land division shall be configured  
 24 such that:

25 a. Structural flood hazard reduction measures are not required and will not be necessary during the life of  
 26 the development or use;

27 b. Shoreline stabilization measures are not required; and

28 c. Any loss of shoreline ecological function can be avoided.

29 10. Where a new moorage facility is proposed within a residential waterfront development of more than four  
 30 (4) units, only one (1) joint-use facility shall be allowed, but only after demonstrating that such use is appropriate  
 31 for the water body. The applicant must also demonstrate that no public moorage facility is available to residents.  
 32 This condition of approval with required access easements and dedications shall be identified on the face of the  
 33 plat. In addition, the joint-use dock easement shall be recorded with the County Auditor.

34 11. New floating homes and new floating on-water residences are prohibited. Floating homes and on-water  
 35 residences moved from outside the State of Washington are also prohibited. **New marinas or other moorages for**  
 36 **floating homes and on-water residences are prohibited.**

37 12. Floating homes legally established in the State of Washington as of January 1, 2011, are considered  
 38 conforming uses pursuant to RCW 90.58.270 and WAC 173-26-241(3)(j).

39 a. A floating home must be moored at an authorized or grandfathered marina or moorage facility, as  
 40 described in WAC 332-30-171(7), and consistent with Sections 40.460.630(C) and 40.460.630(K).

1           **b.**    A one (1) time expansion of a floating home is allowed, as follows:

2                    ~~a.~~(1)    The expansion maintains the size of the footprint of the existing residence;

3                    ~~b.~~(2)    The expansion does not exceed the allowed height limit; and

4                    ~~c.~~(3)    The applicant demonstrates through a letter of exemption that the expansion will result in  
5                    no net loss of shoreline ecological functions.

6                    **c.**    A floating home may relocate to an authorized, existing residential slip, as described in WAC  
7                    332-30-171, and consistent with the standards of Sections 40.460.630(C) and 40.460.630(K).

8            13.    Floating on-water residences legally established in the State of Washington prior to July 1, 2014, are  
9            considered conforming uses pursuant to RCW 90.58.270 and WAC 173-26-241(3)(j).

10                   **a.**    A floating on-water residence must be moored at an authorized or grandfathered marina or moorage  
11                    facility, as described in WAC 332-30-171, and consistent with Sections 40.460.630(C) and 40.460.630(K).

12            **b.**    A one (1) time expansion of a floating on-water residence is allowed, as follows:

13                    ~~a.~~(1)    The expansion maintains the size of the footprint of the existing residence;

14                    ~~b.~~(2)    The expansion does not exceed the allowed height limit; and

15                    ~~c.~~(3)    The applicant demonstrates through a letter of exemption that the expansion will result in no  
16                    net loss of shoreline ecological functions.

17                    **c.**    A floating on-water residence may relocate to an authorized, existing residential slip, as described in  
18                    WAC 332-30-171, and consistent with the standards of Section 40.460.630(C) and 40.460.630(K).

19            14.    Existing Residential Structures.

20                    a.    Legally established existing residential structures and appurtenances located landward of the OHWM  
21                    and outside the floodway that do not meet the standards of this Program are considered to be conforming,  
22                    except that an application to replace an existing residential structure must meet all setback, height, and other  
23                    construction requirements of the Program and the Act. A one (1) time expansion is allowed, as follows:

24                            (1)    The expansion is no more than twenty-five percent (25%) of the habitable floor area of the  
25                            existing residence;

26                            (2)    The expansion does not exceed the allowed height limit;

27                            (3)    The expansion is no farther waterward than the existing structure; and

28                            (4)    The applicant demonstrates that the expansion will result in no net loss of shoreline ecological  
29                            functions.

