Exhibit 1

SHORELINE MASTER PROGRAM PERIODIC REVIEW

PROPOSED CHANGES

DRAFT: PLANNING COMMISION & DEPT. OF ECOLOGY HEARING

AUG 2020

Proposed Amendments – Shoreline Master Program Periodic Review

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 ~~strikethrough~~. Additions are <u>underlined</u>. 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.

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Comprehensive Plan Amendments

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

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

Integration with other plans

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

- Highway 99 Subarea Plan, December 16, 2008
- Agriculture Preservation Strategies Report, March 2009
- Mill Creek Subarea Plan, June 23, 2009
- Clark County Bicycle and Pedestrian Plan, December 2010
- Clark County Economic Development Plan Final Edition, September 2011
- ~~Shoreline Master Program, November 2011; amended December 2014~~
- Coordinated Water System Plan, January 2012
- Aging Readiness Plan, February 12, 2012
- Growing Healthier Planning for a Healthier Clark County Report, June 5, 2012
- Clark County Conservation Areas Acquisition Plan, March 2014
- Clark County Community Development Block Grant Program and Home Investment Partnerships Program Consolidated Housing and Community Development Plan 2015-2019, July 2015
- Clark County Comprehensive Parks, Recreation and Open Space Plan, September 2015

2. A copy of the Shoreline Designations map is added as Figure 36 to Appendix B Figures.
3. The Shoreline Master Program 2020 Periodic Review ordinance and adoption date are added to Appendix H Clark County Legislative History.
4. Chapter 13 Shoreline Master Program is hereby amended to read as follows:

Introduction

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

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

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

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

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

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

General Shoreline Goals

The general goals of this Program are to:

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

~~Shorelines of~~ Shorelines of Statewide Significance

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

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

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Critical Areas Code Amendments

<u>Section 2. Amendatory.</u> Sec. 1 (Exh. A) of Ord. 2003-11-01 and codified as Clark County Code (CCC) 40.440.010, and as most recently amended by Sec. 16 of Ord. 2019-05-07, are each hereby amended to read as follows:

40.440.010 Introduction

A. Purpose.

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

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

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

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

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

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

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

c. That agricultural lands can provide habitat;

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

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

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

(Amended: Ord. 2019-05-07)

B. Applicability.

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

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

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

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

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

4. Exempt Activities.

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

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

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

(Amended: Ord. 2012-07-16)

C. Habitat Areas Covered by This Chapter.

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

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

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

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

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

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

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

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

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

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

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

b. ~~1997~~The most current Washington Department of Fish and Wildlife ~~M~~management ~~R~~recommendations for ~~Washington's~~ Priority Habitats and Species;

c. The list of best available science references as maintained by the responsible official; and

d. Associated GIS data files maintained by Clark County Department of Assessment and GIS.

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

3. Determining Site-Specific Applicability.

a. Determination of habitat categories applicable to a site shall be based on the definitions and Best Available Science that were current at the time the application under review is vested pursuant to Chapter 40.510.

b. In the event of inconsistencies, official habitat area definitions shall prevail over countywide maps in determining applicability of this chapter. The county shall follow the recommendations of WDFW in the interpretation of site-specific conditions as they relate to the definition of priority habitat and species.

D. Activities Reviewed Under This Chapter.

This chapter applies to activities within designated priority and locally important habitat areas as described in 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

Table 40.440.010-1. Exempt and Reviewed Activities		
Proposal	**Is a clearing review required?**	**Are any additional fees or review timelines required?**
		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

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Table 40.440.010-1. Exempt and Reviewed Activities		
Proposal	**Is a clearing review required?**	**Are any additional fees or review timelines required?**
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

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Table 40.440.010-1. Exempt and Reviewed Activities		
Proposal	**Is a clearing review required?**	**Are any additional fees or review timelines required?**
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

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

(Amended: Ord. 2019-03-05)

C. Wetland Determination.

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

(Amended: Ord. 2019-03-05)

D. Wetland Delineation.

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

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

a. USGS quadrangle map with site clearly defined;

b. Topographic map of area;

c. National wetland inventory map showing site;

d. Soil Conservation Service soils map showing site;

e. Site map, at a scale no smaller than one (1) inch equals one hundred (100) feet (1" = 100', a scaling ratio of 1:1,200), if practical, showing the following information:

(1) Wetland boundaries,

(2) Sample sites and sample transects,

(3) Boundaries of forested areas,

(4) Boundaries of wetland classes (Cowardin) if multiple classes exist;

f. Discussion of methods and results with special emphasis on technique used from the Wetlands Delineation Manual;

g. Acreage of each wetland on the site ~~based on the survey if the acreage will impact the buffer size determination or the project design~~;

h. All completed field data sheets per the Wetlands Delineation Manual, numbered to correspond to each sample site.

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

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with Section 6.110A.020(2)(B)(III). Additionally, the responsible official shall forward the digital file to the 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

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

(Amended: Ord. 2019-03-05)

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

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

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

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.

Table 40.450.030-4. Land Use Intensity Matrix[1]

	Parks and Recreation	Streets and Roads	Stormwater Facilities	Utilities	Commercial/Industrial	Residential[2]
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

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

[2] Measured as density averaged over a site, not individual lot sizes.

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

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

b. The responsible official determines a tract is impractical.

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.

4. Adjusted Buffer Width.

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.

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:

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

(2) 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 buffers designated in Table 40.450.030-3 if all of the following criteria are met:

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

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

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

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

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

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

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

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

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

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

Wetland and Buffer –

Please retain in a natural state

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

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

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

1. Residential building permits and home businesses;

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2. Land divisions in the rural area:

a. Development envelopes shall be required for a fully complete preliminary application;

b. Development envelopes shall be shown on the final plat; and

c. A note referencing the development envelopes shall be placed on the final plat.

3. Site plan reviews where the responsible official determines that all development is clearly separated from the wetlands and wetland buffers:

a. Development envelopes shall be required for a fully complete preliminary application;

b. Development envelopes shall be shown on the final site plan; and

c. A note referencing the development envelopes shall be placed on the final site plan.

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

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

40.450.040 Wetland Permits

A. General.

1. A wetland permit is required for any development activity that is not exempt pursuant to Section 40.450.010(C) within wetlands and wetland buffers.

2. Shoreline Master Program. Within shoreline jurisdiction, development may be allowed for those uses in the Shoreline Master Program either through a statement of exemption pursuant to Section 40.460.230(C) or through an application for a shoreline permit (substantial development, conditional use, or variance) to include a wetlands review pursuant to Section 40.460.530(G) and Sections 40.450.020, 40.450.030, and 40.450.040.

3. Standards for wetland permits are provided in Sections 40.450.040(B), (C) and (D).

4. All wetland permits require approval of a preliminary and final enhancement/mitigation plan in accordance with the provisions of Section 40.450.040(E) unless the preliminary enhancement/mitigation plan requirement is waived under the provisions of Section 40.450.040(E)(2).

5. Wetland permit application, processing, preliminary approval, and final approval procedures are set out in Sections 40.450.040(F) through (I).

6. Provisions for programmatic permits are provided by Section 40.450.040(K).

7. Provisions for emergency wetland permits are provided by Section 40.450.040(L).

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

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

1. The proposed activity shall not cause significant degradation of wetland functions;

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2. The proposed activity shall comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, Chapter 40.386, Stormwater and Erosion Control, and on-site wastewater disposal.

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

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

1. Reduced Width Based on Modification of Land Use Intensity. The required buffer width shall be decreased if design techniques are used that reduce the land use intensity category delineated in Table 40.450.030-4. Eligible design measures include the following:

a. General Site Design Measures. High intensity buffers may be reduced to moderate intensity buffers if all of the following mitigation measures are applied to the greatest extent practicable:

(1) Buffer Enhancement. Improve the function of the buffer such that buffer areas with reduced function can function properly. This could include the removal and management of noxious weeds and/or invasive vegetation or specific measures to improve hydrologic or habitat function.

(2) Shielding of High Intensity Uses.

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

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

(c) Pets and Human Disturbance. Use privacy fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the eco-region; place wetland and its buffer in a separate tract.

(3) Surface Water Management.

(a) Existing Runoff. Retrofit stormwater detention and treatment for roads and existing development to the extent determined proportional by the responsible official, and disperse direct discharge of channelized flows from lawns and landscaping;

(b) Change in Water Regime. Infiltrate and/or disperse stormwater runoff from impervious surfaces and drainage from lawns and landscaping treated in accordance with Chapter 40.386 into the buffer at multiple locations.

b. Low Impact Development Design. High intensity buffers may be reduced to moderate or low intensity buffers under the following circumstances:

(1) Limiting stormwater runoff volumes to avoid impacts to receiving waters and wetlands adjacent to the site.

(a) Reduction to moderate intensity buffers, by:

(i) Meeting the standards for full dispersion in Chapter 40.386 over seventy-five percent (75%) of the site; or

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

(iii) Using low impact development BMPs pursuant to Chapter 40.386 to reduce stormwater runoff volume generated from the site to no more than fifty percent (50%) of the runoff volume generated by using standard collection and treatment BMPs.

(b) Reduction to low intensity buffers, by:

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

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

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

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

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

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

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

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

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

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

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

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

4. Stormwater Facilities.

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

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

(1) Removal of trees greater than four (4) inches diameter at four and one-half (4 1/2) feet above the ground or greater than twenty (20) feet in height;

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(2) Disturbance of plant species that are listed as rare, threatened or endangered by the county or any state or federal management agency;

(3) The construction of concrete structures other than manholes, inlets, and outlets that are exposed above the normal water surface elevation of the facility;

(4) The construction of maintenance and access roads;

(5) Slope grading steeper than four to one (4:1) horizontal to vertical above the normal water surface elevation of the stormwater facility;

(6) The construction of pretreatment facilities such as forebays, sediment traps, and pollution control manholes;

(7) The construction of trench drain collection and conveyance facilities;

(8) The placement of fencing; and

(9) The placement of rock and/or riprap, except for the construction of flow spreaders, or the protection of pipe outfalls and overflow spillways; provided, that buffer functions for areas covered in rock and/or riprap are replaced.

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

a. Buffer functions, as they pertain to protection of the adjacent wetland and its functions, are replaced; and

b. Impacts to the buffer and wetland are minimized.

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

a. The activity is temporary and will cease or be completed within three (3) months of the date the activity begins;

b. The activity will not result in a permanent structure in or under the buffer;

c. The activity will not result in a reduction of buffer acreage or function;

d. The activity will not result in a reduction of wetland acreage or function.

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

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

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

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

(1) For Category I and II wetlands, avoiding all impact is not in the public interest or will deny all reasonable economic use of the site;

(2) For Category III and IV wetlands, avoiding all impact will result in a project that is either:

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(a) Inconsistent with the Clark County Comprehensive Growth Management Plan;

(b) Inconsistent with county-wide critical area conservation goals; or

(c) Not feasible to construct.

b. Minimize impacts to wetlands if complete avoidance is infeasible. The responsible official must find that the applicant has limited the degree or magnitude of impact to wetlands by using appropriate technology and by taking affirmative steps to reduce impact through efforts such as:

(1) Seeking easements or agreements with adjacent land owners or project proponents where appropriate;

(2) Seeking reasonable relief that may be provided through application of other county zoning and design standards;

(3) Site design; and

(4) Construction techniques and timing.

c. Compensate for wetland impacts that will occur, after efforts to minimize have been exhausted. The responsible official must find that:

(1) The affected wetlands are restored to the conditions existing at the time of the initiation of the project;

(2) Unavoidable impacts are mitigated in accordance with this subsection; and

(3) The required mitigation is monitored and remedial action is taken when necessary to ensure the success of mitigation activities.

2. Location of Wetland Mitigation. Wetland mitigation for unavoidable impacts shall be located using the following prioritization:

a. On-site. Locate mitigation according to the following priority:

(1) Within or adjacent to the same wetland as the impact;

(2) Within or adjacent to a different wetland on the same site;

b Off-site. Locate mitigation within the same watershed, as shown on Figure 40.450.040-1, or use an established wetland mitigation bank; the service area determined by the mitigation bank review team and identified in the executed mitigation bank instrument;

c. In-kind. Locate or create wetlands with similar landscape position and the same hydro-geomorphic (HGM) classification based on a reference to a naturally occurring wetland system; and

d. Out-of-kind. Mitigate in a different landscape position and/or HGM classification based on a reference to a naturally occurring wetland system.

3. Types of Wetland Mitigation. The various types of wetland mitigation allowed are listed below in the general order of preference.

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

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

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

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

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

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Figure 40.450.040-1

Clark County Watershed Map

(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

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

4. Wetland Mitigation Ratios.

a. Standard Wetland Mitigation Ratios. The following mitigation ratios for each of the mitigation 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

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

(1) The wetland area being preserved is a Category I or II wetland or is within a WDFW priority habitat or species area;

(2) The preservation area is at least one (1) acre in size;

(3) The preservation area is protected in perpetuity by a covenant or easement that gives the county clear regulatory and enforcement authority to protect existing wetland and wetland buffer functions with standards that exceed the protection standards of this chapter;

(4) The preservation area is not an existing or proposed wetland mitigation site; and

(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

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

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(1) Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions have a very high likelihood of success based on prior experience;

(2) Documentation by a qualified wetland specialist demonstrates that the proposed actions for compensation will provide functions and values that are significantly greater than the wetland being affected;

(3) The proposed actions for compensation are conducted in advance of the impact and are shown to be successful;

(4) In wetlands where several HGM classifications are found within one (1) delineated wetland boundary, the areas of the wetlands within each HGM classification can be scored and rated separately and the mitigation ratios adjusted accordingly, if all the following apply:

(a) The wetland does not meet any of the criteria for wetlands with "Special Characteristics," as defined in the rating system;

(b) The rating and score for the entire wetland is provided as well as the scores and ratings for each area with a different HGM classification;

(c) Impacts to the wetland are all within an area that has a different HGM classification from the one used to establish the initial category; and

(d) The proponents provide adequate hydrologic and geomorphic data to establish that the boundary between HGM classifications lies at least fifty (50) feet outside of the footprint of the impacts.

5. Indirect Wetland Impacts Due to Loss of Buffer Function or Stormwater Discharges. Wetland mitigation shall be required in accordance with the wetland mitigation standards in this subsection for the following indirect wetland impacts:

a. Buffer loss resulting from wetland fills permitted under this section;

b. Reduction of wetland buffers beyond the maximum reduction allowed under Section 40.450.040(C)(2); provided, that such reductions are limited as follows:

(1) Road and utility crossings in the wetland buffer approved in accordance with Section 40.450.040(C)(5); and

(2) The total indirect wetland impact from buffer reductions is less than one-quarter (1/4) acre.

c. Unavoidable loss of wetland function due to stormwater discharges that do not meet the wetland protections standards in Chapter 40.386.

6. Wetland Buffers Required for Mitigation. Wetland mitigation shall, at a minimum, be protected by the water quality function wetland buffers required in Table 40.450.030-2:

a. If the wetland mitigation will provide habitat functions that require larger buffers per Table 40.450.030-2, wetland mitigation credit shall be reduced to account for loss of wetland buffer area and function if the required buffers are not provided;

b. Reductions to the required buffers may be applied in accordance with Sections 40.450.040(C) and (D)(5); and

c~~b~~. All wetland buffers shall be included within the mitigation site and subject to the conservation covenant required under Section 40.450.030(F)(3).

7. Alternate Wetland Mitigation.

a. Wetland Mitigation Banking.

