

40.460 SHORELINE MASTER PROGRAM

40.460.100 Introduction

40.460.110 Title

This chapter contains the Clark County Shoreline Master Program (Program).

(Added: Ord. 2012-07-16)

40.460.120 Adoption Authority

This Program is adopted under the authority granted by the Shoreline Management Act (Act) of 1971, Revised Code of Washington (RCW) Chapter 90.58, and Washington Administrative Code (WAC) Chapter 173-26 as amended.

The Act and Chapter 173-26 WAC establish a broad policy giving preference to shoreline uses that:

- A. Depend on proximity to the shoreline (“water-dependent uses”);
- B. Protect biological and ecological resources, water quality and the natural environment; and
- C. Preserve and enhance public access or increase recreational opportunities for the public along shorelines.

(Added: Ord. 2012-07-16)

40.460.130 Purpose and Intent

Clark County prepared this Program to meet the requirements of the Act. This Program provides goals, policies, and regulations for shoreline use and protection. The goals, policies, and regulations contained herein are tailored to the specific geographic, economic, and environmental needs of Clark County.

The purpose of this Program is:

- A. To guide the future development of shorelines in the county in a positive, effective, and equitable manner consistent with the Act;
- B. To promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of the county’s shorelines; and
- C. To ensure, at minimum, no net loss of shoreline ecological functions and processes and to plan for restoring shorelines that have been impaired or degraded by adopting and fostering the following policy contained in RCW 90.58.020, Legislative findings for shorelines of the state:

“It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner, which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto...

In the implementation of this policy the public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the State’s shoreline. Alterations of the natural condition of the shorelines of the State, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other

improvements facilitating public access to shorelines of the State, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the State, and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the State.

Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water."

(Added: Ord. 2012-07-16)

40.460.140 Governing Principles

- A. The goals, policies, and regulations of this Program are intended to be consistent with the state shoreline guidelines in Chapter 173-26 WAC. The goals, policies and regulations are informed by the governing principles in WAC 173-26-186, and the policy statements of RCW 90.58.020.
- B. Any inconsistencies between this Program and the Act must be resolved in accordance with the Act.
- C. Regulatory or administrative actions contained herein must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.
- D. The regulatory provisions of this Program are limited to shorelines of the state, whereas the planning functions of this Program extend beyond the designated shoreline boundaries, given that activities outside the shoreline jurisdiction may affect shorelines of the state.
- E. The policies and regulations established by this Program must be integrated and coordinated with those policies and rules of the Clark County Comprehensive Growth Management Plan and development regulations adopted under the Growth Management Act (Chapter 36.70A RCW) and RCW 34.05.328, Significant legislative rules.
- F. Protecting the shoreline environment is an essential statewide policy goal, consistent with other policy goals. This Program protects shoreline ecosystems from such impairments in the following ways:
1. By using a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by shorelines.
 2. By including policies and regulations that require mitigation of adverse impacts in a manner that ensures no net loss of shoreline ecological functions. The required mitigation shall include avoidance, minimization, and compensation of impacts in accordance with the policies and regulations for mitigation sequencing in WAC 173-26-201(2)(e)(i), Comprehensive Process to Prepare or Amend Shoreline Master Programs.
 3. By including policies and regulations to address cumulative impacts, including ensuring that the cumulative effect of exempt development will not cause a net loss of shoreline ecological functions, and by fairly allocating the burden of addressing such impacts among development opportunities.
 4. By including regulations and regulatory incentives designed to protect shoreline ecological functions, and restore impaired ecological functions where such functions have been identified.

(Added: Ord. 2012-07-16)

40.460.150 Liberal Construction

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

(Added: Ord. 2012-07-16)

40.460.160 Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this Program or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this chapter or its application to any other person or situation. The Clark County Council hereby declares that it would have adopted the ordinance codified in this chapter and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

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

40.460.170 Relationship to Other Plans and Regulations

A. Applicants for shoreline use/development shall comply with all applicable laws prior to commencing any shoreline use, development, or activity.

B. Where this Program makes reference to any RCW, WAC, or other state or federal law or regulation the most recent amendment or current edition shall apply.

C. Uses, developments and activities regulated by this Program may also be subject to the provisions of the Clark County Comprehensive Growth Management Plan, the Washington State Environmental Policy Act ("SEPA," Chapter 43.21C RCW and Chapter 197-11 WAC), other provisions of the Clark County Code, and other local, state and federal laws, as may be amended.