30                    b.    If a structure or development is damaged by fire, flood, explosion, or other natural disaster and the  
31                    damage is less than seventy-five percent (75%) of the replacement cost of the structure or development, it  
32                    may be restored or reconstructed to those configurations existing at the time of such damage, provided:

33                            (1)    The reconstructed or restored structure will not cause additional adverse effects to adjacent  
34                            properties or to the shoreline environment;

35                            (2)    The rebuilt structure or portion of structure shall not expand the original footprint or height of the  
36                            damaged structure;

- 1 (3) No degree of relocation shall occur, except to increase conformity or to increase ecological  
 2 function, in which case the structure shall be located in the least environmentally damaging location  
 3 possible;
- 4 (4) The submittal of applications for permits necessary to restore the development is initiated within  
 5 twelve (12) months of the damage. The Shoreline Administrator may waive this requirement in  
 6 situations with extenuating circumstances;
- 7 (5) The reconstruction is commenced within one (1) year of the issuance of permit;
- 8 (6) The Shoreline Administrator may allow a one (1) year extension provided consistent and  
 9 substantial progress is being made; and
- 10 (7) Any residential structures, including multifamily structures, may be reconstructed up to the size,  
 11 placement and density that existed prior to the damage, so long as other provisions of this Program are  
 12 met.
- 13 c. If a structure or development is either demolished, or damaged by fire, flood, explosion, or other  
 14 natural disaster and the damage is more than seventy-five percent (75%) of the replacement cost of the  
 15 structure or development, then any replacement structure has to meet the requirements of the Program and  
 16 the Act.
- 17 15. New appurtenances shall meet the setback requirements of this Program.
- 18 (Amended: Ord. 2015-12-12)
- 19 L. Signs.
- 20 1. Freestanding signs shall be for only informational purposes such as directional, navigational,  
 21 educational/interpretive, and safety purposes, unless otherwise allowed under this Program and as specified in  
 22 Table 40.460.620-1.
- 23 2. Signs for commercial purposes shall be limited to fascia or wall signs and as regulated by Chapter 40.310,  
 24 unless otherwise provided for in this chapter for specific uses.
- 25 3. All signs shall be located and designed to minimize interference with vistas, viewpoints, and visual access  
 26 corridors to the shoreline.
- 27 4. Over-water signs or signs on floats or pilings shall be prohibited, except when related to navigation or a  
 28 water-dependent use. Such signs shall be limited to fifteen (15) feet in height above the OHWM.
- 29 5. Illuminated signs shall be limited to informational, directional, navigational or safety purposes and shielded  
 30 so as to eliminate glare when viewed from surrounding properties or watercourses.
- 31 M. Transportation Uses.
- 32 1. All transportation facilities in shoreline areas shall be constructed and maintained to cause the least possible  
 33 adverse impacts on the land and water environments, shall respect the natural character of the shoreline, and  
 34 make every effort to preserve wildlife, aquatic life, and their habitats.
- 35 2. New or expanded surface transportation facilities not related to and necessary for the support of shoreline  
 36 activities shall be located outside the shoreline jurisdiction wherever possible, or set back from the ordinary high  
 37 water mark far enough to make shoreline stabilization, such as riprap, bulkheads or jetties, unnecessary.
- 38 3. Transportation facilities shall not adversely impact existing or planned water-dependent uses by impairing  
 39 access to the shoreline.



1 4. All roads shall be adequately set back from water bodies and shall provide buffer areas of compatible,  
2 self-sustaining native vegetation. Shoreline scenic drives and viewpoints may provide breaks in the vegetative  
3 buffer to allow open views of the water.

4 5. Transportation facilities that are allowed to cross over water bodies and associated wetlands shall utilize  
5 elevated, open pile or pier structures whenever feasible to reduce shade impacts. All bridges shall be built high  
6 enough to allow the passage of debris and anticipated high water flows.

7 6. Fills for transportation facility development shall not be permitted in water bodies or associated wetlands  
8 except when all structural or upland alternatives have proven infeasible and the transportation facilities are  
9 necessary to support uses consistent with this Program.

10 7. Transportation and utility facilities shall be required to make joint use of rights-of-way and to consolidate  
11 crossing of water bodies.

12 N. Utility Uses.

13 These provisions apply to services and facilities that produce, convey, store, or process power, gas, wastewater,  
14 communications, and similar services and functions. On-site utility features serving a primary use, such as a water,  
15 sewer or gas line to a residence or other approved use, are "accessory utilities" and shall be considered a part of the  
16 primary use.