(1) Construction, enhancement or restoration of wetlands to use as mitigation for future wetland development impacts is permitted subject to the following:

(a) A wetland permit shall be obtained prior to any mitigation banking. If a wetland permit is not obtained prior to mitigation bank construction, mitigation credit shall not be awarded. On projects proposing off-site wetland banking in addition to required wetland mitigation, a separate wetland permit shall be required for each activity. The performance and maintenance bond requirements of Sections 40.450.040(H)(3)(c) and (d) shall not be applicable, provided there are no requests for mitigation credit prior to the county determining the mitigation banking is successful. If mitigation banking is not fully functioning, as defined in the wetland permit, at the time mitigation credit is requested, Sections 40.450.040(H)(3)(c) and (d) shall apply;

(b) Federal and state wetland regulations, if applicable, may supersede county requirements;

(2) The mitigation credit allowed will be determined by the county, based on the wetland category, condition and mitigation ratios as specified in Section 40.450.040(D)(4). Prior to granting mitigation banking credit, all wetland mitigation banking areas must comply with Sections 40.450.030(E)(4)(b) and (c), and, if applicable, Section 40.450.040(H)(3);

(3) On projects proposing off-site wetland banking in addition to required wetland mitigation, a separate permit fee will be required for each activity;

(4) Purchase of banked wetland credits is permitted to mitigate for wetland impacts in the same watershed provided the applicant has minimized wetland impacts, where reasonably possible, and the following requirements are met:

(a) Documentation, in a form approved by the Prosecuting Attorney, adequate to verify the transfer of wetland credit shall be submitted, and

(b) A plat note along with information on the title shall be recorded in a form approved by the Prosecuting Attorney as adequate to give notice of the requirements of this section being met by the purchase of banked wetland credits;

b. Cumulative Effects Fund. The county may accept payment of a voluntary contribution to an established cumulative effects fund for off-site watershed-scale habitat and wetland conservation in lieu of wetland mitigation of unavoidable impacts in the following cases:

(1) Residential building and home business permits where on-site enhancement and/or preservation is not adequate to meet the requirements of Section 40.450.040(D)(4);

(2) Approved reasonable use exceptions where sufficient on-site wetland and wetland buffer mitigation is not practical;

(3) Small impacts affecting less than one-tenth (1/10) acre of wetland where on-site enhancement and/or preservation is not adequate to meet the requirements of Section 40.450.040(D)(4); or

(4) As an additional mitigation measure when all other mitigation options have been applied to the greatest extent practicable.

8. Stormwater Facilities. Stormwater facilities are allowed in wetlands with habitat scores less than six (6) on the rating form, in compliance with the following requirements:

a. Stormwater detention and retention necessary to maintain wetland hydrology are authorized; provided, that the responsible official determines that wetland functions will not be degraded; and

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

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

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

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

c. Impacts to the wetland are minimized.

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

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

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

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

E. Mitigation Plans.

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

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

a. Baseline information shall include:

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

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

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

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

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

(6) A topographic map of the site; and

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

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

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(b) The responsible official may accept or request an alternate functional assessment methodology when the applicant's proposal requires detailed consideration of specific wetland functions;

(c) Alternate functional assessment methodologies used shall be scientifically valid and reliable.

b. The contents of the conceptual mitigation plan shall include:

(1) Goals and objectives of the proposed project;

(2) A wetland buffer width reduction plan, if width reductions are proposed, that includes:

(a) The land use intensity, per Table 40.450.030-4, of the various elements of the development adjacent to the wetlands;

(b) The wetland buffer width(s) required by Tables 40.450.030-2 and 40.450.030-3;

(c) The proposed buffer width reductions, including documentation that proposed buffer width reductions fully protect the functions of the wetland in compliance with Section 40.450.040(C);

(3) A wetland mitigation plan that includes:

(a) A sequencing analysis for all wetland impacts;

(b) A description of all wetland impacts that require mitigation under this chapter; and

(c) Proposed mitigation measures and mitigation ratios;

(4) Map showing proposed wetland and buffer. This map should include the existing and proposed buffers and all proposed wetland impacts regulated under this chapter;

(5) Site plan;

(6) Discussion and map of plant material to be planted and planting densities;

(7) Preliminary drainage plan identifying location of proposed drainage facilities including detention structures and water quality features (e.g., swales);

(8) Discussion of water sources for all wetlands on the site;

(9) Project schedule;

(10) Discussion of how the completed project will be managed and monitored; and

(11) A discussion of contingency plans in case the project does not meet the goals initially set for the project.

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

a. The approved preliminary mitigation plan and all conditions imposed on that plan. If the preliminary mitigation plan requirement is waived, the final plan shall include the content normally required for the preliminary plan listed in Sections 40.450.040(E)(2)(a), (E)(2)(b)(1), and (E)(2)(b)(2).

b. Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the mitigation project are being met. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

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

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

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

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

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

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

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

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

(e) Measuring sedimentation rates, if applicable; and

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

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

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

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

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

(1) Engineering construction plans;

(2) Final site plan or proposed plat;

(3) Final landscaping plan;

(4) Habitat permit;

(5) WDFW HPA;

(6) USACE Section 404 permit; and

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(7) WDOE Administrative Order or Section 401 certification.

f. Evidence of Financial and Scientific Proficiency. A description of how the mitigation project will be managed during construction and the scientific capability of the designer to successfully implement the proposed project. In addition, a demonstration of the financial capability of the applicant to successfully complete the project and ensure it functions properly at the end of the specific monitoring period.

g. Contingency Plan. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.

F. Wetland Permit – Application.

1. Pre-Permit Consultation. Any person intending to apply for a wetland permit is encouraged, but not required, to meet with the department during the earliest possible stages of project planning in order to discuss wetland impact avoidance, minimization, compensatory mitigation, and the required contents of a mitigation plan before significant commitments have been made to a particular project design. Effort put into pre-permit consultations and planning will help applicants create projects which will be more quickly and easily processed.

2. Applications. Applications for wetland permits shall be made to the department on forms furnished by the department. Unless the responsible official waives one (1) or more of the following information requirements, applications shall include:

a. Wetland delineations and buffer width designations pursuant to Sections 40.450.020 and 40.450.030;

b. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than one (1) inch equals one hundred (100) feet (1″ = 100′, a scaling ratio of 1:1,200) showing the location, width, depth and length of all existing and proposed structures, roads, stormwater facilities, sewage treatment, and installations within the wetland and its buffer;

c. The exact sites and specifications for all development activities proposed within wetlands and wetland buffers, including the amounts and methods;

d. A proposed preliminary mitigation plan meeting the requirements of Section 40.450.040(E). If the preliminary plan requirement has been waived, a final mitigation plan shall be required in its place.

3. Fees. At the time of application, the applicant shall pay a filing fee pursuant to Chapter 6.110A.

(Amended: Ord. 2004-06-11)

G. Wetland Permit – Processing.

1. Procedures. Wetland permit applications shall be processed using the application procedures in Chapter 40.510 unless specifically modified herein:

a. Type I Wetland Permit. The following wetland permits shall be reviewed under the Type I review process described in Section 40.510.010:

(1) Buffer modification only;

(2) Wetland impacts resulting in less than 0.10 acre of direct wetland impact;

(3) Wetland permits associated with residential building permits, regardless of impact;

(4) Wetland permits associated with home business permits, regardless of impact;

(5) Re-authorization of approved wetland permits;

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(6) Programmatic wetland permits that are SEPA exempt.

b. Type II Wetland Permit. The following wetland permits shall be reviewed under the Type II review process described in Section 40.510.020:

(1) Wetland impacts resulting in 0.10 acre, or more, of direct wetland impact, other than residential building and home business permits;

(2) Programmatic wetland permits that require SEPA review;

(3) Programmatic permit applications subject to Type II review shall not be subject to the distribution requirements of Section 40.510.020(E)(2)(a)(3). Within fourteen (14) calendar days after the date an application is accepted as fully complete, the county shall publish in a newspaper of general circulation a summary of the notice, including the date, time and manner of making comments, the nature and location of the proposal and instructions for obtaining further information.

c. Type III Wetland Permit. Reasonable use exceptions, other than residential and home business permits, made under Section 40.450.010(B)(4), shall be reviewed under the Type III review process described in Section 40.510.030.

d. Modifications to conservation covenants required under Section 40.450.030(F)(3) shall be consistent with the standards of this chapter and will be processed subject to the following:

(1) Modification to a covenant approved by a Type I decision shall be subject to a Type I review process.

(2) Modification to a covenant approved by a Type II decision shall be subject to a Type I review process if the responsible official finds the requested change:

(a) Does not increase the potential adverse impact to wetlands or buffers; and

(b) Does not involve an issue of broad public interest, based on the record of the decision; and

(c) Does not require further SEPA review.

(3) Modification to a covenant approved by a Type II decision shall be subject to a Type II review process if it is not subject to Type I review.

(4) Modification to a covenant approved by a Type III decision shall be subject to a Type I review process if the responsible official finds the modification:

(a) Provides an increased benefit to wetlands or wetland buffers; and

(b) Does not involve an issue of broad public interest, based on the record of the decision; and

(c) Does not require further SEPA review.

(5) Modification to a covenant approved by a Type III decision shall be subject to a Type II review process if the responsible official finds the requested change in the decision:

(a) Does not increase the potential adverse impact to wetlands or wetland buffers allowed by the covenant or SEPA determination; and

(b) Does not involve an issue of broad public interest, based on the record of the decision.

(6) Modification to a covenant approved by a Type III decision shall be subject to a Type III review process if it is not subject to Type I or II review.

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

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

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

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

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

H. Wetland Permit – Preliminary Approval.

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

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

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

a. The approved preliminary mitigation plan;

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

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

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

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

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

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

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

I. Wetland Permit – Final Approval.

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

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

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b. Installation and approval of field markings as required by Section 40.450.030(F)(2);

c. The recording of a conservation covenant as required by Section 40.450.030(F)(3);

d. The posting of a performance assurance as required by Section 40.450.040(H)(3);

2. Duration.

a. Wetland or Wetland Buffer Impacts. Final approval shall be valid for the period specified in the final wetland permit, or the associated development approval. Extension of the permit shall only be granted in conjunction with extension of an associated permit;

b. Compensatory Mitigation. The compensatory mitigation requirements of the permit shall remain in effect for the duration of the monitoring and maintenance period specified in the approval.

(Amended: Ord. 2007-11-13)

J. Wetland Permit Financial Assurances.

1. Types of Financial Assurances. The responsible official shall accept the following forms of financial assurances:

a. An escrow account secured with an agreement approved by the responsible official;

b. A bond provided by a surety for estimates that exceed five thousand dollars ($5,000);

c. A deposit account with a financial institution secured with an agreement approved by the responsible official;

d. A letter of commitment from a public agency; and

e. Other forms of financial assurance determined to be acceptable by the responsible official.

2. Financial Assurance Estimates. The applicant shall submit itemized cost estimates for the required financial assurances. The responsible official may adjust the estimates to ensure that adequate funds will be available to complete the specified compensatory mitigation upon forfeiture. In addition the cost estimates must include a contingency as follows:

a. Estimates for bonds shall be multiplied by one hundred fifty percent (150%);

b. All other estimates shall be multiplied by one hundred ten percent (110%).

3. Waiver of Financial Assurances. For Type I wetland permits, the responsible official may waive the requirement for one or both financial assurances if the applicant can demonstrate to the responsible official's satisfaction that posting the required financial assurances will constitute a significant hardship.

4. Acceptance of Work and Release of Financial Assurances.

a. Release of Performance Assurance. Upon request, the responsible official shall release the performance assurance when the following conditions are met:

(1) Completion of construction and planting specified in the approved compensatory mitigation plan;

(2) Submittal of an as-built report documenting changes to the compensatory mitigation plan that occurred during construction;

(3) Field inspection of the completed site(s); and

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(4) Provision of the required maintenance assurance.

b. Release of Maintenance Assurance. Upon request, the responsible official shall release the maintenance assurance when the following conditions are met:

(1) Completion of the specified monitoring and maintenance program;

(2) Submittal of a final monitoring report demonstrating that the goals and objectives of the compensatory mitigation plan have been met as demonstrated through:

(a) Compliance with the specific performance standards established in the wetland permit; or

(b) Functional assessment of the mitigation site(s); and

(c) Field inspection of the mitigations site(s).

c. Incremental Release of Financial Assurances. The responsible official may release financial assurances incrementally only if specific milestones and associated costs are specified in the compensatory mitigation plan and the document legally establishing the financial assurance.

5. Transfer of Financial Assurances. The responsible official may release financial assurances at any time if equivalent assurances are provided by the original or a new permit holder.

6. Forfeiture. If the permit holder fails to perform or maintain compensatory mitigation in accordance with the approved wetland permit, the responsible official may declare the corresponding financial assurance forfeit pursuant to the following process:

a. The responsible official shall, by registered mail, notify the wetland permit holder/agent that is signatory to the financial assurance and the financial assurance holder of nonperformance with the terms of the approved wetlands permit;

b. The written notification shall cite a reasonable time for the permit holder, or legal successor, to comply with provisions of the permit and state the county's intent to forfeit the financial assurance should the required work not be completed in a timely manner;

c. Should the required work not be completed timely, the county shall declare the assurance forfeit;

d. Upon forfeiture of a financial assurance, the proceeds thereof shall be utilized either to correct the deficiencies which resulted in forfeiture or, if such correction is deemed by the responsible official to be impractical or ineffective, to enhance other wetlands in the same watershed or contribute to an established cumulative effects fund for watershed scale habitat and wetland conservation.

K. Programmatic Permits for Routine Maintenance and Operations of Utilities and Public Facilities. The responsible official may issue programmatic wetland permits for routine maintenance and operations of utilities and public facilities within wetlands and wetland buffers, and for wetland enhancement programs. It is not the intent of the programmatic permit process to deny or unreasonably restrict a public agency or utility's ability to provide services to the public. Programmatic permits only authorize activities specifically identified in and limited to the permit approval and conditions.

1. Application Submittal Requirements. Unless waived by the responsible official with specific findings in the approval document in accordance with Section 40.450.040(K)(2), applications for programmatic wetland permits shall include a programmatic permit plan that includes the following:

a. A discussion of the purpose and need for the permit;

b. A description of the scope of activities in wetlands and wetland buffers;

c. Identification of the geographical area to be covered by the permit;

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d. The range of functions and values of wetlands potentially affected by the permit;

e. Specific measures and performance standards to be taken to avoid, minimize and mitigate impacts on wetland functions and values including:

(1) Procedures for identification of wetlands and wetland buffers;

(2) Maintenance practices proposed to be used;

(3) Restoration measures;

(4) Mitigation measures and assurances;

(5) Annual reporting to the responsible official that documents compliance with permit conditions and proposes any additional measures or adjustments to the approved programmatic permit plan;

(6) Reporting to the responsible official any specific wetland or wetland buffer degradations resulting from maintenance activities when the degradation occurs or within a timely manner;

(7) Responding to any department requests for information about specific work or projects;

(8) Procedures for reporting and/or addressing activities outside the scope of the approved permit; and

(9) Training all employees, contractors and individuals under the supervision of the applicant who are involved in permitted work.

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

3. Approval Conditions. Approval of a programmatic wetland permit shall incorporate at least the following as conditions:

a. The approved programmatic permit plan;

b. Annual reporting requirements; and

c. A provision stating that duration of the permit.

4. Duration and Re-authorization.

a. The duration of a programmatic permit is for five (5) years, unless:

(1) An annual performance based re-authorization program is approved within the permit; or

(2) A shorter duration is supported by findings.

b. Requests for re-authorization of a programmatic permit must be received prior to the expiration of the original permit.

(1) Re-authorization is reviewed and approved through the process described in Section 40.450.040(K)(1).

(2) Permit conditions and performance standards may be modified through the re-authorization process.

(3) The responsible official may temporarily extend the original permit if the review of the re-authorization request extends beyond the expiration date.