D. In the event this Program conflicts with other applicable county policies or regulations, they must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous, and unless otherwise stated, the provisions that provide the most protection to shoreline ecological processes and functions shall prevail.

E. Projects in the shoreline jurisdiction that have been previously approved through local and state reviews are considered accepted. Major changes or new phases of projects that were not included in the originally approved plan will be subject to the policies and regulations of this Program.

F. The Clark County Critical Area Ordinances (CAO) are adopted into the Master Program by reference, except that those provisions inconsistent with the Shoreline Management Act and implementing Washington Administrative Code chapters shall not apply in shoreline jurisdiction. The applicable CAO is the version listed in Section 40.460.530. Any amendments to the CAO shall be incorporated through an amendment to the Master Program that is approved by the Department of Ecology pursuant to WAC 173-26-191(2)(b).

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

40.460.180 Composition of the Shoreline Master Program (Program)

A. This Shoreline Master Program is a comprehensive use plan for Clark County, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.

B. Clark County Comprehensive Growth Management Plan Chapter 13, Shoreline Master Program Goals and Policies, this chapter, and the Official Shoreline Map (electronic) are adopted as Clark County's Shoreline Master Program (Program).

C. The Inventory and Characterization Report; Shoreline Management Strategy; Restoration Plan; Cumulative Impacts Analysis; No Net Loss Report; and Public Participation Plan are supporting documents, and are not adopted as part of this Program or the County's Comprehensive Growth Management Plan.

D. The Inventory and Characterization Report establishes the baseline against which the standard "no net loss of shoreline ecological functions" is measured. The Restoration Plan identifies and prioritizes shoreline restoration opportunities that may be undertaken independently or in conjunction with mitigation for development impacts to improve shoreline ecological functions over time.

(Added: Ord. 2012-07-16)

40.460.190 Effective Date

This Program and all amendments thereto shall take effect fourteen (14) days from the date of Department of Ecology (Ecology) written notice of final action, and shall apply to new applications submitted on or after that date and to applications that have not been determined to be fully complete by that date.

(Added: Ord. 2012-07-16)

40.460.200 Applicability, Shoreline Permits and Exemptions

To be authorized, all uses and development activities in shorelines shall be planned and carried out in a manner consistent with this Program and this chapter and the policy of the Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use is required.

(Added: Ord. 2012-07-16)

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 copy of the Shoreline Map for the county is shown in the most recently adopted Clark County Comprehensive Growth Management Plan.

(Amended: Ord. 2020-12-01)

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.

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.

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.

(Amended: Ord. 2020-12-01)

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;

Unnamed Lake 01 (south of Horseshoe Lake);

Horseshoe Lake;

Lake Merwin;

Yale Lake;

Carty Lake.

(Amended: Ord. 2014-12-10; Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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).

(Amended: Ord. 2020-12-01)

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

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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

(Amended: Ord. 2012-07-16; Ord. 2020-12-01)

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; Ord. 2020-12-01)

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; Ord. 2020-12-01)

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.

(Amended: Ord. 2018-11-06; Ord. 2020-12-01)

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.
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; Ord. 2020-12-01)

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 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 multifamily residence. This exception applies if either:
 - a. The dock is a new dock, and the fair market value of the dock does not exceed eleven thousand two hundred dollars (\$11,200) or an adjustment to that figure made by the State Office of Financial Management; or
 - b. The 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 (\$22,500) 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.
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. §§ 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; Ord. 2020-12-01)

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; Ord. 2020-12-01)

40.460.240 Prohibited Uses

The following modifications and uses are prohibited in all shoreline designations and are not eligible for review as a shoreline conditional use or shoreline variance. See Sections 40.100.070 and 40.460.800 for definitions of the following modifications and uses:

- A. Uses not otherwise allowed in the underlying zoning district;
- B. Parking as a primary use;
- C. Discharge of solid wastes, liquid wastes, untreated effluents, and other potentially harmful materials;
- D. Solid waste facilities;
- E. Hazardous waste facilities as defined in Section 40.100.070; and
- F. Speculative fill.

(Amended: Ord. 2012-07-16; Ord. 2014-08-10)

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).

(Amended: Ord. 2020-12-01)

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 on-water residences are considered conforming uses, subject to the requirements in Section 40.460.630(K).

(Amended: Ord. 2015-12-12; Ord. 2020-12-01)

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;
 - 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; Ord. 2020-12-01)

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; Ord. 2020-12-01)

40.460.260 Shoreline Variance

A. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Program would impose unnecessary hardships on the applicant or thwart the policies set forth in the Act and this Program.