17 1. Whenever feasible, all utility facilities shall be located outside shoreline jurisdiction. Where distribution  
18 and transmission lines (except electrical transmission lines) must be located in the shoreline jurisdiction they  
19 shall be located underground.

20 2. Where overhead electrical transmission lines must parallel the shoreline, they shall be outside of the two  
21 hundred (200) foot shoreline environment unless topography or safety factors would make it unfeasible.

22 3. Utilities, including limited utility extensions, shall be designed, located and installed in such a way as to  
23 preserve the natural landscape, minimize impacts to scenic views, and minimize conflicts with present and  
24 planned land and shoreline uses.

25 4. Transmission, distribution, and conveyance facilities shall be located in existing rights-of-way and  
26 corridors or shall cross shoreline jurisdictional areas by the shortest, most direct route feasible, unless such route  
27 would cause significant environmental damage.

28 5. Utility production and processing facilities, such as power plants and wastewater treatment facilities, or  
29 parts of those facilities that are non-water-oriented shall not be allowed in the shoreline jurisdiction unless it can  
30 be demonstrated that no other feasible option is available.

31 6. Stormwater control facilities, limited to detention/retention/treatment ponds, media filtration facilities, and  
32 lagoons or infiltration basins, within the shoreline jurisdiction shall only be permitted when the stormwater  
33 facilities are designed to mimic and resemble natural wetlands, ponds, or closed depressions, and meet applicable  
34 water quality requirements of Chapter 40.386.

35 7. Stormwater outfalls may be placed below the OHWM to reduce scouring, but new outfalls and  
36 modifications to existing outfalls shall be designed and constructed to avoid impacts to existing native aquatic  
37 vegetation attached to or rooted in substrate. In river and stream shorelines, stormwater outfall structures may  
38 require permanent bank hardening to prevent failure of the outfall structure or erosion of the shoreline. Diffusers  
39 or discharge points must be located offshore at a distance beyond the nearshore area to avoid impacts to nearshore  
40 habitats.

41 8. Water reclamation discharge facilities such as injection wells or activities such as land application are  
42 prohibited in the shoreline jurisdiction, unless the discharge water meets Ecology's Class A reclaimed water  
43 standards. An applicant for discharge of Class A reclaimed water in the shoreline jurisdiction shall demonstrate  
44 habitat benefits of such discharge.

1 9. Where allowed under this Program, construction of underwater utilities or those within the wetland  
2 perimeter shall be scheduled to avoid major fish migratory runs or use construction methods that do not cause  
3 disturbance to the habitat or migration.

4 10. All underwater pipelines transporting liquids intrinsically harmful to aquatic life or potentially  
5 detrimental to water quality shall be equipped with automatic shut off valves.

6 11. Upon completion of utility installation/maintenance projects on shorelines, banks shall, at a minimum, be  
7 restored to pre-project configuration, replanted and provided with maintenance care until the newly planted  
8 vegetation is fully established. Plantings shall be native species and/or be similar to vegetation in the surrounding  
9 area.

10 (Amended: Ord. 2012-07-16; Ord. 2015-12-12; Ord. 2018-01-01)

11  
12 **Section 14. Amendatory.** Sec. 3, Part C of Ord. 2012-07-16 and codified as CCC 40.460.710, and as most recently  
13 amended by Sec. 9 of Ord. 2018-11-06, are each hereby amended to read as follows:

14 **40.460.710 Administrative Authority and Responsibility**

15 A. Shoreline Administrator and Shoreline Management Review Committee.

16 1. The responsible official or his/her designee is the Shoreline Administrator for the county.

17 2. The Shoreline Management Review Committee (SMRC), consisting of three members: the Shoreline  
18 Administrator (Chairman) and two additional members from different county departments as designated by the  
19 responsible official Public Works Director (Chairman), Community Development Director, and the Parks and  
20 Lands Division Manager, or their designated representatives, shall convene as often as necessary on the call of  
21 the Chairman to review shoreline requests and permit applications for which the notice of application procedures  
22 of Chapter 173-27 WAC and this section have been completed. After considering the application and other  
23 relevant material, SMRC may, by majority vote, take one (1) of the following actions:

24 a. Approve issuance of the permit;

25 b. Approve the permit subject to certain specified conditions; or

26 c. Formulate recommendations on the application to be forwarded to the Shoreline Administrator for  
27 action.