L. Wetland Permit – Emergency.

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1. Authorization. Notwithstanding the provisions of this chapter or any other laws to the contrary, the responsible official may issue prospectively or, in the case of imminent threats, retroactively a temporary emergency wetlands permit if:

a. The responsible official determines that an unacceptable threat to life or loss of property will occur if an emergency permit is not granted; and

b. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this act and other applicable laws.

2. Conditions. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this act and shall:

a. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety (90) days; and

b. Require, within this ninety (90) day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the ninety (90) days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

3. Notice. Notice of issuance of an emergency permit shall be published in a newspaper having general circulation in Clark County not later than ten (10) days after issuance of such permit.

4. Termination. The emergency permit may be terminated at any time without process upon a determination by the responsible official that the action was not or is no longer necessary to protect human health or the environment.

M. Revocation. In addition to other remedies provided for elsewhere in this chapter, the responsible official may suspend or revoke wetland permit(s) issued in accordance with this chapter and associated development permits, pursuant to the provisions of Title 32 of the Clark County Code, if the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the permit, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the permit.

N. Enforcement. At such time as a violation of this chapter has been determined, enforcement action shall be commenced in accordance with the enforcement provisions of Title 32 of this code, and may also include the following:

1. Applications for county land use permits on sites that have been cited or issued an administrative notice and order under Title 32 of this code, or have been otherwise documented by the responsible official for activities in violation of this chapter, shall not be processed for a period of six (6) years provided:

a. The county has the authority to apply the permit moratorium to the property; and

b. The county records the permit moratorium;

c. The responsible official may reduce or wave the permit moratorium duration upon approval of a wetland permit under Section 40.450.040.

2. Compensatory mitigation requirements under Sections 40.450.040(C) and (D) may be increased by the responsible official as follows:

a. All or some portion of the wetland or wetland buffer impact cannot be permitted or restored in place; and

b. Compensatory mitigation for the impact is delayed more than one year from the time of the original citation or documentation of the violation.

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(Amended: Ord. 2006-05-27)

Shoreline Master Program Code Amendments

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

40.460.210 Applicability

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

1. Those lands extending two hundred (200) feet in all directions as measured on a horizontal plane from the ordinary high water mark (OHWM);

2. Floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways;

3. The full extent of floodplains; and

4. All wetlands and river deltas associated with the streams and lakes that are subject to the provisions of this Program; the same to be designated as to location by Ecology.

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

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

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

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

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

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

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

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

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

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

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

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Lacamas Creek: from its 20 cfs point (Sec. 35, T3N, R3E) downstream to the Camas city limits.

North Fork Lacamas Creek: from its 20 cfs point (Sec. 35, T3N, R3E) downstream to the confluence with Lacamas Creek.

Matney Creek: from its 20 cfs point (Sec. 15, T2N, R3E) downstream to its confluence with Lacamas Creek.

Fifth Plain Creek: from its 20 cfs point (Sec. 6, T2N, R3E) downstream to its confluence with Lacamas Creek.

Burnt Bridge Creek: those shorelines outside the Vancouver city limits (1) near the intersection of NE St. Johns Blvd. and Highway 500 (Sec. 24, T2N, R1E), and (2) downstream from the I-5 highway crossing (Sec. 15, T2N, R2E).

Salmon Creek: from its 20 cfs point (Sec. 10, T3N, R3E) downstream to the Battle Ground city limits (Sec. 12, T3N, R2E); from the Battle Ground city limits (Sec. 14, T3N, R2E) downstream to its confluence with Lake River.

Rock Creek: from its 20 cfs point (Sec. 33, T4N, R3E) downstream to its confluence with Salmon Creek.

Morgan Creek: from its 20 cfs point (Sec. 13, T3N, R2E) downstream to its confluence with Salmon Creek.

Curtin (Glenwood) Creek: from its 20 cfs point (Sec. 32, T3N, R2E) downstream to its confluence with Salmon Creek.

Mill Creek: from its 20 cfs point (Sec. 7, T3N, R2E) downstream to its confluence with Salmon Creek.

Gee Creek: downstream from the Ridgefield city limits (Sec. 13, T4N, R1W) to its confluence with the Columbia River.

East Fork Lewis River: from the Skamania County line downstream to its confluence with the North Fork Lewis River.

Copper Creek: from the Skamania County line downstream to its confluence with the East Fork Lewis River.

King Creek: from its 20 cfs point (Sec. 26, T4N, R4E) downstream to its confluence with the East Fork Lewis River.

Rock Creek: from its 20 cfs point (Sec. 23, T3N, R4E) downstream to its confluence with the East Fork Lewis River.

Coyote Creek: from its 20 cfs point (Sec. 10, T3N, R4E) downstream to its confluence with Rock Creek.

Cedar Creek: from its 20 cfs point (Sec. 17, T3N, R4E) downstream to its confluence with Rock Creek.

Big Tree Creek: from its 20 cfs point (Sec. 31, T5N, R4E) downstream to its confluence with the East Fork Lewis River.

Yacolt Creek: from its 20 cfs point (Sec. 11, T4N, R3E) downstream to its confluence with Big Tree Creek.

Rock Creek: from its 20 cfs point (Sec. 36, T5N, R2E) downstream to its confluence with the East Fork Lewis River.

Mason Creek: from its 20 cfs point (Sec. 8, T4N, R2E) downstream to its confluence with the East Fork Lewis River.

Lockwood Creek: from its 20 cfs point (Sec. 1, T4N, R1E) downstream to its confluence with the East Fork Lewis River.

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North Fork Lewis River, south side: from the Skamania County line downstream to its confluence with the East Fork Lewis River.

Siouxon Creek: from the Skamania County line downstream to its confluence with the North Fork Lewis River.

North Siouxon Creek: from Skamania County line downstream to its confluence with Siouxon Creek.

Canyon Creek: from the Skamania County line downstream to its confluence with the North Fork Lewis River.

Fly Creek: from its 20 cfs point (Sec. 1, T4N, R4E) downstream to its confluence with Canyon Creek.

Cedar Creek: from its 20 cfs point (Sec. 19, T5N, R4E) downstream to its confluence with the North Fork Lewis River.

Chelatchie Creek: from its 20 cfs point (Sec. 12, T5N, R3E downstream to its confluence with Cedar Creek.

Unnamed Tributary to Chelatchie Creek: from its 20 cfs point (Sec. 10, T5N, R3E) downstream to its confluence with Chelatchie Creek.

Pup Creek: from its 20 cfs point (Sec. 10 T5N, R2E) downstream to its confluence with Cedar Creek.

Lewis River south side: downstream from the confluence of the East Fork and the North Fork to its confluence with the Columbia River.

Lake River: from its origin at Vancouver Lake to its confluence with the Columbia River.

Whipple Creek: from its 20 cfs point (Sec. 7, T3N, R1E) downstream to its confluence with Lake River.

C. The following are lakes with shorelines subject to this Program:

Lacamas Lake;

Round Lake;

Vancouver Lake;

Unnamed Lake 02 (west of Vancouver Lake);

Post Office Lake;

Green Lake;

Battle Ground Lake;

Campbell Lake;

Unnamed Lake 03 (south of Canvasback Lake);

Canvasback Lake;

Hathaway Lake;

Lancaster Lake;

Mud Lake;

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Unnamed Lake 01 (south of Horseshoe Lake);

Horseshoe Lake;

Lake Merwin;

Yale Lake;

Carty Lake.

(Amended: Ord. 2014-12-10)

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

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

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

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

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

I. This Program shall apply whether the proposed development or activity is exempt from a shoreline permit or not.

(Added: Ord. 2012-07-16)

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

40.460.220 Shoreline Substantial Development Permit Required

A. General Requirements.

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

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

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

(Amended: Ord. 2018-11-06)

B. Developments Not Subject to the Act.

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

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

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

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

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

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

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

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

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

(Added: Ord. 2018-11-06)

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

40.460.230 Exemptions from a Shoreline Substantial Development Permit

A. General Requirements.

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

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

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

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

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

(Amended: Ord. 2018-11-06)

B. List of Exemptions.

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

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

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

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

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

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

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

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

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

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

~~(~~a~~)~~. T~~t~~he dock is a new dock, and the fair market value of the dock does not exceed ~~ten~~eleven thousand two hundred dollars ($11~~0~~,2~~0~~00) or an adjustment to that figure made by the State Office of Financial Management~~,~~; or

~~(~~b~~)~~. T~~t~~he dock is a replacement dock that is constructed to replace an existing dock and is of equal or lesser square footage than the replaced dock, and the replacement dock has a fair market value that does not exceed twenty-two thousand five hundred ($22~~0~~,5~~0~~00) dollars or an adjustment to that figure made by the State Office of Financial Management.

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

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

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

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

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

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

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

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

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

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

14. Watershed restoration projects as defined in RCW 89.08.460.

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

(1) The project has been approved by WDFW;

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

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

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

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

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

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

C. Statements of Exemption.

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

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

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

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

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

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

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

40.460.250 Nonconforming Uses and Development

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

B. Nonconforming Uses.

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

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

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

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

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

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

7. Legally established floating homes and <u>on-water</u> residences are considered conforming uses, subject to the requirements in Section 40.460.630(K)~~(13)~~.

(Amended: Ord. 2015-12-12)

C. Nonconforming Structures.

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

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

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

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

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

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

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

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

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

(Amended: Ord. 2015-12-12)

D. Nonconforming Lots.

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

(Added: Ord. 2012-07-16)

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

40.460.430 Shoreline Designations

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

Aquatic;

Natural;

Urban Conservancy;

Medium Intensity;

High Intensity;

Rural Conservancy – Residential; and

Rural Conservancy – Resource Lands.

B. Aquatic Shoreline Designation.

1. Purpose.

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

2. Designation Criteria.

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

3. Areas Designated.

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

4. Management Policies.

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

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

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

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

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

(1) Minimize interference with surface navigation;

(2) Consider impacts to public views; and

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

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

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

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

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

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

C. Natural Shoreline Designation.

1. Purpose.

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

2. Designation Criteria.

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

a. The shoreline ecological functions are substantially intact and have a high opportunity for preservation and low opportunity for restoration;

b. The shoreline is generally in public or conservancy ownership or under covenant, easement, or a conservation tax program;

c. The shoreline contains little or no development, or is planned for development that would have minimal adverse impacts to ecological functions or risk to human safety;

d. There are low-intensity agricultural uses, and no active forestry or mining uses;

e. The shoreline has a high potential for low-impact or passive or public recreation and is planned for park or open space uses as part of the comprehensive plan; or

f. The shoreline is considered to represent ecosystems and geologic types that have high scientific and educational value.

3. Areas Designated.

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

4. Management Policies.

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

a. Any use that would substantially degrade shoreline ecological functions or natural character of the shoreline area should not be allowed.

b. Scientific, historical, cultural, educational research uses, and low-impact, passive recreational uses may be allowed; provided, that ecological functions remain intact.

c. Vegetation should remain undisturbed except for removal of noxious vegetation and invasive species. Proposed subdivision or lot line adjustments, new development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed.

d. Uses that would deplete physical or biological resources or impair views to or from the shoreline over time should be prohibited.

e. Only physical alterations that serve to protect a significant or unique physical, biological or visual shoreline feature that might otherwise be degraded or destroyed, or those alterations that are the minimum necessary to support a permitted use, should be allowed.

f. Only the following types of signs should be considered for location in the shorelines: interpretive, directional, navigational, regulatory, and public safety.

D. Urban Conservancy Shoreline Designation.

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1. Purpose.

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

2. Designation Criteria.

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

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

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

c. The shoreline has open space or critical areas that should not be more intensively developed;

d. The shoreline is not highly developed and is likely in recreational use. The shoreline has the potential for development that is compatible with ecological restoration. The shoreline is planned for a park, as open space, or for a Master Planned Resort; or

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

3. Areas Designated.

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

4. Management Policies.

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

a. Uses that preserve the natural character of the area or promote preservation of open space or critical areas either directly or over the long term should be the primary allowed uses. Uses that result in restoration of shoreline ecological functions should be allowed if the use is otherwise compatible with the purpose of the Urban Conservancy shoreline designation and the setting.

b. Single-family residential development shall ensure no net loss of shoreline ecological functions and preserve the existing character of the shoreline consistent with the purpose of this designation.

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

d. Public access and public recreation objectives should be implemented whenever feasible and when significant ecological impacts can be mitigated.

e. Thinning or removal of vegetation should be limited to that necessary to:

(1) Remove noxious vegetation and invasive species;

(2) Provide physical or visual access to the shoreline; or

(3) Maintain or enhance an existing use consistent with critical areas protection and maintenance or enhancement of shoreline ecological functions.

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

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

E. Medium Intensity Shoreline Designation.

1. Purpose.

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

2. Designation Criteria.

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

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

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

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

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

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

3. Areas Designated.

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

4. Management Policies.

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

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

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

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

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

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

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

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

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

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

(Amended: Ord. 2014-08-10)

F. High Intensity Shoreline Designation.

1. Purpose.

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

2. Designation Criteria.

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

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

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

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

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

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

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

3. Areas Designated.

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

4. Management Policies.

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

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

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

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

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

(Amended: Ord. 2014-08-10)

G. Rural Conservancy – Residential Shoreline Designation.

1. Purpose.

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

2. Designation Criteria.

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

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

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

c. The shoreline is not highly developed and most development is low-density residential;

d. The shoreline is planned or platted Rural Center, Rural, or Master Planned Resort;

e. The shoreline has moderate to high potential for public, water-oriented recreation where ecological functions can be maintained or restored; or

f. The shoreline has high scientific or educational value or unique historic or cultural resources value.

3. Areas Designated.

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

4. Management Policies.

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

a. Uses in the Rural Conservancy – Residential shoreline designation should be limited to those that sustain the shoreline area's physical and biological resources and do not substantially degrade shoreline ecological functions or the rural or natural character of the shoreline area.

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

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

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

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

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

H. Rural Conservancy – Resource Lands Shoreline Designation.

1. Purpose.

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

2. Designation Criteria.

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

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

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

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

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

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

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

3. Areas Designated.

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

4. Management Policies.

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

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

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

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

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

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

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

(Added: Ord. 2012-07-16)

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

40.460.440 Official Shoreline Map

A. Map Established.

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

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

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

B. File Copies.

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

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[1]/Rural[2] 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

[1]Urban = City or Urban Growth Area

[2]Rural = Unincorporated Clark County outside Urban Growth Areas

(Added: Ord. 2012-07-16)

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Section 11. Amendatory. Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.510, are each hereby amended to read as follows:

40.460.510 General Shoreline Use and Development Regulations

A. Shoreline uses and developments that are water-dependent shall be given priority.

B. Shoreline uses and developments shall fully mitigate for impacts and shall not cause impacts that require remedial action or loss of shoreline ecological functions on the subject property or other properties.

C. Shoreline uses and developments shall be located and designed in a manner such that shoreline stabilization is not necessary at the time of development and will not be necessary in the future for the subject property or other nearby shoreline properties unless it can be demonstrated that stabilization is the only alternative that protects public safety and existing primary structures.

D. Non-water-oriented uses shall not adversely impact or displace water-oriented shoreline uses.

E. Single-family residential uses shall be allowed on all shorelines not subject to a preference for commercial or industrial water-dependent uses, and shall be located, designed and used in accordance with applicable policies and regulations of this Program. However, single-family residences are prohibited in the Aquatic and Natural shoreline designations.

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

1. Minimize interference with surface navigation;

2. Consider impacts to public views; and

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

G. Hazardous materials shall be disposed of and other steps be taken to protect the ecological integrity of the shoreline area in accordance with the other policies and regulations of this Program as amended and all other applicable federal, state, and local statutes, regulations, codes, and ordinances.