(Amended: Ord. 2018-11-06)

B. When a shoreline variance is requested, the Shoreline Administrator shall be the final approval authority for the county. However, shoreline variances must have approval from Ecology, which shall have final approval authority. Shoreline variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in the Act (RCW 90.58.020). In all instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect..

(Amended: Ord. 2018-11-06)

C. The Shoreline Administrator is authorized to recommend a variance from the performance standards of this Program only when all of the following criteria are met (WAC 173-27-170):

1. That the strict application of the bulk, dimensional or performance standards set forth in this Program precludes, or significantly interferes with, reasonable use of the property;
2. That the hardship described in subsection (A) of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this Program, and not, for example, from deed restrictions or the applicant's own actions;
3. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Growth Management Plan and this Program and will not cause adverse impacts to the shoreline environment;
4. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
5. That the variance requested is the minimum necessary to afford relief; and
6. That the public interest will suffer no substantial detrimental effect.

(Amended: Ord. 2018-11-06)

D. Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(c), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

1. That the strict application of the bulk, dimensional or performance standards set forth in this Program precludes all reasonable use of the property;
2. That the proposal is consistent with the criteria established under Sections 40.460.260(C)(2) through (6); and
3. That the public rights of navigation and use of the shorelines will not be adversely affected.

(Amended: Ord. 2018-11-06)

E. The burden of proving that a proposed shoreline variance meets the criteria of this Program shall be on the applicant. Absence of such proof shall be grounds for denial of the application.

F. In the granting of all shoreline variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area.

G. Before making a recommendation to grant a shoreline variance, the county shall consider issues related to the conservation of valuable natural resources, and the protection of views from nearby public roads, surrounding properties and public areas.

H. A variance from county development code requirements shall not be construed to mean a shoreline variance from use regulations in this Program, and vice versa.

I. Shoreline variances may not be used to permit a use or development that is specifically prohibited in a shoreline designation.

(Added: Ord. 2012-07-16)

40.460.270 Shoreline Conditional Use Permit

- A. The purpose of the conditional use permit is to provide greater flexibility in varying the application of the use regulations of this Program in a manner that will be consistent with the policies of the Act and this Program, particularly where denial of the application would thwart the policies of the Act.
- B. When a conditional use is requested, the Shoreline Administrator shall be the final approval authority for the county. However, shoreline conditional uses must have approval from Ecology, which shall have final approval authority under WAC 173-27-200.
- C. Conditional use permits shall be authorized only when they are consistent with the following criteria:
1. The proposed use is consistent with the policies of RCW 90.58.020, WAC 173-27-160 and all provisions of this Program;
 2. The use will not interfere with normal public use of public shorelines;
 3. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Growth Management Plan and this Program;
 4. The public interest will suffer no substantial detrimental effect; and
 5. Consideration has been given to cumulative impact of additional requests for like actions in the area.
- D. Uses specifically prohibited by this Program may not be authorized.
- E. Other uses not specifically identified in this Program are considered “unclassified uses” and may be authorized through a conditional use permit if the applicant can demonstrate that the proposed use is consistent with the purpose of the shoreline designation and compatible with existing shoreline improvements.
- F. The burden of proving that a proposed shoreline conditional use meets the criteria of this Program and WAC 173-27-160 shall be on the applicant. Absence of such proof shall be grounds for denial of the application.
- G. The County is authorized to impose conditions and standards to enable a proposed shoreline conditional use to satisfy the conditional use criteria.

(Added: Ord. 2012-07-16)

40.460.300 Shoreline Master Program Goals and Policies

The Shoreline Master Program Goals and Policies are listed in Chapter 13 of the Clark County Comprehensive Plan. The general regulations in Section 40.460.500 and the specific use regulations in Section 40.460.600 are the means by which these goals and policies are implemented.

(Added: Ord. 2012-07-16)

40.460.400 Shoreline Designations

40.460.410 Introduction

The intent of assigning shoreline designations to specific geographies is to encourage development that will enhance the present or desired character of the shoreline. To accomplish this, segments of shoreline are given a shoreline designation based on existing development patterns, natural capabilities and limitations, and the vision of the County. The shoreline designations are intended to work in conjunction with the comprehensive plan and zoning.

Management policies are an integral part of the shoreline designations and are used for determining uses and activities that can be permitted in each shoreline designation. Development regulations specify how and where permitted development can take place within each shoreline designation and govern height and setback.