28 3. The Shoreline Administrator, through the Shoreline Management Review Committee, shall have the  
29 authority to act upon the following matters:

30 a. Interpretation, enforcement, and administration of this Program as prescribed in this title;

31 b. Applications for shoreline management substantial development permits;

32 c. Applications for shoreline conditional use permits;

33 d. Applications for shoreline variances;

34 e. Modifications or revisions to any of the above approvals; and

35 f. Requests for statements of exemption.

1 4. The Shoreline Administrator shall document all project review actions in shoreline areas in order to  
 2 periodically evaluate the cumulative effects of authorized development on shoreline conditions per WAC  
 3 173-26-191.

4 5. In a case where a shoreline substantial development permit, shoreline conditional use permit, or shoreline  
 5 variance is requested with a concurrent Type III land use action, the Shoreline Management Review Committee  
 6 authority granted in 40.460.710(A)(3) may be ceded to the Hearing Examiner pursuant to Section 40.510.030 and  
 7 40.460.725(D)(1).

8 (Amended: Ord. 2018-11-06)

9 B. Clark County Planning Commission.

10 The County Planning Commission shall be responsible for hearing and making recommendations for action to the  
 11 County Council on the following types of matters:

12 1. Amendments to the Shoreline Master Program. Any of the provisions of this Program may be amended as  
 13 provided for in WAC 173-26-100 and 173-26-104.

14 2. Review and Adjustments. Periodic review of this Program shall be conducted as required by state law and  
 15 regulations (RCW 90.58.080(4)). Adjustments shall be made as necessary to reflect changing local  
 16 circumstances, new information or improved data, and changes in state statutes and regulations. This review  
 17 process shall be consistent with WAC 173-26-090 and shall include a local citizen involvement effort and public  
 18 hearing to obtain the views and comments of the public.

19 (Amended: Ord. 2018-11-06)

20 C. Clark County Council.

21 The Council shall be responsible for making final determinations on amendments to this Program, which shall be  
 22 adopted by ordinance. The Council shall enter findings and conclusions setting forth the factors it considered in  
 23 reaching its decision. Amendments shall be submitted to and reviewed by Ecology.

24 (Amended: Ord. 2018-11-06)

25 D. Ecology and the Attorney General.

26 1. The duties and responsibilities of Ecology shall include, but are not limited to, the following:

27 a. Reviewing and approving Program amendments prepared by the county pursuant to WAC 173-26-120  
 28 (State Process for Approving/Amending Shoreline Master Programs). Amendments or revisions to this  
 29 Program, as provided by law, do not become effective until approved by Ecology.

30 b. Final approval and authority to condition or deny shoreline conditional use permits and shoreline  
 31 variance permits filed by the county.

32 2. Ecology and the Attorney General have the authority to review and petition for review the county's permit  
 33 decisions. Petitions for review must be commenced within twenty-one (21) days from the date the final decision  
 34 was filed.

35 E. Ecology Review.

36 1. Clark County shall notify Ecology ~~shall be notified by mail sent via USPS, return receipt requested.~~ of any  
 37 substantial development, conditional use or variance permit decisions made by the Shoreline Administrator,  
 38 whether it is an approval or denial. Clark County ~~The notification~~ shall notify Ecology ~~occur~~ after all local  
 39 administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed.  
 40 When a substantial development permit and either conditional use or variance permit are required for a

1 development, the submittal of the permits shall be made concurrently. The Shoreline Administrator shall file the  
2 following with Ecology and the Attorney General:

- 3 a. A copy of the complete application per WAC 173-27-180;
- 4 b. Findings and conclusions that establish the basis for the decision including but not limited to  
5 identification of shoreline environment designation, applicable Program policies and regulations and the  
6 consistency of the project with appropriate review criteria for the type of permit(s);
- 7 c. The final decision of the county;
- 8 d. The permit data sheet per WAC 173-27-990;
- 9 e. Affidavit of public notice; and
- 10 f. Where applicable, the Shoreline Administrator shall also file the applicable documents required by the  
11 State Environmental Policy Act (Chapter 43.21C RCW).