H. In-water work shall be scheduled to protect biological productivity (including but not limited to fish runs, spawning, and benthic productivity). In-water work shall not occur in areas used for commercial fishing during a fishing season unless specifically addressed and mitigated for in the permit.

I. The effect of proposed in-stream structures on bank margin habitat, channel migration, and floodplain processes should be evaluated during permit review.

J. Previous approvals of master plans for projects in shoreline jurisdiction should be accepted. New phases of projects for which no master plan has yet been approved, or for which major changes are being proposed, or new projects for which master plans are being submitted shall be subject to the policies and regulations of this Program.

K. Within urban growth areas, ~~Ecology~~Clark County may grant relief from use and development regulations of this Program, consistent with the criteria and procedures in WAC 173-27-215, when the following apply:

1. A shoreline restoration project identified in the SMP Restoration Plan causes or would cause a landward shift in the OHWM creating a hardship meeting specific criteria in RCW 90.58.580(1)(a);

2. The proposed relief meets specific criteria in RCW 90.58.580(1)(b); and

3. The application for relief is submitted to Ecology in writing requesting approval or disapproval as part of a normal review of a shoreline substantial development permit, conditional use permit, or variance. If the proposal

is not connected to a shoreline permit review, the county may provide a copy of a complete application to Ecology along with the applicant's request for relief pursuant to RCW 90.58.580(1)(c).

(Added: Ord. 2012-07-16)

Section 12. Amendatory. Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.530, and as most recently amended by Sec. 7 of Ord. 2018-11-06, are each hereby amended to read as follows:

40.460.530 Critical Areas Protection

A. General Provisions.

1. Critical areas as defined in Chapters 40.410 through 40.450 which are located within the shoreline jurisdiction are protected under this section.

2. Any allowed use, development, or activity proposed on a parcel with a critical area located in the shoreline jurisdiction shall be regulated under the provisions of this Program.

3. Any allowed use, development, or activity meeting the definition of a development exempt from the shoreline substantial development permit process outlined in WAC 173-27-040 and Section 40.460.230 shall be consistent with the policies and provisions of this Program for critical areas protection.

4. Provisions of the critical areas regulations that are not consistent with the Act and supporting WAC chapters shall not apply in shoreline jurisdiction.

5. Habitat that cannot be replaced or restored within twenty (20) years shall be preserved.

6. Where construction of a single-family residence is proposed, this activity is considered exempt from obtaining a shoreline substantial development permit when the construction is located landward of the ordinary high water mark and does not include placement of fill in wetlands. Construction of single-family residences requiring fill in wetlands must obtain a shoreline substantial development permit in addition to other shoreline approvals as applicable.

7. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with this Program and this title.

8. Unless otherwise stated, critical area buffers within the shoreline jurisdiction shall be protected and/or enhanced in accordance with this Program and this title.

9. Shoreline uses and developments and their associated structures and equipment shall be located, designed and operated using best management practices to protect critical areas.

10. The applicant shall demonstrate all reasonable efforts have been taken to avoid and, where unavoidable, minimize and mitigate impacts such that no net loss of critical area and shoreline ecological function is achieved. Mitigation shall occur in the following order of priority:

a. Avoiding the impact altogether by not taking a certain action or parts of an action;

b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

d. Reducing or eliminating the impact over time by preservation and maintenance operations;

e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

11. In addition to compensatory mitigation, unavoidable adverse impacts may be addressed through restoration efforts.

(Amended: Ord. 2018-11-06)

B. Applicable Critical Areas.

For purposes of this Program, the following critical areas will be protected under this Program. An amendment to these regulations will apply in shoreline jurisdiction only if it is adopted as an SMP amendment or update.

1. Critical aquifer recharge areas, defined in Chapter 40.410 ~~as adopted by Ordinance 2005-04-15, dated April 26, 2005; Ordinance 2009-03-02; and Ordinance 2018-01-03~~ most recently amended by Ordinance 2020-03-01, dated March 10, 2020;

2. Flood hazard areas, defined in Chapter 40.420 ~~as adopted by Ordinance 2012-07-15, dated July 24, 2012; and Ordinance 2018-01-03~~ most recently amended by Ordinance 2019-05-07, dated May 21, 2019;

3. Geologic hazard areas, defined in Chapter 40.430 ~~as adopted by Ordinance 2005-04-15, dated April 26, 2005; Ordinance 2006-09-13; Ordinance 2009-01-01; Ordinance 2012-02-03; and Ordinance 2012-07-16~~most recently amended by Ordinance 2019-05-07, dated May 21, 2019;

4. Habitat conservation areas, defined in Chapter 40.440 ~~as adopted by Ordinance 2006-08-03, dated August 1, 2006; Ordinance 2012-07-16; and Ordinance 2014-12-05~~most recently amended by Ordinance 2019-05-07, dated May 21, 2019; and

5. Wetlands, defined in Chapter 40.450 ~~as adopted by Ordinance 2006-05-27, dated May 26, 2006; Ordinance 2012-07-03; Ordinance 2012-07-16; and Ordinance 2014-12-05~~most recently amended by Ordinance 2019-05-07, dated May 21, 2019.

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

C. Critical Aquifer Recharge Areas.

1. General Provisions. This chapter applies to all critical aquifer recharge areas as defined in Section 40.410.010(C) within shoreline jurisdiction. Chapter 40.410, Critical Aquifer Recharge Areas~~, Ordinance 2005-04-15, dated April 26, 2005; Ordinance 2009-03-02; and Ordinance 2018-01-03~~, is hereby adopted in whole as part of this Program pursuant to Section 40.460.530(B)(1).

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

D. Flood Hazard Areas.

1. General Provisions.

a. The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a report entitled "Flood Insurance Study, Clark County, Washington and Incorporated Areas" effective January 19, 2018, and accompanying flood insurance rate maps (FIRMs) and any revisions thereto are hereby adopted by reference and declared to be a part of this Program. The Flood Insurance Study and the FIRMs are on file with the Public Works Department. In addition, Map 27, Potential Channel Migration Zone (CMZ) Areas (Inventory and Characterization Report Volume 1, Lewis and Salmon-Washougal Watersheds and Rural Areas), is incorporated herein by reference.

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b. This chapter applies to all development in identified special flood hazard areas as defined in Section 40.420.010(C) within shoreline jurisdiction, including channel migration zones.

c. A statement of exemption pursuant to Section 40.460.230(C) or an application for a shoreline permit (substantial development, variance, or conditional use) pursuant to Sections 40.460.220, 40.460.260 or 40.460.270 is required, and a flood hazard review will be part of the approvals required under this Program.

d. The degree of flood protection required by this section is considered reasonable for regulatory purposes, and is based upon scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside flood hazard areas, or uses permitted within such areas, will be free from flooding or flood damages. This chapter shall not create liability on the part of Clark County, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

2. Regulated Activities.

a. Within special flood hazard areas, development may be allowed for those uses allowed in this Program pursuant to Section 40.460.530(D)(1)(c).

b. All uses not allowed by this Program are prohibited, except as follows:

(1) In accordance with Chapter 86.16 RCW, repairs, reconstruction, or improvements to a lawfully established structure:

(a) Which do not increase the ground floor area; and

(b) That are not substantial improvements as defined in Section 40.420.010(C).

(2) Floodway encroachments are prohibited unless certification by a licensed professional engineer registered in the state of Washington is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. If it has been adequately demonstrated that the encroachment will not result in increased flood levels, all new non-residential construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Program.

3. Standards.

a. Construction in special flood hazard areas is subject to the standards specified in Section 40.420.020.

b. Structural flood hazard reduction measures are allowed only when necessary to protect existing development.

c. When necessary, in-stream structures shall be located, designed, and maintained in such a manner that minimizes flood potential and the damage affected by flooding.

d. Fills are prohibited in floodplains except where the applicant clearly demonstrates that the geohydraulic characteristics will not be altered in a way that increases flood velocity or risk of damage to life or property, and flood storage capacity will not be reduced (see Section 40.460.560(B)).

e. Fill shall be avoided in critical areas or buffers where possible. Pile or pier supports or other support methods shall be utilized instead of fills whenever feasible, particularly for permitted development in floodways or wetlands.

f. Dikes and levees shall not be placed in the floodway except for current deflectors necessary for protection of bridges and roads.

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g. Removal of beaver dams to control or limit flooding shall be avoided where feasible and allowed only in coordination with WDFW and receipt of all applicable state permits.

(Amended: Ord. 2018-11-06)

E. Geologic Hazard Areas.

1. General Provisions.

a. Geologic hazard areas include steep slope hazard areas, landslide hazard areas, seismic hazard areas, and volcanic hazard areas as defined in Section 40.430.010.

b. Approximate locations of geologic hazard areas are identified on adopted maps which are on file with the County Auditor. Where the maps and definitions of geologic hazard areas conflict, the definitions shall prevail.

c. Where development proposals require a geologic hazard area review under Section 40.430.030, the review will be part of the approvals required under this Program.

2. Regulated Activities.

a. All construction, development, earth movement, clearing, or other site disturbance which 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.

b. Class IV G forest practices (conversions) are regulated under this Program.

3. Standards.

a. 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 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).

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

F. Habitat Conservation Areas.

1. General Provisions.

a. Designated habitat areas are those defined in Section 40.100.070 and those described below:

(1) Water bodies defined as waters of the state (RCW 90.48.020), including waters, bed, and bank;

(2) DNR Classification System Type S, F, Np, and Ns water bodies as defined and mapped based on WAC 222-16-030 (Forest Practices Rules);

(3) Riparian Priority Habitat Areas. Areas extending landward on each side of the stream or water body from the ordinary high water mark to the edge of the one hundred (100) year floodplain, or the following distances, if greater:

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

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

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(c) DNR Type Np waters, one hundred (100) feet; and

(d) DNR Type Ns waters, seventy-five (75) feet;

(4) Other Priority Habitats and Species ~~(PHS)~~ Areas (PHS) as defined in the most current WDFW Priority Habitats and Species List~~. Areas identified by and consistent with WDFW priority habitats and species criteria~~, including areas within one thousand (1,000) feet of individual species points mapped by WDFW~~sites~~. The county shall defer to WDFW in regards to classification, mapping and interpretation of priority habitat species. Determination of habitat categories applicable to a site shall be based on the definitions and Best Available Science that were current at the time the application under review is vested pursuant to Chapter 40.510.

b. In the event of inconsistencies, official habitat area definitions shall prevail over county-wide maps in determining applicability of this section. The county shall follow the recommendations of WDFW in the interpretation of site-specific conditions as they relate to the definition of priority habitat and species.

c. The portion of the riparian priority habitat area nearest to the OHWM shall be set aside for vegetation conservation and protection of the water body within the shoreline jurisdiction.

d. Where development proposals require a habitat review under Section 40.440.030, the review will be part of the approvals required under this Program.

e. The reasonable use provisions in Chapter 40.440 do not apply to habitat conservation areas regulated under this Program.

2. Regulated Activities.

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.

b. Proposed new single-family residential development occurring immediately outside but within three hundred (300) feet of designated priority species habitat polygons or within one hundred (100) feet of designated nonriparian priority habitat polygons shall require consultation with WDFW prior to issuance of a development permit. In such cases, further review under this section is not required unless WDFW finds that there are potential adverse impacts.

c. Agricultural activities within designated riparian habitat areas are subject to the provisions of this section and Section 40.440.040(B).

d. Class IV G forest practices (conversions) are regulated under this Program.

3. Standards.

a. Any alterations within designated habitat areas in shoreline jurisdiction require review and approval prior to clearing or development and prior to issuance of any County permit or statement of exemption.

b. Alterations within the designated habitat areas shall:

(1) Avoid impacts to the habitat conservation areas during project planning and development to the extent possible;

(2) Substantially maintain the level of habitat functions and values as characterized and documented using best available science;

(3) Minimize habitat disruption or alteration beyond the extent required to undertake the proposal; and

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(4) Compensate for impacts to the habitat conservation areas to meet the standard of no net loss of shoreline ecological functions. Mitigation measures and proposals must demonstrate use of best available science.

c. In the event that impacts to habitat areas cannot be avoided, development and approval of a mitigation plan in accordance with the provisions of Sections 40.440.020(A)(3) through (8) is required.

(Amended: Ord. 2015-12-12)

G. Wetlands.

1. General Provisions.

a. Where development proposals require a wetlands review under Section 40.450.030, the review will be part of the approvals required under this Program. Such review is required for any development activity that is within wetlands and wetland buffers subject to this Program, unless specifically authorized by a statement of exemption. Requirements for wetland permit applications are provided in Sections 40.450.040(B), (C), and (D).

b. This section shall not apply to wetlands created from nonwetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, stormwater facilities, farm ponds, landscape amenities and unintentionally created wetlands created as a result of the construction of a public or private road, street, or highway after July 1, 1990; provided, that wetlands created as mitigation shall not be exempt.

c. A wetland determination is required in conjunction with the submittal of a development permit application. The Shoreline Administrator shall determine the probable existence of a wetland on the parcel involved in the development permit application. If wetlands or wetland buffers are found to exist on a parcel, wetland delineation is required.

d. The location of a wetland and its boundary shall be determined through the performance of a field investigation utilizing the methodology contained in the Wetlands Delineation Manual and as specified in Chapter 40.450. If a wetland is located off site and is inaccessible, the best available information shall be used to determine the wetland boundary and category. Methodology is specified in Section 40.450.030(D).

e. All buffers shall be measured horizontally outward from the delineated wetland boundary.

f. Wetland buffer widths shall be determined by the Shoreline Administrator in accordance with the standards in Section 40.450.030~~.~~, except as follows:

(1) The exceptions to urban plat requirements in Section 40.450.030(E)(3) do not apply in the Shoreline Management Area; and

(2) The adjusted buffer width standards in Section 40.450.030(E)(4)(a) shall be limited to a maximum width reduction of 25% from the required buffer at any location within the Shoreline Management Area; and

(3) The adjusted buffer width standards in Sections 40.450.030(E)(4)(b)(2) and 40.450.030(E)(4)(c) do not apply in the Shoreline Management Area.

g. The wetland buffer reductions allowed in Section 40.450.040(C)(1) shall only be approved within the Shoreline Management Area subject to the following:

(1) Reductions for the Low Impact Development Design measures in Section 40.450.040(C)(1)(b) shall not be allowed in the Shoreline Management Area; and

(2) All other applicable land use intensity modification measures listed in Section 40.450.040(C)(1) shall be implemented.

h. All wetland reviews require approval of a preliminary and a final enhancement/mitigation plan in accordance with the provisions of Section 40.450.040(E) unless the preliminary enhancement/mitigation plan requirement is waived under the provisions of Section 40.450.040(E)(2).

i~~h~~. Wetland reviews under this Program shall be according to the application, processing, preliminary approval, and final approval procedures set out in Section 40.450.040(F) through (I) and are part of the approvals required under this Program.

j~~i~~. Provisions for programmatic permits are included in Section 40.450.040(K).

k~~j~~. Provisions for emergency wetland permits are included in Section 40.450.040(L).

l~~k~~. The reasonable use provisions in Chapter 40.450 do not apply to wetlands regulated under this Program.

m. Section 40.460.530(A)(10), regarding avoidance, minimization and mitigation sequence of impacts to critical areas and shoreline ecological functions, applies to wetland buffers.

2. Regulated Activities.

No development or activity in wetlands or wetland buffers subject to this Program shall be allowed unless it is demonstrated that:

a. The proposed development or activity will not result in a net loss of wetland functions to the point of net loss of shoreline ecological function; and

b. The proposed development or activity complies with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, stormwater management, wetlands protection, and on-site wastewater disposal.

3. Standards.

a. Stormwater Facilities.