(Added: Ord. 2012-07-16)

40.460.420 Authority

A. Local governments are required under the Shoreline Management Act of 1971 (Chapter 90.58 RCW) and the Shoreline Master Program Guidelines (Chapter 173-26 WAC) to develop and assign a land use categorization system known as “shoreline environment designations” for shoreline areas as a basis for effective shoreline master programs. For purposes of this Program “shoreline designation” is used in place of the term “shoreline environment designation” referred to in Chapter 173-26 WAC.

B. The method for local government to account for different shoreline conditions is to assign a shoreline designation to each distinct shoreline section in its jurisdiction. The shoreline designation assignments provide the framework for implementing shoreline policies and regulatory measures for environmental protection, use provisions, and other regulatory measures specific to each shoreline designation.

(Added: Ord. 2012-07-16)

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.

(Amended: Ord. 2020-12-01)

B. Aquatic Shoreline Designation.

1. Purpose.

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 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.

(Amended: Ord. 2020-12-01)

C. Natural Shoreline Designation.

1. Purpose.

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 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.

(Amended: Ord. 2020-12-01)

D. Urban Conservancy Shoreline Designation.

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 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.
- 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.

(Amended: Ord. 2020-12-01)

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 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.
- 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; Ord. 2020-12-01)

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 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.
- 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; Ord. 2020-12-01)

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 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.
- 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.

(Amended: Ord. 2020-12-01)

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 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. 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; Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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. Copies of the map may be prepared for administrative purposes. To facilitate use of this Program a copy is included in the most recently adopted Clark County Comprehensive Growth Management Plan.

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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/Rural² 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

¹Urban = City or Urban Growth Area

²Rural = Unincorporated Clark County outside Urban Growth Areas

(Amended: Ord. 2012-07-16; Ord. 2020-12-01)

40.460.500 General Shoreline Use and Development Regulations

All uses and development activities in shorelines shall be subject to the following general regulations in addition to the applicable use-specific regulations in Section 40.460.600.

(Added: Ord. 2012-07-16)

40.460.510 General Shoreline Use and Development Regulations

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

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

K. Within urban growth areas, 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).

(Amended: Ord. 2012-07-16; Ord. 2020-12-01)

40.460.520 Archaeological, Cultural, and Historic Resources

A. When a shoreline use or development is in an area known or with a low-moderate to high probability to contain archaeological artifacts based on the state's predictive model and the potential impact of the use or development is considered a significant risk to the archaeological artifacts that may be present based on Section 40.570.080(C)(3)(k)(3), the applicant shall provide for a site inspection and evaluation by a professional archaeologist prior to issuance of any shoreline permit or approval. Site inspection requirements shall be consistent with the predetermination provisions in Section 40.570.080(C)(3)(k). Work may not begin until the inspection and evaluation have been completed and the county has issued its permit or approval.

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

B. If any item of possible archaeological interest (including human skeletal remains) is discovered on site, all work shall immediately stop, and the county, State Department of Archaeology and Historic Preservation (DAHP), and affected Native American tribe(s) shall be notified of the discovery. A stop-work order will be issued. The shoreline permit will be temporarily suspended. All applicable state and federal permits shall be obtained as a condition of resumption of development activities. Development activities may resume only upon the applicant's receipt of county approval.

(Amended: Ord. 2015-12-12)

C. If the discovery includes human skeletal remains, the find must be secured and protected from further disturbance; the Clark County Medical Examiner and local law enforcement shall be notified in the most expeditious manner possible. The County Medical Examiner will assume jurisdiction over the site and the human skeletal remains, and will make a determination of whether they are crime-related. If they are not, DAHP will take jurisdiction over the remains and report them to the appropriate parties. The State Physical Anthropologist will make a determination of whether the remains are Native American and report that finding to the affected parties. DAHP will handle all consultation with the affected parties as to the preservation, excavation, and disposition of the remains.

(Added: Ord. 2012-07-16)

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; Ord. 2020-12-01)

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 most recently amended by Ordinance 2020-03-01, dated March 10, 2020;
2. Flood hazard areas, defined in Chapter 40.420 as most recently amended by Ordinance 2019-05-07, dated May 21, 2019;
3. Geologic hazard areas, defined in Chapter 40.430 as most recently amended by Ordinance 2019-05-07, dated May 21, 2019;
4. Habitat conservation areas, defined in Chapter 40.440 as most recently amended by Ordinance 2020-12-01, dated December 1, 2020; and
5. Wetlands, defined in Chapter 40.450 as most recently amended by Ordinance 2020-12-01, dated December 1, 2020.