12 2. When the project has been modified in the course of the local review process, plans or text shall be provided  
13 to Ecology that clearly indicates the final approved plan.

14 3. If Ecology determines that the submittal does not contain all of the documents and information required by  
15 this section, Ecology shall identify the deficiencies and notify the county and the applicant in writing. Ecology  
16 will not act on conditional use or variance permit submittals until the material requested in writing is submitted to  
17 them.

18 4. Ecology shall convey to the county and applicant its final decision approving, approving with conditions, or  
19 disapproving the permit within thirty (30) days of the date of submittal by the county. The Shoreline  
20 Administrator will notify those interested persons having requested notification of such decision.

21 5. Ecology shall base its determination to approve, approve with conditions or deny a conditional use permit  
22 or variance permit on consistency with the policy and provisions of the Act and the criteria listed in this Program.

23 6. Appeals of Ecology decisions on conditional use and variance requests shall be made to the Shorelines  
24 Hearings Board as specified in Section 40.460.735(A).

25 F. Master Program Amendments.

26 1. This Program shall be periodically reviewed no later than eight (8) years following its approval by Ecology  
27 and adjustments shall be made as are necessary to reflect changing local circumstances, new information or  
28 improved data, and changes in State statutes and regulations. This review process shall be consistent with  
29 Chapter 173-26 WAC requirements and shall include a local citizen involvement effort and public hearing to  
30 obtain the views and comments of the public.

31 2. Any of the provisions of this Program may be amended as provided for in RCW 90.58.120 and 90.58.200  
32 and Chapter 173-26 WAC. Amendments or revisions to this Program, as provided by law, do not become  
33 effective until approved by Ecology.

34 3. Proposals for shoreline redesignation (i.e., amendments to the shoreline maps and descriptions) must  
35 demonstrate consistency with the criteria set forth in WAC 173-22-040.

36 (Amended: Ord. 2012-07-16; Ord. 2018-01-01)

1 **Map Amendments**

2 **Section 15. Amendatory.** There are two maps on the following pages. The first map highlights proposed areas of  
3 change on the shoreline designations map. The second map shows the proposed new shoreline map if the proposed  
4 changes are incorporated.

5 These draft maps were shared during the 30-day comment period held from January 28 – February 27, 2020. No  
6 additional changes to these maps are being proposed based on comment period feedback.