(1) Stormwater dispersion practices and facilities that comply with the standards of Chapter 40.386 shall be allowed in all wetland buffers where no net loss of shoreline ecological functions can be demonstrated. Stormwater outfalls for dispersion facilities shall comply with the standards in Section 40.460.530(G)(3)(b).

(2) Other stormwater facilities are only allowed in buffers of wetlands with low habitat function (less than ~~five~~six (~~5~~6) points on the habitat section of the rating system form) per Section 40.450.040(C)(4)(b); provided, the facilities shall be built on the outer twenty-five percent (25%) of the buffer and not degrade the existing buffer function and are designed to blend with the natural landscape.

b. Road and utility crossings into and through wetlands and wetland buffers are allowed provided all the following conditions are met:

(1) Buffer functions, as they pertain to protection of the adjacent wetland and its functions, are replaced;

(2) Impacts to the buffer and wetland are first avoided and minimized; and

(3) The activity does not result in a decrease in wetland acreage or classification.

c. Regulated activities not involving stormwater management, road and utility crossings, or a buffer reduction via enhancement are allowed in the buffer if all the following conditions are met:

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(1) The activity is temporary and will cease or be completed within three (3) months of the date the activity begins;

(2) The activity will not result in a permanent structure in the buffer;

(3) The activity will not result in a reduction of buffer acreage or shoreline ecological function; and

(4) The activity will not result in a reduction of wetland acreage or shoreline ecological function.

d. Wetland mitigation for unavoidable impacts shall be required using the following prioritization:

(1) On-Site. Locate mitigation according to the following priority:

(a) Within or adjacent to the same wetland as the impact;

(b) Within or adjacent to a different wetland on the same site;

(2) Off-Site. Locate mitigation within the same watershed, as shown on Section 40.450.040, Figure 40.450.040-1, or use an established wetland mitigation bank; the service area determined by the mitigation bank review team and identified in the executed mitigation bank instrument;

(3) In-Kind. Locate or create wetlands with similar landscape position and the same hydro-geomorphic (HGM) classification based on a reference to a naturally occurring wetland system; and

(4) Out-of-Kind. Mitigate in a different landscape position and/or HGM classification based on a reference to a naturally occurring wetland system.

e. The various types of wetland mitigation allowed are listed below in the general order of preference.

(1) Re-establishment, which is the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

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

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

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

f. The mitigation ratios for each of the mitigation types described in Section 40.460.530(G)(3)(e) are specified in Section 40.450.040(D)(4). Section 40.450.040(D)(4)(c)(4) does not apply to this program.

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g. The Shoreline Administrator has the authority to approve preservation of existing wetlands as wetland mitigation under the following conditions:

(1) The wetland area being preserved is a Category I or II wetland or is within a WDFW priority habitat or species area;

(2) The preservation area is at least one (1) acre in size;

(3) The preservation area is protected in perpetuity by a covenant or easement that gives the county clear regulatory and enforcement authority to protect existing wetland and wetland buffer functions with standards that exceed the protection standards of this chapter; and

(4) The preservation area is not an existing or proposed wetland mitigation site.

h. Wetland mitigation shall be required in accordance with the wetland mitigation standards in this section for the following indirect wetland impacts:

(1) Buffer loss resulting from wetland fills permitted under this section;

(2) Reduction of wetland buffers beyond the maximum reduction allowed under Section 40.460.530(G)(1)(f)~~40.450.040(C)(2)~~; provided, that such reductions are limited as follows:

(a) Road and utility crossings in the wetland buffer approved in accordance with Section 40.450.040(C)(5); and

(b) The total indirect wetland impact from buffer reductions is less than one-quarter (1/4) acre; and

(3) Unavoidable loss of wetland function due to stormwater discharges that do not meet the wetland protection standards in Chapter 40.386.

i. Wetland mitigation shall be protected by the water quality function wetland buffers required in Table 40.450.030-2.

(1) Reductions to the required buffers may be applied in accordance with Sections 40.450.040(C) and (D)(5) within the limitations allowed under Section 40.460.530(G)(1)(f).

(2) All wetland buffers shall be included within the mitigation site and subject to the conservation covenant required under Section 40.450.030(F)(3).

j. Alternate Wetland Mitigation in the form of credits from an approved in-lieu-fee program or a~~i~~s provided in Section 40.450.040(D)(7) which includes:

(1) Wetland mitigation banking; and

(2) Contributions to the county's cumulative effects fund.

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

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Section 13. Amendatory. Sec. 3, Part B of Ord. 2012-07-16 and codified as CCC 40.460.630, and as most recently amended by Sec. 8 of Ord. 2018-11-06, are each hereby amended to read as follows:

40.460.630 Use-Specific Development Regulations

A. Agriculture.

1. Agricultural practices shall prevent erosion of soils and bank materials within shoreline areas and minimize siltation, turbidity, pollution, and other environmental degradation of watercourses and wetlands.

2. Stream banks and water bodies shall be protected from damage due to concentration and overgrazing of livestock by providing the following:

a. Suitable bridges, culverts or ramps for stock crossing;

b. Ample supplies of clean water in tanks on dry land for stock watering; and

c. Fencing or other grazing controls to prevent damage to riparian vegetation, bank compaction or bank erosion.

3. New confinement lots, feeding operations, lot wastes, stockpiles of manure solids, manure lagoons, and storage of noxious chemicals are prohibited.

4. The disposal of farm wastes, chemicals, fertilizers and associated containers and equipment within shoreline jurisdiction is prohibited. Composted organic wastes may be used for fertilization or soil improvement.

5. New uses proposed as part of a conversion of agricultural lands shall comply with the provisions of this title and this Program.

6. For purposes of this Program, the definitions in RCW 90.58.065 and in Section 40.460.800 for agricultural activities, agricultural equipment and facilities, and agricultural products control.

(Amended: Ord. 2018-11-06)

B. Aquaculture.

1. 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.

2. Aquaculture facilities shall only be permitted where impacts to existing uses can be fully mitigated.

3. Fish net-pens shall not occupy more than one (1) surface acre of water, excluding booming and anchoring equipment, and shall not be located within one (1) mile of any other aquaculture facility.

4. No processing of any aquaculture product, except for the sorting or culling of the cultured species and the washing or removal of surface materials or species after harvest, shall occur in or over the water. All other processing activities and facilities shall be located on land.

5. If uncertainty exists regarding potential impacts of a proposed aquaculture activity, baseline and periodic operational monitoring by a county-approved consultant (unless otherwise provided for) may be required, at the applicant's expense, and shall continue until adequate information is available to determine the success of the project and/or the magnitude of any probable significant adverse environmental impacts. Permits for such activities shall include specific performance measures and provisions for adjustment or termination of the project at any time if monitoring indicates significant, adverse environmental impacts that cannot be adequately mitigated.

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6. Aquacultural uses and facilities not involving substantial substrate modification shall be located at least six hundred (600) feet from any wildlife refuge lands; those involving substantial substrate modification shall be located at least fifteen hundred (1,500) feet from such areas. Lesser distances may be authorized without a variance if it is demonstrated by the applicant that the fish and wildlife habitat resources will be protected, and if the change is supported by the reviewing resource agencies. Greater distances may be required if recommended by the reviewing resource agencies.

7. Aquacultural structures and activities that are not water-dependent (including, but not limited to, warehouses for storage of products, parking and loading facilities) shall be located landward of the OHWM and landward of water-dependent portions of the project, and shall minimize detrimental impacts to the shoreline.

8. For aquaculture projects using over-water structures, storage of necessary tools and apparatus waterward of the OHWM shall be limited to containers of not more than three (3) feet in height, as measured from the surface of the raft or dock. Materials which are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the OHWM.

9. No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation. All wastes shall be disposed of in a manner that will ensure strict compliance with all applicable waste disposal standards.

10. When feasible, the cleaning of nets and other apparatus shall be accomplished by air drying, spray washing or hand washing, rather than chemical treatment and application.

11. Prior to use of any agents such as antibiotics, vaccines, growth stimulants, or anti-fouling agents, approval must be obtained from all appropriate state and federal agencies, including but not limited to the U.S. Food and Drug Administration, Ecology, WDFW, and the Department of Agriculture, as required, and proof thereof is submitted to the county.

12. Only nonlethal, nonabusive predator control methods shall be used. Double netting for seals, overhead netting for birds, and three (3) foot high fencing or netting for otters are approved methods of predator control. The use of other nonlethal, nonabusive predator control measures shall be contingent upon receipt of written approval from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required.

13. Activities associated with the use of net-pens for finfish aquaculture shall be consistent with RCW 77.125.050.

(Amended: Ord. 2018-11-06)

C. Boating Uses.

1. General Requirements.

a. All boating uses, development, and facilities shall protect the rights of navigation.

b. Boating facilities shall be sited and designed to ensure no net loss of shoreline ecological functions, and shall meet DNR requirements and other state guidance if located in or over state-owned aquatic lands.

c. Boating facilities shall locate on stable shorelines in areas where:

(1) There is adequate water mixing and flushing;

(2) Such facilities will not adversely affect flood channel capacity or otherwise create a flood hazard;

(3) Water depths are adequate to minimize spoil disposal, filling, beach enhancement, and other channel maintenance activities; and

(4) Water depths are adequate to prevent the structure from grounding out at the lowest low water or else stoppers are installed to prevent grounding out.

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d. Boating facilities shall not be located:

(1) Along braided or meandering river channels where the channel is subject to change in alignment;

(2) On point bars or other accretion beaches;

(3) Where new or maintenance dredging will be required; or

(4) In areas with important bank margin habitat for aquatic species or where wave action caused by boating use would increase bank erosion rates.

e. Boating uses and facilities shall be located far enough from public swimming beaches, fishing and aquaculture harvest areas, and waterways used for commercial navigation to alleviate any adverse impacts, safety concerns and potential use conflicts.

f. In-water work shall be scheduled to protect biological productivity (including but not limited to fish runs, spawning, and benthic productivity). In-water work shall not occur in areas used for commercial fishing during a fishing season unless specifically addressed and mitigated for in the permit.

g. Accessory uses at boating facilities shall be:

(1) Limited to water-oriented uses, including uses that provide physical or visual shoreline access for substantial numbers of the general public; and

(2) Located as far landward as possible while still serving their intended purposes.

h. Parking and storage areas shall be landscaped or screened to provide visual and noise buffering between adjacent dissimilar uses or scenic areas.

i. Boating facilities shall locate where access roads are adequate to handle the traffic generated by the facility and shall be designed so that lawfully existing or planned public shoreline access is not unnecessarily blocked, obstructed nor made dangerous.

j. Joint-use moorage with ten (10) or more berths is regulated under this section as a marina (Section 40.460.630(C)(3)). Joint-use moorage with fewer than ten (10) berths is regulated under this section as a moorage facility (Section 40.460.630(C)(4)).

k. All marinas and public launch facilities shall provide restrooms/hand-sanitizing facilities for boaters' use that are designed, constructed and maintained to be clean, well lit, safe and convenient for public use. One (1) restroom and hand-sanitizing facility shall be provided for every seventy-five (75) marina moorage sites or twenty (20) boat launch parking spaces.

l. Installation of boat waste disposal facilities such as pump-outs and portable dump stations shall be required at all marinas and shall be provided at public boat launches to the extent possible. The locations of such facilities shall be considered on an individual basis in consultation with the Washington Departments of Health, Ecology, Natural Resources, Parks, and WDFW, as necessary.

m. All utilities shall be placed at or below dock levels, or below ground, as appropriate.

n. All signage shall adhere to the standards for signs in this Program and Chapter 40.310, except that a marina or boat launch may have one (1) advertising sign oriented towards the water that does not exceed twenty-four (24) square feet in area and fifteen (15) feet in height above the OHWM.

o. When appropriate, marinas and boat launch facilities shall install public safety signs, to include the locations of fueling facilities, pump-out facilities, and locations for proper waste disposal.

p. Boating facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials used for submerged portions, decking and other

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components that may come in contact with water shall be approved by applicable state agencies for use in water to avoid discharge of pollutants from wave splash, rain or runoff. Wood treated with creosote, copper chromium, arsenic, pentachlorophenol or other similarly toxic materials is prohibited for use in moorage facilities.

q. Boating facilities in waters providing a public drinking water supply shall be constructed of untreated materials, such as untreated wood, approved plastic composites, concrete, or steel.

r. Vessels shall be restricted from extended mooring on waters of the state except as allowed by state regulations; and provided, that a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

2. Boat Launch Facilities.

a. A private boat launch shall be allowed on a parcel or lot only when public boat launches are unavailable within one-half (1/2) mile upstream or downstream of any property line.

b. No more than one (1) private boat launch facility or structure shall be permitted on a single residential parcel or lot.

c. Boat launch and haul-out facilities, such as ramps, marine travel lifts and marine railways, and minor accessory buildings shall be designed and constructed in a manner that minimizes adverse impacts on fluvial processes, biological functions, aquatic and riparian habitats, water quality, navigation and neighboring uses.

d. Boat launch facilities shall be designed and constructed using methods/technology that have been recognized and approved by state and federal resource agencies as the best currently available.

3. Marinas.

a. Marinas shall be designed to:

(1) Provide thorough flushing of all enclosed water areas;

(2) Allow the free movement of aquatic life in shallow water areas; and

(3) Avoid and minimize any interference with geohydraulic processes and disruption of existing shore forms.

b. Open pile or floating breakwater designs shall be used unless it can be demonstrated that riprap or other solid construction would not result in any greater net impacts to shoreline ecological functions, processes, fish passage, or shore features.

c. Wet-moorage marinas shall locate a safe distance from domestic sewage or industrial waste outfalls.

d. To the maximum extent possible, marinas and accessory uses shall share parking facilities.

e. New marina development shall provide public access amenities, such as viewpoints, interpretive displays and public access to accessory water-enjoyment uses such as restaurants.

f. If a marina is to include gas and oil handling facilities, such facilities shall be separate from main centers of activity in order to minimize the fire and water pollution hazard, and to facilitate fire and pollution control. Marinas shall have adequate facilities and procedures for fuel handling and storage, and the containment, recovery, and mitigation of spilled petroleum, sewage, and other potentially harmful or hazardous materials, and toxic products.

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g. Live-aboards are restricted to marinas, may occupy up to twenty percent (20%) of the slips at a marina and shall be connected to utilities that provide potable water and wastewater conveyance to an approved disposal facility. Live-aboards are not allowed at joint-use moorages.

h. The marina operator shall be responsible for the collection and dumping of sewage, solid waste, and petroleum waste.

i. No commercial or sport fish-processing discharge or discarding of unused bait, scrap fish, or viscera shall be permitted within any marina.

4. Moorage Facilities: Docks, Piers, and Mooring Buoys.

a. Mooring buoys shall be used instead of docks and piers whenever feasible.

b. Existing, legally established, private recreational docks, piers, and floats for individual lots in existing subdivisions and for existing individual single-family developments are considered nonconforming uses and structures. If such dock or float is abandoned, becomes hazardous, or is removed for any reason, it may be replaced with only one (1) joint-use facility that complies with the policies and regulations of this Program. All required permits and approvals shall be obtained prior to commencing construction.

c. All moorage facilities shall be constructed and maintained in a safe and sound condition. Those that are abandoned or unsafe shall be removed or repaired promptly by the owner.

d. Docks and piers for water-dependent commercial and industrial uses shall be allowed to the outer harbor line or combined U.S. Pierhead/Bulkhead line but no more than that required for the draft of the largest vessel expected to moor at the facility. These provisions are also applicable to multiple-use facilities where the majority use is water-dependent and public access can safely be provided.

e. Fixed piers shall not be permitted for residential use on rivers. Docks for residential use on a river shall be securely anchored to pilings to allow for changes in river level, and shall be designed to withstand the one hundred (100) year flood or be seasonably removable.

f. Commercial covered moorage facilities may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water, including a demonstration that adequate landside sites are not feasible.

g. Covered moorage facilities associated with any residential development shall be prohibited.

h. Provisions for waste discharge shall be made in all proposals for public moorage facilities, and shall include oil containment barriers when required by the U.S. Coast Guard under provisions of the Clean Water Act.

i. Bulk storage (nonportable storage in fixed tanks) for gasoline, oil and other petroleum products for any use or purpose is prohibited on docks and piers.

j. Residential docks and piers shall be allowed, as follows:

(1) A new private dock or pier serving an individual lot is prohibited, unless it can be demonstrated that such dock or pier will result in no net loss of shoreline ecological function.