(Amended: Ord. 2015-12-12; Ord. 2018-11-06; Ord. 2020-12-01)

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, 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; Ord. 2020-12-01)

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.

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.
- 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; Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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;
 - (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 Areas (PHS) as defined in the most current WDFW Priority Habitats and Species List, including areas within one thousand (1,000) feet of individual species points mapped by WDFW. 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
 - (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; Ord. 2020-12-01)

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 twenty-five percent (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. 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. Provisions for programmatic permits are included in Section 40.450.040(K).
- k. Provisions for emergency wetland permits are included in Section 40.450.040(L).
- l. 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 six (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:
- (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) Reestablishment, 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. Reestablishment 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. Reestablishment 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.
- 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) of this section; 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) of this section.
 - (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 as 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; Ord. 2020-12-01)

40.460.540 Public Access

A. Provisions for adequate public access shall be incorporated into all shoreline development proposals and erosion control measures that involve public funding unless the applicant demonstrates public access is not feasible due to one (1) or more of the provisions of Section 40.460.540(B)(1) through (5).

B. Consistent with constitutional limitations, provisions for adequate public access shall be incorporated into all land divisions and other shoreline development proposals (except residential development of less than five (5) parcels), unless this requirement is clearly inappropriate to the total proposal. Public access will not be required where the applicant demonstrates one (1) or more of the following:

1. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means;
2. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
3. The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access is unreasonably disproportionate to the total proposed development;
4. Significant environmental impacts that cannot be mitigated will result from the public access; or
5. Significant undue and unavoidable conflict between public access requirements and the proposed use and/or adjacent uses would occur; provided, that the applicant has first demonstrated and the county determines that all reasonable alternatives have been evaluated and found infeasible, including but not limited to:
 - a. Regulating access by such means as maintaining a gate and/or limiting hours of use;

- b. Designing separation of uses and activities (including, but not limited to, fences, terracing, use of one-way glazing, hedges, landscaping); and
 - c. Provisions for access at a site geographically separated from the proposal such as a street end, vista or trail system.
- C. Public access sites shall be connected to barrier free route of travel and shall include facilities based on criteria within the Americans with Disabilities Act accessibility guidelines.
- D. Public access shall include provisions for protecting adjacent properties from trespass and other possible adverse impacts to neighboring properties.
- E. Signs indicating the public's right of access to shoreline areas shall be installed and maintained in conspicuous locations.
- F. Required public access shall be fully developed and available for public use at the time of occupancy of the use or activity.
- G. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a means of view and/or physical approach to public waters and may include interpretive centers and displays.
- H. Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of a plat or short plat as a condition running contemporaneous with the authorized land use, as a minimum. Said recording with the County Auditor's Office shall occur at the time of permit approval.
- I. Future actions by the applicant, successors in interest, or other parties shall not diminish the usefulness or value of the public access provided.
- J. Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or nonprofit agency through a formal agreement approved by the Shoreline Administrator and recorded with the County Auditor's Office.

(Added: Ord. 2012-07-16)

40.460.550 Restoration

- A. Restoration of shoreline ecological functions and processes shall be encouraged and allowed on all shorelines and shall be located, designed and implemented in accordance with applicable policies and regulations of this Program and consistent with other county programs (see Section 40.460.640(D)).
- B. Impacts to shoreline ecological functions shall be fully mitigated. Such mitigation may include elements from the shoreline restoration plan, where appropriate.
- C. Elements of the shoreline restoration plan may also be implemented in any shoreline designation to improve shoreline ecological function.
- D. Restoration efforts shall be developed by a qualified professional, shall be based on federal, state, and local guidance and shall consider the following:
 - 1. Riparian soil conditions;
 - 2. In-stream fish habitats; and
 - 3. Healthy aquatic and terrestrial food webs.

(Added: Ord. 2012-07-16)

40.460.560 Site Planning and Development

A. General.

1. Land disturbing activities such as grading and cut/fill shall be conducted in such a way as to minimize impacts to soils and native vegetation.
2. Impervious surfaces shall be minimized to the extent feasible as specified in Chapter 40.386. Low impact development techniques shall be utilized where feasible to minimize increases to stormwater runoff.
3. When feasible, existing transportation corridors shall be utilized. Ingress/egress points shall be designed to minimize potential conflicts with and impacts upon vehicular and pedestrian traffic. Pedestrians shall be provided with safe and convenient circulation facilities.
4. Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading, alteration of topography and natural features, and designed to accommodate wildlife movement.
5. Parking, storage, and non-water-dependent accessory and appurtenant structures and areas shall be located landward from the OHWM and landward of the water-oriented portions of the principal use.
6. Trails and uses near the shoreline shall be landscaped or screened to provide visual and noise buffering between adjacent dissimilar uses or scenic areas, without blocking visual access to the water.
7. Fencing, walls, hedges, and similar features shall be designed in a manner that does not significantly interfere with wildlife movement.
8. Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible.
9. A use locating near a legally established aquaculture enterprise, including an authorized experimental project, shall demonstrate that such use would not result in damage to or destruction of the aquaculture enterprise, or compromise its monitoring or data collection.