DRAFT



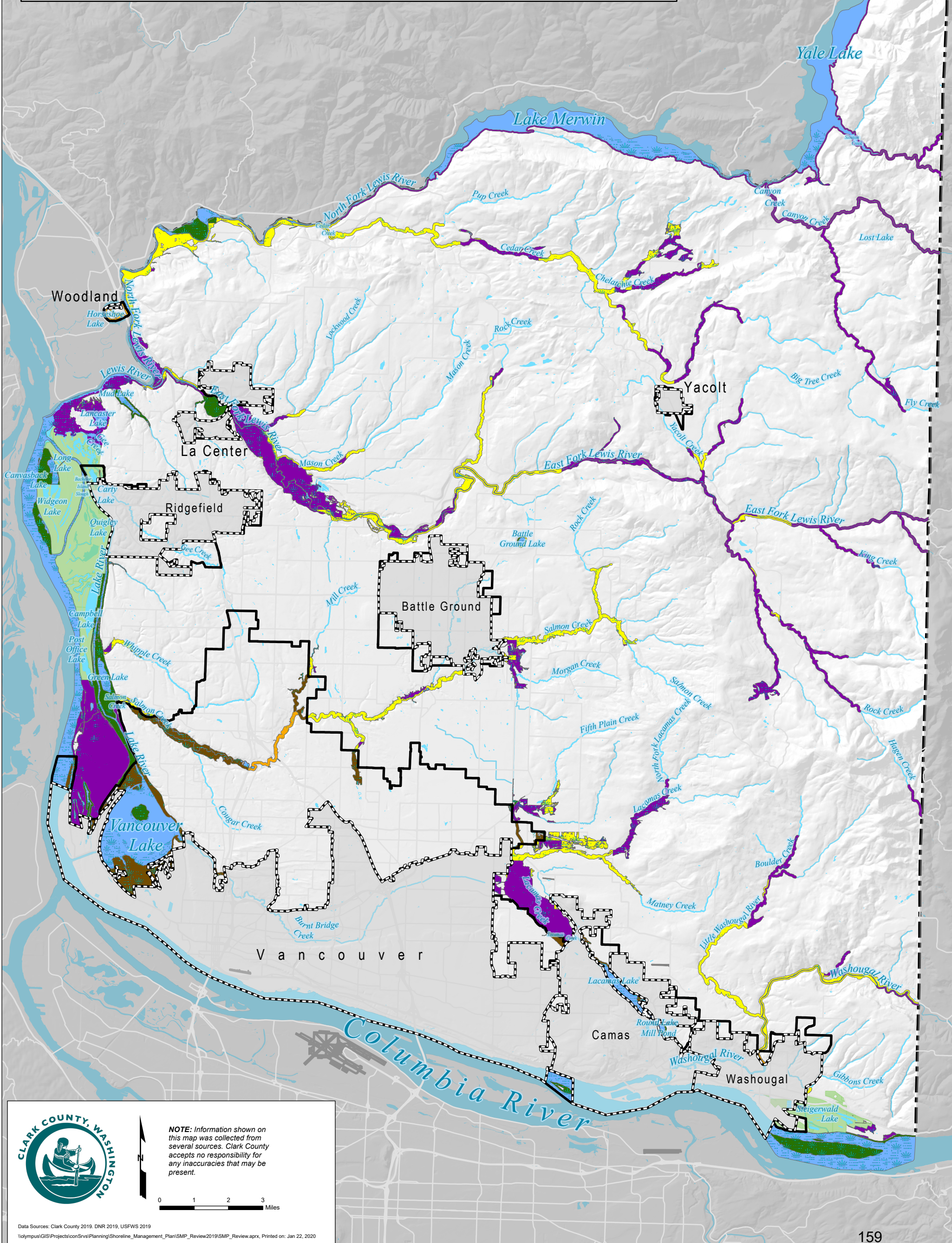
# Proposed New Shoreline Designation Map

January 2020 Draft

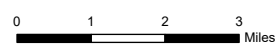
## KEY

- |                                   |                   |                               |                                 |
|-----------------------------------|-------------------|-------------------------------|---------------------------------|
| Associated Wetlands*              | County Boundary   | <b>Shoreline Designations</b> | Natural                         |
| USFWS National Wildlife Refuges** | Urban Growth Area | Aquatic                       | Rural Conservancy Residential   |
| Incorporated Area                 |                   | High Intensity                | Rural Conservancy Resource Land |
|                                   |                   | Medium Intensity              | Urban Conservancy               |

\*Definitive presence will be determined on a project basis  
\*\*Private development in National Wildlife Refuges are regulated under the Rural Conservancy Residential provisions of the SMP.



**NOTE:** Information shown on this map was collected from several sources. Clark County accepts no responsibility for any inaccuracies that may be present.



**From:** Jenna Kay  
**To:** [Kathleen Otto](#)  
**Cc:** [Lindsey Shafar](#); [Oliver Orjiako](#); [Christine Cook](#)  
**Subject:** RE: Project Update: Shoreline Master Program Periodic Review  
**Date:** Friday, June 5, 2020 9:59:00 AM

---

Good morning Kathleen,

We are writing to follow-up on the below email to see if you have any questions for us. Please let us know if you do. We know you are very busy with COVID-19 matters.

Regards,  
 Jenna



**Jenna Kay**  
 Planner II  
 COMMUNITY PLANNING

564.397.4968




---

**From:** Jenna Kay  
**Sent:** Thursday, May 14, 2020 4:55 PM  
**To:** Kathleen Otto <Kathleen.Otto@clark.wa.gov>  
**Cc:** Lindsey Shafar <Lindsey.Shafar@clark.wa.gov>; Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Christine Cook <Christine.Cook@clark.wa.gov>  
**Subject:** Project Update: Shoreline Master Program Periodic Review

Greetings Kathleen,

I am writing today regarding the Shoreline Master Program Periodic Review project. Shortly before the COVID-19 stay at home order went into effect, Community Planning had requested a conversation with Council to provide an update on the Shoreline Master Program (SMP) Periodic Review project. In lieu of an in-person discussion, attached please find a written update on this project and a proposal for next steps.