(2) New joint-use docks and piers serving two or more lots each with water frontage are allowed if no marina or public boat launch is located within one-half (1/2) mile of the upstream property line or one-half (1/2) mile downstream from the downstream property line, and provided they meet the requirements of this Program.

(3) New land divisions with shoreline frontage shall provide for joint-use docks if the proposal includes construction of a dock. Proposed docks and piers shall include no more than one mooring space per dwelling unit. Where a new moorage facility is proposed within a residential waterfront development

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of more than four (4) units, only one (1) joint-use facility shall be allowed, but only after demonstrating that such use is appropriate for the water body. The applicant must also demonstrate that no public moorage facility is available to residents. This condition of approval with required access easements and dedications shall be identified on the face of the plat. In addition, the joint-use dock easement shall be recorded with the County Auditor.

(4) Only a single, joint-use moorage facility shall be permitted in association with hotels, motels, and multifamily residences. No more than one (1) mooring slip per unit shall be allowed.

k. Applicants for joint-use docks and piers shall demonstrate and document that adequate maintenance of the structure, activities, and associated landward area will be provided by identified responsible parties. The applicant shall file a legally enforceable joint use agreement or other legal instrument prior to the issuance of any building permits. The documents shall at minimum address the following:

(1) Apportionment of construction and maintenance expenses;

(2) Easements and liability agreements; and

(3) Use restrictions.

l. Docks and piers shall be designed and constructed to meet the following standards:

(1) The maximum dimensions of a dock or pier shall be no greater than necessary, and shall generally meet the following development standards. These dimensions may be adjusted by the Shoreline Administrator on a case-by-case basis to protect sensitive shoreline resources.

(a) Docks, piers, and ramps shall be no more than four (4) feet in width.

(b) A dock or pier shall be long enough to obtain a depth as required by WDFW at its landward edge, and only as long as necessary to serve the intended use.

(c) The deck surface of docks and piers shall not exceed three (3) feet in height above the OHWM on the landward side, and shall extend one (1) foot above the water surface at all other locations.

(2) Over-water structures shall be located in water sufficiently deep to prevent the structure from grounding out at the lowest low water or stoppers should be installed to prevent grounding out.

(3) The portions of piers, elevated docks, and gangways that are over the nearshore/littoral area shall have unobstructed grating over the entire surface area. Floating docks and piers shall have unobstructed grating over at least fifty percent (50%) of the surface area.

(4) Piers/anchors and/or ramps shall extend waterward, perpendicular from the ordinary high water mark (OHWM), to a point where the water depth is sufficient to prevent damage to shallow-water habitat.

(5) Skirting shall not be placed on piers, ramps, or floats. Protective bumper material will be allowed along the outside edge of the float as long as the material does not extend below the bottom edge of the float frame or impede light penetration.

(6) If a bulkhead-like base is proposed for a fixed pier or dock where there is net positive littoral drift, the base shall be built landward of the OHWM or protective berms. When plastics or other nonbiodegradable materials are used in float, pier, or dock construction, precautions shall be taken to ensure their containment.

(7) Pilings must be structurally sound and cured prior to placement in the water. Pilings employed for docks, piers, or any other structure shall have a minimum vertical clearance of one foot above extreme high water. Pile spacing shall be the maximum feasible to minimize shading and avoid a “wall” effect

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that would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment.

(8) Docks used for motor boats should be located where the water will be deeper than seven (7) feet at the lowest low water to avoid prop scour.

(9) Docks and piers shall be set back a minimum of ten (10) feet from side property lines, except that joint-use facilities may be located closer to or upon a side property line when agreed to by contract or covenant with the owners of the affected properties. A copy of such agreement shall be recorded with the County Auditor and filed with the shoreline permit application.

m. Recreational floats shall be designed and constructed to meet the following standards:

(1) They shall be located as close to the shore as possible, and no farther waterward than any existing floats and established swimming areas.

(2) They shall be constructed so that the deck surface is a minimum of one (1) foot above the water surface and with reflectors for night-time visibility.

(3) Floats serving the public, a multifamily development, or multiple property owners shall not exceed one hundred (100) square feet; those serving only a legally established single-family residence shall not exceed sixty-four (64) square feet.

n. Mooring buoys shall be placed as specified by WDFW, DNR, and the U.S. Coast Guard to balance the goals of protecting nearshore habitat and minimizing obstruction to navigation. Anchors and other design features shall meet WDFW standards.

o. Mooring buoys shall be discernible from a distance of at least one hundred (100) yards. Only one (1) mooring buoy for each waterfront lot shall be permitted unless greater need is demonstrated by the applicant and documented by the county. In cases such as those of a community park with recreational users or a residential development with lot owners both on and away from the shoreline needing moorage, joint-use facilities shall be used.

p. Mooring buoys for residential use on a river shall be securely anchored to pilings to allow for changes in river level, and shall be designed to withstand the one hundred (100) year flood or be seasonably removable.

(Amended: Ord. 2018-11-06)

D. Commercial Uses.

1. Water-oriented commercial uses are preferred over nonwater-oriented commercial uses.

2. An applicant for a new commercial use or development shall demonstrate that:

a. There will not be a net loss of shoreline ecological function by reason of the use or development; and

b. The use or development will have no significant adverse impacts to other shoreline resources or other shoreline uses.

3. Loading, service areas, and other accessory uses and structures shall be located landward of a commercial structure or underground whenever possible, but shall in no case be waterward of the structure. Loading and service areas shall be screened from view with native plants.

4. Where allowed, nonwater-oriented commercial uses may be permitted:

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

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

c. If the site is physically separated from the shoreline by another property or public right-of-way.

5. Nonwater-oriented commercial uses may occupy:

a. Up to a total of twenty-five percent (25%) of the total frontage length of all parcels in the master planned development (regardless of ownership); or

b. Up to a total of twenty-five percent (25%) of the total project area within shoreline jurisdiction of all parcels in the master planned development (regardless of ownership).

(Amended: Ord. 2014-08-10; Ord. 2018-11-06)

E. Forest Practices.

1. Commercial harvest of timber undertaken on shorelines shall comply with the applicable policies and provisions of the Forests and Fish Report (U.S. Fish and Wildlife Service, et al., 1999) and the Forest Practices Act, Chapter 76.09 RCW as amended, and any regulations adopted pursuant thereto (WAC Title 222), as administered by the Department of Natural Resources.

2. Timber harvest conducted under a forest practice authorized under WAC Title 222 or Section 40.260.080 is not development as defined in Chapter 90.58 RCW and is not subject to the Shoreline Master Program. Other activities conducted under a forest practice, such as road improvement, maintenance or construction, culvert replacements, or placement of landings, are development subject to this chapter.

3. When timberland is to be converted to another use, such conversion shall be clearly indicated on the forest practices application. Failure to indicate the intent to convert the timberland to another use on the application will result in subsequent conversion proposals being reviewed pursuant to Conversion Option Harvest Plan. Failure to declare intent to convert on the application shall provide adequate grounds for denial of subsequent conversion proposals for a period of six (6) years from date of forest practices application approval per RCW 76.09.060(3)(d), (e) and (f), RCW 76.09.460 and 76.09.470, subject to the provisions of Sections 40.260.080(A)(4)(a)(2) and (C).

4. With respect to timber situated within two hundred (200) feet landward of the OHWM within shorelines of statewide significance, Ecology or the county shall allow only selective commercial timber cutting, so that no more than thirty percent (30%) of the merchantable trees may be harvested in any ten (10) year period of time; provided, that other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions, or silviculture practices necessary for regeneration render selective logging ecologically detrimental; and provided further, that clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted. Exceptions to this standard shall be by conditional use permit only.

5. For the purposes of this Program, preparatory work associated with the conversion of land to nonforestry uses and/or developments shall not be considered forest practices and shall be reviewed in accordance with the provisions for the proposed nonforestry use and the general provisions of this Program, including vegetation conservation.

(Amended: Ord. 2018-11-06)

F. Industrial Uses.

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1. General Requirements.

a. Water-oriented industrial uses and development are preferred over non-water-oriented industrial uses and development.

b. Water-related uses shall not displace existing water-dependent uses or occupy space designated for water-dependent uses identified in a substantial development permit or other approval.

c. Water-enjoyment uses shall not displace existing water-dependent or water-related uses or occupy space designated for water-dependent or water-related uses identified in a substantial development permit or other approval.

d. Waterward expansion of existing non-water-oriented industry is prohibited.

e. Proposed developments shall maximize the use of legally established existing industrial facilities and avoid duplication of dock or pier facilities before expanding into undeveloped areas or building new facilities. Proposals for new industrial and port developments shall demonstrate the need for expansion into an undeveloped area.

f. Proposed large-scale industrial developments or major expansions shall be consistent with an officially adopted comprehensive scheme of harbor improvement and/or long-range port development plan.

g. New facilities for shallow-draft shipping shall not be allowed to preempt deep-draft industrial sites.

h. Ship, boat-building, and repair yards shall employ best management practices (BMPs) with regard to the various services and activities they perform and their impacts on surrounding water quality.

i. Industrial water treatment and water reclamation facilities may be permitted only as conditional uses and only upon demonstrating that they cannot be located outside of shoreline jurisdiction. They shall be designed and located to be compatible with recreational, residential, or other public uses of the water and shorelands.

2. Log Storage.

a. Log booming, rafting and storage in the Aquatic shoreline designation shall comply with WAC 332-30-145 or its successor.

b. Log storage shall be permitted in public waters only where:

(1) Water quality standards can be met at all times;

(2) Grounding will not occur;

(3) Associated activities will not hinder other beneficial uses of the water, such as small craft navigation; and

(4) Fish and wildlife habitat conservation areas can be avoided.

c. No log raft shall remain in the Aquatic shoreline designation for more than one (1) year, unless specifically authorized in writing.

d. Log storage facilities shall be sited to avoid and minimize the need for dredging in order to accommodate new barging and shall be located in existing developed areas to the greatest extent feasible. If a new log storage facility is proposed along an undeveloped shoreline, an alternatives analysis shall be required that demonstrates that it is not feasible to locate the facility within an existing developed area.

e. A debris management plan describing the removal and disposal of wood waste must be approved by the county. Debris monitoring reports shall be provided, where stipulated. Positive control, collection,

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treatment, and disposal methods for keeping leachate, bark, and wood debris (both floating and sinking particles) out of surface water and groundwater shall be employed at log storage areas, log dumps, raft building areas, and mill-side handling zones. In the event that bark or wood debris accidentally enters the water, it shall be immediately removed. Surface runoff from log storage areas shall be collected and discharged at only one point, if possible.

f. Existing in-water log storage and log booming facilities in critical habitats utilized by threatened or endangered species classified under the Endangered Species Act (ESA) shall be re-evaluated if use is discontinued for one (1) year, or if substantial repair or reconstruction is required. The evaluation shall include an alternatives analysis in order to determine if logs can be stored upland and out of the water, or if the site should be used for other purposes that would have lesser impacts on ESA-listed species. The alternatives analysis shall include evaluation of the potential for moving all, or portions of, log storage and booming to uplands.

g. Nonaquatic log storage areas shall meet the following requirements:

(1) The ground surface of any unpaved log storage area underlain by permeable soils shall be separated from the highest seasonal water table by at least four (4) feet in order to reduce waste buildup and impacts on groundwater and surface water;

(2) Stormwater shall be managed consistent with Chapters 13.26A and 40.386; and

(3) A berm must be located around the outer edge of the upland sort surface using rocks, or other suitable materials to prevent loss of wood debris into the water.

(Amended: Ord. 2015-12-12)

G. Institutional Uses.

1. Water-oriented institutional uses and developments are preferred.

2. Where allowed, non-water-oriented institutional uses may be permitted as part of a mixed use development; provided, that a significant public benefit such as public access and/or ecological restoration is provided.

3. Loading, service areas, and other accessory uses shall be located landward of a primary structure or underground whenever possible, but shall in no case be waterward of the structure. Loading and service areas shall be screened from view with native plants.

4. Where institutional uses are allowed as a conditional use, the following must be demonstrated:

a. A water-dependent use is not reasonably expected to locate on the proposed site due to topography, surrounding land uses, physical features of the site, or the site's separation from the water;

b. The proposed use does not displace a current water-oriented use and will not interfere with adjacent water-oriented uses; and

c. The proposed use will be of substantial public benefit by increasing the public use, enjoyment, and/or access to the shoreline consistent with protection of shoreline ecological function.

H. Mining.

1. An applicant for mining and associated activities within the shoreline jurisdiction shall demonstrate that the proposed activities are dependent on a shoreline location consistent with this Program and WAC 173-26-201(2)(a).

2. Mining and associated activities shall be designed and conducted to result in no net loss of shoreline ecological functions and processes, and will only be allowed if they will not cause:

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a. Damage to or potential weakening of the structural integrity of the shoreline zone that would change existing aquatic habitat or aquatic flow characteristics;

b. Changes in the water or exchange of water to or from adjacent water bodies that would damage aquatic or shoreline habitat; and

c. Changes in groundwater or surface water flow that would be detrimental to aquatic habitat, shoreline habitat, or groundwater.

3. Mining within the active channel(s) or channel migration zone of a stream shall not be permitted unless:

a. Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect in-stream habitat or the natural processes of gravel transport for the stream system as a whole.

b. The mining and any associated permitted activities, such as flood hazard reduction (Section 40.460.530(C)), will not have significant adverse impacts to habitat for priority species nor cause a net loss of shoreline ecological functions.

4. The applicant shall obtain and fully comply with all necessary permits and approvals, including, but not limited to, hydraulic project approvals (HPA) from WDFW.

5. A reclamation plan that complies with the format and detailed minimum standards of Chapter 78.44 RCW and Chapter 332-18 WAC and that meets the provisions of this Program shall be included with any shoreline permit application for mining. The proposed subsequent use of mined property must be consistent with the provisions of the shoreline designation in which the property is located, and shall obtain and fully comply with all necessary permits and approvals. Reclamation of disturbed shoreline areas shall provide appropriate ecological functions consistent with the setting.

6. Aggregate washing and ponding of waste water are prohibited in floodways.

7. Disposal of overburden or other mining spoil or nonorganic solid wastes shall comply with fill policies and regulations of this Program and other applicable county regulations.

8. In considering renewal, extension or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted, the county shall require compliance with this Program.

9. Where a lawfully established mining operation has resulted in the creation of a lake(s) greater than twenty (20) acres and such lake(s) is subject to the provisions of this Program and the Act, such lake(s) shall be given a shoreline designation of Rural Conservancy – Resource Lands or as otherwise adopted. Notwithstanding any other applicable regulations, such mining operations shall be permitted to continue and may be expanded subject to approval of a shoreline conditional use permit.

10. The provisions of this section do not apply to dredging of authorized navigation channels when conducted in accordance with WAC 173-26-231.

I. Parking.

1. Parking as a primary use is prohibited in all shoreline areas.

2. Where parking is allowed as accessory to a permitted use, it shall be located landward of the primary structure as far as possible or within the primary structure.

J. Recreational Uses.

1. Recreational developments shall provide for nonmotorized access to the shoreline such as pedestrian and bicycle paths.

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2. The minimum width of public access easements for trails shall be twenty (20) feet when a trail is not located within a public right-of-way, unless the Shoreline Administrator determines that undue hardship would result, or that it is impractical or environmentally unsound. In such cases, easement width may be reduced only by the minimum extent necessary to meet public access standards.

3. Recreation areas or facilities on the shoreline shall provide physical or visual public access to the shoreline.

4. Parking areas shall be located upland away from the immediate shoreline, with pedestrian trails or walkways providing access to the water.

5. All permanent, substantial, recreational structures and facilities shall be located outside officially mapped floodways. The Shoreline Administrator may grant administrative exceptions for nonintensive minor accessory uses ~~(~~including, but not limited to, picnic tables, playground equipment~~,)~~ and water dependent structures that are necessarily located within a floodway, such as boat ramps.

6. Recreational sites with active uses shall be provided with restrooms and hand-sanitizing facilities in accordance with public health standards and without adversely altering the natural features attractive for recreational uses.

7. Recreational facilities shall include features such as buffer strips, screening, fences, and signs, if needed to protect the value and enjoyment of adjacent or nearby private properties and natural areas from trespass, overflow and other possible adverse impacts.

8. Where fertilizers and pesticides are used in recreational developments, waters in and adjacent to such developments shall be protected from drainage and surface runoff.

9. Golf course structures (clubhouses and maintenance buildings) that are non-water-oriented shall be located no closer than one hundred (100) feet from the OHWM of any shorelines of the state.

10. Tees, greens, fairways, golf cart routes, and other site development features shall be located no closer than one hundred (100) feet from the OHWM of any shorelines of the state to the extent practicable. Where unavoidable, such development shall be designed to minimize impacts to shoreline and critical areas and their buffers and mitigate impacts by including ecological restoration and enhancement.

11. Golf course water hazards and stormwater drainage basins shall be managed:

a. For wildlife through appropriate plantings and measures to maintain or enhance water quality; and

b. Consistent with Chapters 13.26A and 40.386.

12. The setback for water-related and water-enjoyment recreational development in Natural, Urban Conservancy, and Medium Intensity shoreline designations is fifty (50) feet, except trails which may meander between twenty (20) and fifty (50) feet landward of the OHWM to:

a. Respond to site characteristics such as natural topography and existing vegetation; or

b. Take advantage of opportunities for visual or physical access to the shoreline; or

c. Connect existing trail easements; or

d. Create an interesting experience for trail users.

A trail project, any portion of which encroaches closer than fifty (50) feet, shall maintain no net loss of shoreline ecological function and include shoreline restoration where feasible.

13. The following trail types as described in the Vancouver-Clark Parks and Recreation Regional Trails and Bikeway Systems Plan (2006) are preferred in the Natural shoreline designation:

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a. Type A3: Primitive Trails or Paths;

b. Type C2: Walking Trails or Paths; and

c. Type D1: Equestrian Trails or Paths.

14. When regional or local shared-use or other impervious surface trails are proposed in the Natural or Urban Conservancy shoreline designations, to respond to Americans with Disabilities Act (ADA) requirements or other circumstances or conditions, the project shall maintain no net loss of shoreline ecological functions and shall include restoration where feasible.

(Amended: Ord. 2015-12-12)

K. Residential Uses.

1. Residential development shall include provisions to ensure preservation of native vegetation and to control erosion during construction.

2. New residential construction shall be located so as not to require shoreline stabilization measures.

3. New residential development shall be prohibited in, over, or floating on the water.

4. New residential development shall be located and designed to a density that minimizes view obstructions to and from the shoreline.

5. Clustering of residential units as permitted by this title shall be allowed where appropriate to minimize physical and visual impacts on shorelines.

6. In those areas where only on-site sewage systems are available, density shall be limited to that which can demonstrably accommodate protection of surface and groundwater quality.

7. New residential development, including sewage disposal systems, shall be prohibited in floodways and channel migration zones.

8. Appurtenances, accessory uses, and facilities serving a residential structure shall be located outside setbacks, critical areas, and buffers unless otherwise allowed under this Program to promote community access and recreational opportunities. Normal appurtenances are limited to garages (up to three (3) cars), shops (up to one thousand (1,000) square feet), decks, driveways, utilities, and fences.

9. Residential lots that are boundary line-adjusted or newly created through a land division shall be configured such that:

a. Structural flood hazard reduction measures are not required and will not be necessary during the life of the development or use;

b. Shoreline stabilization measures are not required; and

c. Any loss of shoreline ecological function can be avoided.

10. Where a new moorage facility is proposed within a residential waterfront development of more than four (4) units, only one (1) joint-use facility shall be allowed, but only after demonstrating that such use is appropriate for the water body. The applicant must also demonstrate that no public moorage facility is available to residents. This condition of approval with required access easements and dedications shall be identified on the face of the plat. In addition, the joint-use dock easement shall be recorded with the County Auditor.

11. New floating homes and new floating on-water residences are prohibited. Floating homes and on-water residences moved from outside the State of Washington are also prohibited. New marinas or other moorages for floating homes and on-water residences are prohibited.

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12. Floating homes legally established in the State of Washington as of January 1, 2011, are considered conforming uses pursuant to RCW 90.58.270 and WAC 173-26-241(3)(j).

a. A floating home must be moored at an authorized or grandfathered marina or moorage facility, as described in WAC 332-30-171(7), and consistent with Sections 40.460.630(C) and 40.460.630(K).

b. A one (1) time expansion of a floating home is allowed, as follows:

~~a.~~(1) The expansion maintains the size of the footprint of the existing residence;

~~b.~~(2) The expansion does not exceed the allowed height limit; and

~~c.~~(3) The applicant demonstrates through a letter of exemption that the expansion will result in no net loss of shoreline ecological functions.

c. A floating home may relocate to an authorized, existing residential slip, as described in WAC 332-30-171, and consistent with the standards of Sections 40.460.630(C) and 40.460.630(K).

13. Floating on-water residences legally established in the State of Washington prior to July 1, 2014, are considered conforming uses pursuant to RCW 90.58.270 and WAC 173-26-241(3)(j).

a. A floating on-water residence must be moored at an authorized or grandfathered marina or moorage facility, as described in WAC 332-30-171, and consistent with Sections 40.460.630(C) and 40.460.630(K).

b. A one (1) time expansion of a floating on-water residence is allowed, as follows:

~~a.~~(1) The expansion maintains the size of the footprint of the existing residence;

~~b.~~(2) The expansion does not exceed the allowed height limit; and

~~c.~~(3) The applicant demonstrates through a letter of exemption that the expansion will result in no net loss of shoreline ecological functions.

c. A floating on-water residence may relocate to an authorized, existing residential slip, as described in WAC 332-30-171, and consistent with the standards of Section 40.460.630(C) and 40.460.630(K).

14. Existing Residential Structures.

a. Legally established existing residential structures and appurtenances located landward of the OHWM and outside the floodway that do not meet the standards of this Program are considered to be conforming, except that an application to replace an existing residential structure must meet all setback, height, and other construction requirements of the Program and the Act. A one (1) time expansion is allowed, as follows:

(1) The expansion is no more than twenty-five percent (25%) of the habitable floor area of the existing residence;

(2) The expansion does not exceed the allowed height limit;

(3) The expansion is no farther waterward than the existing structure; and

(4) The applicant demonstrates that the expansion will result in no net loss of shoreline ecological functions.

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

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(1) The reconstructed or restored structure will not cause additional adverse effects to adjacent properties or to the shoreline environment;

(2) The rebuilt structure or portion of structure shall not expand the original footprint or height of the damaged structure;

(3) No degree of relocation shall occur, except to increase conformity or to increase ecological function, in which case the structure shall be located in the least environmentally damaging location possible;

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

(5) The reconstruction is commenced within one (1) year of the issuance of permit;

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

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

c. If a structure or development is either demolished, or damaged by fire, flood, explosion, or other natural disaster and the damage is more than seventy-five percent (75%) of the replacement cost of the structure or development, then any replacement structure has to meet the requirements of the Program and the Act.

15. New appurtenances shall meet the setback requirements of this Program.

(Amended: Ord. 2015-12-12)

L. Signs.

1. Freestanding signs shall be for only informational purposes such as directional, navigational, educational/interpretive, and safety purposes, unless otherwise allowed under this Program and as specified in Table 40.460.620-1.

2. Signs for commercial purposes shall be limited to fascia or wall signs and as regulated by Chapter 40.310, unless otherwise provided for in this chapter for specific uses.

3. All signs shall be located and designed to minimize interference with vistas, viewpoints, and visual access corridors to the shoreline.

4. Over-water signs or signs on floats or pilings shall be prohibited, except when related to navigation or a water-dependent use. Such signs shall be limited to fifteen (15) feet in height above the OHWM.

5. Illuminated signs shall be limited to informational, directional, navigational or safety purposes and shielded so as to eliminate glare when viewed from surrounding properties or watercourses.

M. Transportation Uses.

1. All transportation facilities in shoreline areas shall be constructed and maintained to cause the least possible adverse impacts on the land and water environments, shall respect the natural character of the shoreline, and make every effort to preserve wildlife, aquatic life, and their habitats.

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2. New or expanded surface transportation facilities not related to and necessary for the support of shoreline activities shall be located outside the shoreline jurisdiction wherever possible, or set back from the ordinary high water mark far enough to make shoreline stabilization, such as riprap, bulkheads or jetties, unnecessary.

3. Transportation facilities shall not adversely impact existing or planned water-dependent uses by impairing access to the shoreline.

4. All roads shall be adequately set back from water bodies and shall provide buffer areas of compatible, self-sustaining native vegetation. Shoreline scenic drives and viewpoints may provide breaks in the vegetative buffer to allow open views of the water.

5. Transportation facilities that are allowed to cross over water bodies and associated wetlands shall utilize elevated, open pile or pier structures whenever feasible to reduce shade impacts. All bridges shall be built high enough to allow the passage of debris and anticipated high water flows.

6. Fills for transportation facility development shall not be permitted in water bodies or associated wetlands except when all structural or upland alternatives have proven infeasible and the transportation facilities are necessary to support uses consistent with this Program.

7. Transportation and utility facilities shall be required to make joint use of rights-of-way and to consolidate crossing of water bodies.

N. Utility Uses.

These provisions apply to services and facilities that produce, convey, store, or process power, gas, wastewater, communications, and similar services and functions. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence or other approved use, are “accessory utilities” and shall be considered a part of the primary use.

1. Whenever feasible, all utility facilities shall be located outside shoreline jurisdiction. Where distribution and transmission lines (except electrical transmission lines) must be located in the shoreline jurisdiction they shall be located underground.

2. Where overhead electrical transmission lines must parallel the shoreline, they shall be outside of the two hundred (200) foot shoreline environment unless topography or safety factors would make it unfeasible.

3. Utilities, including limited utility extensions, shall be designed, located and installed in such a way as to preserve the natural landscape, minimize impacts to scenic views, and minimize conflicts with present and planned land and shoreline uses.

4. Transmission, distribution, and conveyance facilities shall be located in existing rights-of-way and corridors or shall cross shoreline jurisdictional areas by the shortest, most direct route feasible, unless such route would cause significant environmental damage.

5. Utility production and processing facilities, such as power plants and wastewater treatment facilities, or parts of those facilities that are non-water-oriented shall not be allowed in the shoreline jurisdiction unless it can be demonstrated that no other feasible option is available.

6. Stormwater control facilities, limited to detention/retention/treatment ponds, media filtration facilities, and lagoons or infiltration basins, within the shoreline jurisdiction shall only be permitted when the stormwater facilities are designed to mimic and resemble natural wetlands, ponds, or closed depressions, and meet applicable water quality requirements of Chapter 40.386.

7. Stormwater outfalls may be placed below the OHWM to reduce scouring, but new outfalls and modifications to existing outfalls shall be designed and constructed to avoid impacts to existing native aquatic vegetation attached to or rooted in substrate. In river and stream shorelines, stormwater outfall structures may require permanent bank hardening to prevent failure of the outfall structure or erosion of the shoreline. Diffusers

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or discharge points must be located offshore at a distance beyond the nearshore area to avoid impacts to nearshore habitats.

8. Water reclamation discharge facilities such as injection wells or activities such as land application are prohibited in the shoreline jurisdiction, unless the discharge water meets Ecology's Class A reclaimed water standards. An applicant for discharge of Class A reclaimed water in the shoreline jurisdiction shall demonstrate habitat benefits of such discharge.

9. Where allowed under this Program, construction of underwater utilities or those within the wetland perimeter shall be scheduled to avoid major fish migratory runs or use construction methods that do not cause disturbance to the habitat or migration.

10. All underwater pipelines transporting liquids intrinsically harmful to aquatic life or potentially detrimental to water quality shall be equipped with automatic shut off valves.

11. Upon completion of utility installation/maintenance projects on shorelines, banks shall, at a minimum, be restored to pre-project configuration, replanted and provided with maintenance care until the newly planted vegetation is fully established. Plantings shall be native species and/or be similar to vegetation in the surrounding area.

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

Section 14. Amendatory. Sec. 3, Part C of Ord. 2012-07-16 and codified as CCC 40.460.710, and as most recently amended by Sec. 9 of Ord. 2018-11-06, are each hereby amended to read as follows:

40.460.710 Administrative Authority and Responsibility

A. Shoreline Administrator and Shoreline Management Review Committee.

1. The responsible official or his/her designee is the Shoreline Administrator for the county.

2. The Shoreline Management Review Committee (SMRC), consisting of three members: the Shoreline Administrator (Chairman) and two additional members from different county departments as designated by the responsible official ~~Public Works Director (Chairman), Community Development Director, and the Parks and Lands Division Manager, or their designated representatives~~, shall convene as often as necessary on the call of the Chairman to review shoreline requests and permit applications for which the notice of application procedures of Chapter 173-27 WAC and this section have been completed. After considering the application and other relevant material, SMRC may, by majority vote, take one (1) of the following actions:

a. Approve issuance of the permit;

b. Approve the permit subject to certain specified conditions; or

c. Formulate recommendations on the application to be forwarded to the Shoreline Administrator for action.

3. The Shoreline Administrator, through the Shoreline Management Review Committee, shall have the authority to act upon the following matters:

a. Interpretation, enforcement, and administration of this Program as prescribed in this title;

b. Applications for shoreline management substantial development permits;

c. Applications for shoreline conditional use permits;

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d. Applications for shoreline variances;

e. Modifications or revisions to any of the above approvals; and

f. Requests for statements of exemption.

4. The Shoreline Administrator shall document all project review actions in shoreline areas in order to periodically evaluate the cumulative effects of authorized development on shoreline conditions per WAC 173-26-191.

5. In a case where a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance is requested with a concurrent Type III land use action, the Shoreline Management Review Committee authority granted in 40.460.710(A)(3) may be ceded to the Hearing Examiner pursuant to Section 40.510.030 and 40.460.725(D)(1).

(Amended: Ord. 2018-11-06)

B. Clark County Planning Commission.

The County Planning Commission shall be responsible for hearing and making recommendations for action to the County Council on the following types of matters:

1. Amendments to the Shoreline Master Program. Any of the provisions of this Program may be amended as provided for in WAC 173-26-100 and 173-26-104.