There are four items attached for your consideration, as follows:

- **Project update** memo
- Appendix A: **Summary of comments** received during a 30-day public comment period held in early 2020
- Appendix B: Copies of the ten (10) **comments** received



Appendix C: Current **draft proposed amendments**. There are no major policy changes in the proposal. Amendments in response to comments are highlighted; many address feedback from Ecology to bring the SMP into compliance with updated critical areas requirements.

Please let Oliver and me know if you have any questions.

Thank you,  
Jenna



**Jenna Kay**  
Planner II  
COMMUNITY PLANNING

564.397.4968



**From:** [Jenna Kay](#)  
**To:** [Temple Lentz](#)  
**Cc:** [Lindsey Shafar](#); [Oliver Orjiako](#); [Christine Cook](#)  
**Subject:** RE: Project Update: Shoreline Master Program Periodic Review  
**Date:** Friday, June 5, 2020 10:04:00 AM

---

Good morning Councilor Lentz,

We are writing to follow-up on the below email to see if you have any questions for us. Please let us know if you do. We know you are very busy with COVID-19 matters.

Regards,  
Jenna



**Jenna Kay**  
 Planner II  
 COMMUNITY PLANNING

564.397.4968




---

**From:** Jenna Kay  
**Sent:** Thursday, May 14, 2020 5:00 PM  
**To:** Temple Lentz <Temple.Lentz@clark.wa.gov>  
**Cc:** Lindsey Shafar <Lindsey.Shafar@clark.wa.gov>; Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Christine Cook <Christine.Cook@clark.wa.gov>  
**Subject:** Project Update: Shoreline Master Program Periodic Review

Greetings Councilor Lentz,

I am writing today regarding the Shoreline Master Program Periodic Review project. Shortly before the COVID-19 stay at home order went into effect, Community Planning had requested a conversation with Council to provide an update on the Shoreline Master Program (SMP) Periodic Review project. In lieu of an in-person discussion, attached please find a written update on this project and a proposal for next steps.

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Please let Oliver and me know if you have any questions.

Thank you,  
Jenna



**Jenna Kay**  
Planner II  
COMMUNITY PLANNING

564.397.4968



**From:** [Jenna Kay](#)  
**To:** [Julie Olson](#)  
**Cc:** [Lindsey Shafar](#); [Oliver Orjiako](#); [Christine Cook](#)  
**Subject:** RE: Project Update: Shoreline Master Program Periodic Review  
**Date:** Friday, June 5, 2020 10:05:00 AM

---

Good morning Councilor Olson,

We are writing to follow-up on the below email to see if you have any questions for us. Please let us know if you do. We know you are very busy with COVID-19 matters.

Regards,  
Jenna



**Jenna Kay**  
 Planner II  
 COMMUNITY PLANNING

564.397.4968




---

**From:** Jenna Kay  
**Sent:** Thursday, May 14, 2020 5:01 PM  
**To:** Julie Olson <Julie.Olson2@clark.wa.gov>  
**Cc:** Lindsey Shafar <Lindsey.Shafar@clark.wa.gov>; Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Christine Cook <Christine.Cook@clark.wa.gov>  
**Subject:** Project Update: Shoreline Master Program Periodic Review

Greetings Councilor Olson,

I am writing today regarding the Shoreline Master Program Periodic Review project. Shortly before the COVID-19 stay at home order went into effect, Community Planning had requested a conversation with Council to provide an update on the Shoreline Master Program (SMP) Periodic Review project. In lieu of an in-person discussion, attached please find a written update on this project and a proposal for next steps.

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Please let Oliver and me know if you have any questions.

Thank you,  
Jenna



**Jenna Kay**  
Planner II  
COMMUNITY PLANNING

564.397.4968



**From:** [Jenna Kay](#)  
**To:** [John Blom](#)  
**Cc:** [Lindsey Shafar](#); [Oliver Orjiako](#); [Christine Cook](#)  
**Subject:** RE: Project Update: Shoreline Master Program Periodic Review  
**Date:** Friday, June 5, 2020 10:05:00 AM

---

Good morning Councilor Blom,

We are writing to follow-up on the below email to see if you have any questions for us. Please let us know if you do. We know you are very busy with COVID-19 matters.

Regards,  
Jenna



**Jenna Kay**  
 Planner II  
 COMMUNITY PLANNING

564.397.4968




---

**From:** Jenna Kay  
**Sent:** Thursday, May 14, 2020 5:02 PM  
**To:** John Blom <John.Blom@clark.wa.gov>  
**Cc:** Lindsey Shafar <Lindsey.Shafar@clark.wa.gov>; Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Christine Cook <Christine.Cook@clark.wa.gov>  
**Subject:** Project Update: Shoreline Master Program Periodic Review

Greetings Councilor Blom,

I am writing today regarding the Shoreline Master Program Periodic Review project. Shortly before the COVID-19 stay at home order went into effect, Community Planning had requested a conversation with Council to provide an update on the Shoreline Master Program (SMP) Periodic Review project. In lieu of an in-person discussion, attached please find a written update on this project and a proposal for next steps.

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Please let Oliver and me know if you have any questions.

Thank you,  
Jenna



**Jenna Kay**  
Planner II  
COMMUNITY PLANNING

564.397.4968



**From:** [Jenna Kay](#)  
**To:** [Gary Medvigy](#)  
**Cc:** [Lindsey Shafar](#); [Oliver Orjiako](#); [Christine Cook](#)  
**Subject:** RE: Project Update: Shoreline Master Program Periodic Review  
**Date:** Friday, June 5, 2020 10:06:00 AM

---

Good morning Councilor Medvigy,

We are writing to follow-up on the below email to see if you have any questions for us. Please let us know if you do. We know you are very busy with COVID-19 matters.

Regards,  
 Jenna



**Jenna Kay**  
 Planner II  
 COMMUNITY PLANNING

564.397.4968




---

**From:** Jenna Kay  
**Sent:** Thursday, May 14, 2020 5:03 PM  
**To:** Gary Medvigy <Gary.Medvigy@clark.wa.gov>  
**Cc:** Lindsey Shafar <Lindsey.Shafar@clark.wa.gov>; Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Christine Cook <Christine.Cook@clark.wa.gov>  
**Subject:** Project Update: Shoreline Master Program Periodic Review

Greetings Councilor Medvigy,

I am writing today regarding the Shoreline Master Program Periodic Review project. Shortly before the COVID-19 stay at home order went into effect, Community Planning had requested a conversation with Council to provide an update on the Shoreline Master Program (SMP) Periodic Review project. In lieu of an in-person discussion, attached please find a written update on this project and a proposal for next steps.

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Please let Oliver and me know if you have any questions.

Thank you,  
Jenna



**Jenna Kay**  
Planner II  
COMMUNITY PLANNING

564.397.4968



**From:** [Jenna Kay](#)  
**To:** [Brent Davis](#); [Dan Young](#)  
**Cc:** [Oliver Orjiako](#)  
**Subject:** Project Update: Shoreline Master Program Periodic Review  
**Date:** Thursday, May 14, 2020 5:06:04 PM  
**Attachments:** [Project Update May 2020 - Shoreline Master Program.pdf](#)  
[Exhibit A - Comment Summary.pdf](#)  
[Exhibit B - Comments.pdf](#)  
[Exhibit C - Proposed Amendments - May 2020.pdf](#)

---

Hi Dan and Brent,

Just wanted to share the Shoreline Master Program Periodic Review update we shared with Council and the Interim County Manager today as an FYI.

Thanks,  
Jenna

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*Message sent to Council with attached documents:*

Greetings,

I am writing today regarding the Shoreline Master Program Periodic Review project. Shortly before the COVID-19 stay at home order went into effect, Community Planning had requested a conversation with Council to provide an update on the Shoreline Master Program (SMP) Periodic Review project. In lieu of an in-person discussion, attached please find a written update on this project and a proposal for next steps.

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Please let Oliver and me know if you have any questions.

Thank you,  
Jenna



**Jenna Kay**  
Planner II  
COMMUNITY PLANNING

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