2. Review and Adjustments. Periodic review of this Program shall be conducted as required by state law and regulations (RCW 90.58.080(4)). Adjustments shall be made as necessary to reflect changing local circumstances, new information or improved data, and changes in state statutes and regulations. This review process shall be consistent with WAC 173-26-090 and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

(Amended: Ord. 2018-11-06)

C. Clark County Council.

The Council shall be responsible for making final determinations on amendments to this Program, which shall be adopted by ordinance. The Council shall enter findings and conclusions setting forth the factors it considered in reaching its decision. Amendments shall be submitted to and reviewed by Ecology.

(Amended: Ord. 2018-11-06)

D. Ecology and the Attorney General.

1. The duties and responsibilities of Ecology shall include, but are not limited to, the following:

a. Reviewing and approving Program amendments prepared by the county pursuant to WAC 173-26-120 (State Process for Approving/Amending Shoreline Master Programs). Amendments or revisions to this Program, as provided by law, do not become effective until approved by Ecology.

b. Final approval and authority to condition or deny shoreline conditional use permits and shoreline variance permits filed by the county.

2. Ecology and the Attorney General have the authority to review and petition for review the county's permit decisions. Petitions for review must be commenced within twenty-one (21) days from the date the final decision was filed.

E. Ecology Review.

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1. Clark County shall notify Ecology ~~shall be notified~~ by mail sent via USPS, return receipt requested, of any substantial development, conditional use or variance permit decisions made by the Shoreline Administrator, whether it is an approval or denial. Clark County~~The notification~~ shall notify Ecology~~occur~~ after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed. When a substantial development permit and either conditional use or variance permit are required for a development, the submittal of the permits shall be made concurrently. The Shoreline Administrator shall file the following with Ecology and the Attorney General:

a. A copy of the complete application per WAC 173-27-180;

b. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable Program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);

c. The final decision of the county;

d. The permit data sheet per WAC 173-27-990;

e. Affidavit of public notice; and

f. Where applicable, the Shoreline Administrator shall also file the applicable documents required by the State Environmental Policy Act (Chapter 43.21C RCW).

2. When the project has been modified in the course of the local review process, plans or text shall be provided to Ecology that clearly indicates the final approved plan.

3. If Ecology determines that the submittal does not contain all of the documents and information required by this section, Ecology shall identify the deficiencies and notify the county and the applicant in writing. Ecology will not act on conditional use or variance permit submittals until the material requested in writing is submitted to them.

4. Ecology shall convey to the county and applicant its final decision approving, approving with conditions, or disapproving the permit within thirty (30) days of the date of submittal by the county. The Shoreline Administrator will notify those interested persons having requested notification of such decision.

5. Ecology shall base its determination to approve, approve with conditions or deny a conditional use permit or variance permit on consistency with the policy and provisions of the Act and the criteria listed in this Program.

6. Appeals of Ecology decisions on conditional use and variance requests shall be made to the Shorelines Hearings Board as specified in Section 40.460.735(A).

F. Master Program Amendments.

1. This Program shall be periodically reviewed no later than eight (8) years following its approval by Ecology and adjustments shall be made as are necessary to reflect changing local circumstances, new information or improved date, and changes in State statutes and regulations. This review process shall be consistent with Chapter 173-26 WAC requirements and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

2. Any of the provisions of this Program may be amended as provided for in RCW 90.58.120 and 90.58.200 and Chapter 173-26 WAC. Amendments or revisions to this Program, as provided by law, do not become effective until approved by Ecology.

3. Proposals for shoreline redesignation (i.e., amendments to the shoreline maps and descriptions) must demonstrate consistency with the criteria set forth in WAC 173-22-040.

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

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Map Amendments

Section 15. Amendatory. There are two maps on the following pages. The first map highlights proposed areas of change on the shoreline designations map. The second map shows the proposed new shoreline map if the proposed changes are incorporated.

These draft maps were shared during the 30-day comment period held from January 28 – February 27, 2020. No additional changes to these maps are being proposed based on comment period feedback.

Below please find a written summary of the proposed map changes:

- **Carty Lake.** The Shoreline Management Act guidelines require that SMPs include a list and a map of streams and lakes that are in shoreline jurisdiction. Carty Lake was mistakenly left out of the Clark County SMP during the 2012 SMP update. It was later added to the list of lakes in the SMP in Clark County Code 40.460.210(B), however, it has not yet been added to the shoreline map. The proposed amendment to add Carty Lake to the shoreline map would keep the map current and improve consistency between the shoreline map and Clark County Code.
- **Revised flood maps – Washougal, Little Washougal, Columbia.** Within the unincorporated county, new Federal Emergency Management Agency (FEMA) Insurance Rate Maps went into effect in January, 2018 for the Washougal River, Little Washougal River and tributary, and the Columbia River from the City of Washougal east to Skamania County. Since the 100-year floodplain is one of the criteria for determining shoreline jurisdiction, this map amendment would update the shoreline boundary in areas where the 100-year floodplain has changed and resulted in a shift in the shoreline jurisdiction.
- **Revised floodplain near Lacamas Lake**. In the process of reviewing the shoreline jurisdiction for the above map changes, staff noticed a portion of the 100-year floodplain that was missing from the shoreline jurisdiction near Lacamas Lake. Since the 100-year floodplain is one of the criteria for determining shoreline jurisdiction, this map amendment would update the shoreline boundary along a portion of Lacamas Lake.
- **Wetlands near Shanghai Creek**. Associated wetlands are one of the criteria for determining shoreline jurisdiction. There is an area of wetlands near Shanghai Creek, which county and Ecology staff have confirmed are not actually considered associated wetlands. This was based on multiple site visits to the area for various development projects. Since on the ground shoreline boundary mapping overrides what is on the shoreline map, there have been a handful of projects in this area that did not receive any kind of shoreline permit or exemption because it was determined those projects were not actually within shoreline jurisdiction. Based on this information, and in order to keep the shoreline map as current as possible, this amendment would remove the portion of wetlands near Shanghai Creek that are not considered associated wetlands and are not considered within shoreline jurisdiction. If removed from the shoreline map, these wetlands would be protected by the county wetland protection code instead of the shoreline master program.
- **Updated Department of Natural Resources Water Feature Layer.** The streams and lakes shown on the shoreline designation map are based on Department of Natural Resources (DNR) water features. A Clark County constituent notified the county about Mill Pond being recognized by the Department of Natural Resources as a waterbody since the 2012 Shoreline Master Program update. In order to keep the county shoreline designation map current, the current DNR water feature data will be used to show waterbodies and waterbody labels on shoreline maps.
- **Columbia-Lewis River Confluence Updates.** Plas Newydd LLC owns property near the confluence of the Columbia and Lewis rivers. The company is currently working on becoming certified as a conservation and wetland mitigation bank by the State Department of Ecology. In the process of planning for this project, the organization has conducted detailed mapping work of its property. The data the organization has collected has been reviewed by Clark County and Department of Ecology staff. Adjustments to the shoreline map designations and boundaries are proposed based on the additional detailed data provided, to more accurately

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indicate the shoreline designations and boundaries. Incorporation of the additional data into the shoreline designation map does not revise critical areas maps adopted or maintained under the Growth Management Act or replace site specific determinations of the extent of the Shoreline Management Area and boundaries between mapped shoreline designations for future permit or statement of exemption applications. Field verified site specific conditions will be used for any future application pursuant to Clark County Code 40.460.440(D)(4).

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Proposed Changes to Shoreline Map

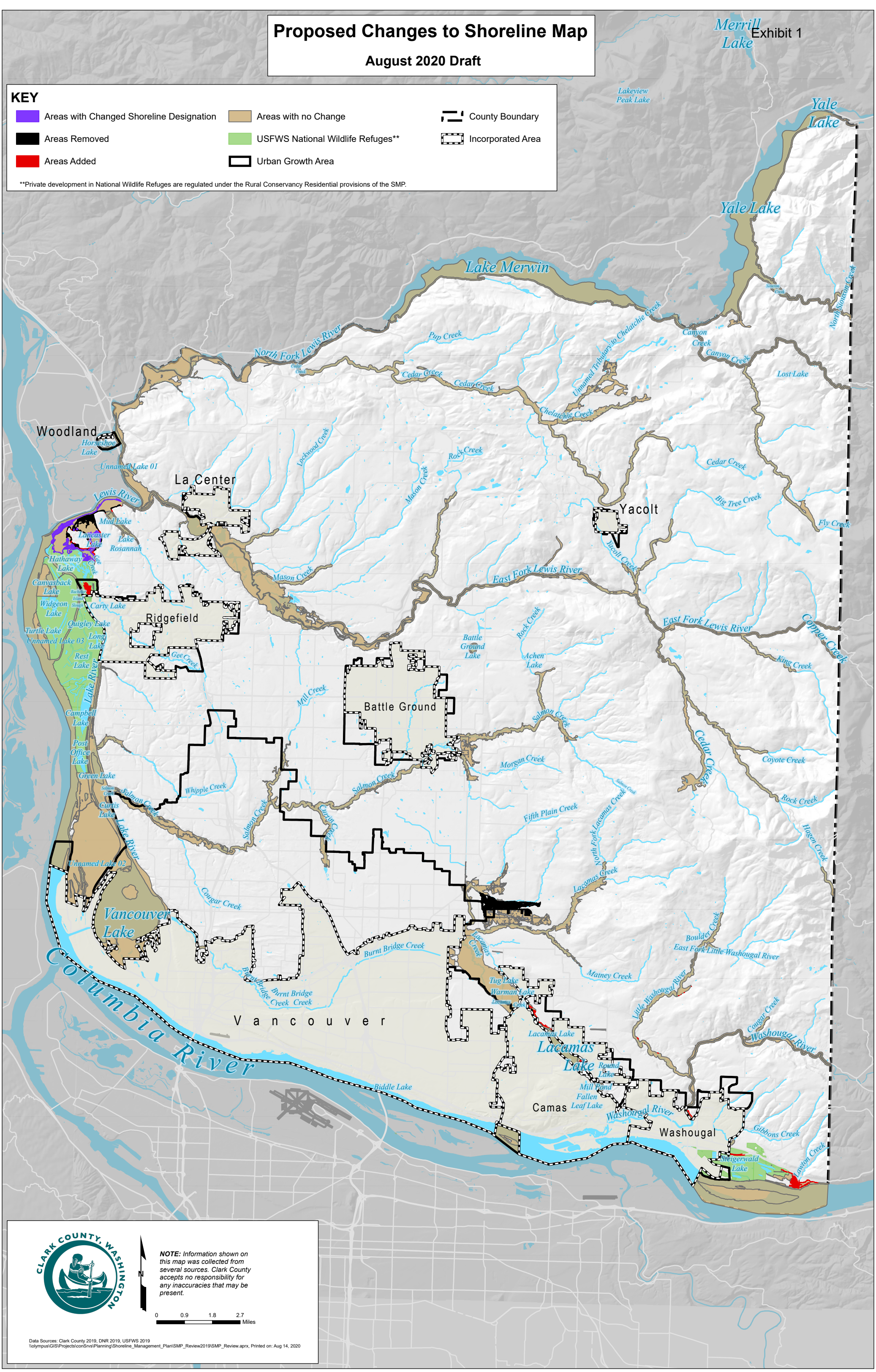
August 2020 Draft

Exhibit 1

KEY

- Areas with Changed Shoreline Designation
- Areas Removed
- Areas Added
- Areas with no Change
- USFWS National Wildlife Refuges**
- Urban Growth Area
- County Boundary
- Incorporated Area

**Private development in National Wildlife Refuges are regulated under the Rural Conservancy Residential provisions of the SMP.



CLARK COUNTY, WASHINGTON

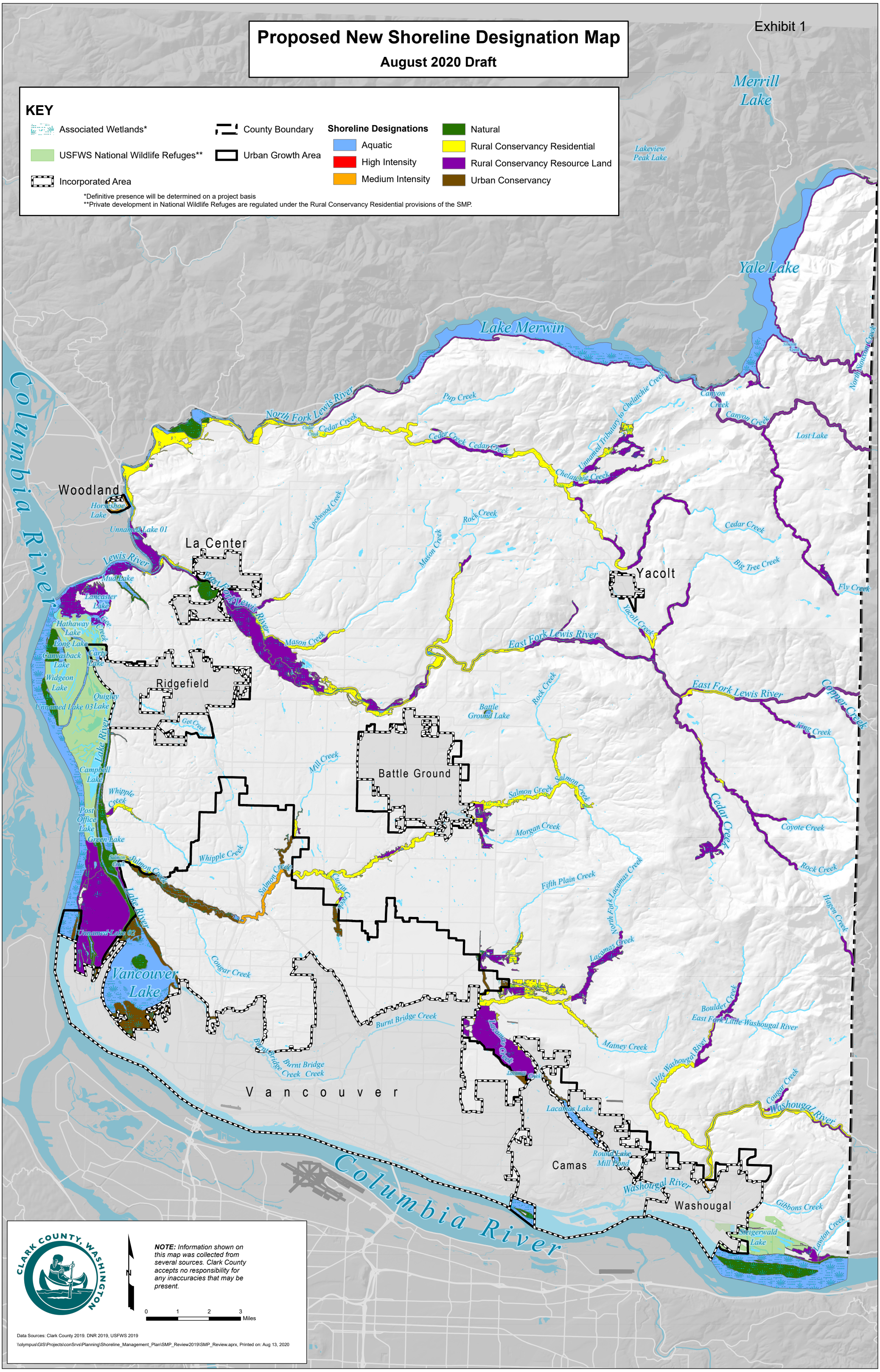
N

NOTE: *Information shown on this map was collected from several sources. Clark County accepts no responsibility for any inaccuracies that may be present.*

0 0.9 1.8 2.7 Miles

Data Sources: Clark County 2019, DNR 2019, USFWS 2019
\\olympus\GIS\Projects\conSrvs\Planning\Shoreline_Management_Plan\SMP_Review2019\SMP_Review.aprx, Printed on: Aug 14, 2020

Exhibit 1

Proposed New Shoreline Designation Map

August 2020 Draft