(Amended: Ord. 2015-12-12)

B. Grading, Fill, and Excavation.

1. Land disturbing activities such as grading and cut/fill shall be conducted in such a way as to minimize impacts to soils and native vegetation, and shall at a minimum meet the requirements of Chapter 14.07.
2. Clearing, grading, fill, and excavation activities shall be scheduled to minimize adverse impacts, including, but not limited to, damage to water quality and aquatic life.
3. Clearing and grading shall not result in changes to surface water drainage patterns that adversely impact adjacent properties.
4. Developments shall include provisions to control erosion during construction and to ensure preservation of native vegetation for bank stability. Disturbed areas shall be stabilized immediately and revegetated with native vegetation.
5. Fills shall be permitted only in conjunction with a permitted use, and shall be of the minimum size necessary to support that use. Speculative fills are prohibited.
6. Any significant placement of materials from off site (other than permitted deposition of clean dredge materials) shall be considered fill and shall comply with the fill provisions in Chapter 14.07. Fill shall consist only of clean materials.
7. Soil, gravel or other substrate transported to the site for fill shall be screened and documented that it is uncontaminated. Use of any contaminated materials as fill is prohibited.

8. Fills shall be designed and placed to allow surface water penetration into groundwater supplies where such conditions existed prior to filling.
9. Fills must protect shoreline ecological functions, including channel migration processes.
10. Fill waterward of OHWM shall only be allowed as a conditional use and then only when it is necessary:
 - a. To support a water-dependent or public access use;
 - b. For habitat creation or restoration projects;
 - c. For remediation of contaminated sediments as part of an interagency environmental clean-up plan;
 - d. For disposal of dredged material considered suitable under, and conducted in accordance with, the dredged material management program of the Department of Natural Resources;
 - e. For expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible;
 - f. For a mitigation action;
 - g. For environmental restoration; or
 - h. For a beach nourishment or enhancement project.

In the Columbia River, fills shall be prohibited between the OHWM and minus fifteen (-15) feet CRD, unless shallow water habitat will be created as mitigation.

11. Excavation below the OHWM is considered dredging and subject to provisions in Section 40.460.640.
12. Upon completion of construction, remaining cleared areas shall be replanted with native species as identified by the Clark Conservation District. Replanted areas shall be maintained such that within three (3) years' time the vegetation is fully re-established.

(Amended: Ord. 2012-12-23)

C. Building Design.

1. Non-single-family structures shall incorporate architectural features that provide compatibility with adjacent properties, enhance views of the landscape from the water, and reduce scale to the extent possible.
2. Building surfaces on or adjacent to the water shall employ materials that minimize reflected light.
3. Facade treatments, mechanical equipment and windows in structures taller than two (2) stories shall be designed and arranged to prevent bird collisions using the best available technology. Single-family residential structures are exempt from this provision.
4. Interior and exterior structure lighting shall be designed, shielded and operated to:
 - a. Avoid illuminating nearby properties or public areas;
 - b. Prevent glare on adjacent properties, public areas or roadways;
 - c. Prevent land and water traffic hazards; and
 - d. Reduce night sky effects to avoid impacts to fish and wildlife.
5. Accessory uses, including parking, shall be located as far landward as possible while still serving their intended purposes.

(Added: Ord. 2012-07-16)

40.460.570 Vegetation Conservation

A. Existing vegetation within shoreline jurisdiction shall be retained in the riparian area closest to the water body but landward from the OHWM as follows:

1. Type S waters in rural areas, one hundred fifty (150) feet;
2. Type S waters in urban growth areas, one hundred fifteen (115) feet;
3. Type F waters in rural areas, one hundred fifteen (115) feet;
4. Type F waters in urban growth areas, one hundred (100) feet;
5. Type Np waters, seventy-five (75) feet;
6. Type Ns waters, fifty (50) feet;
7. Lakes, one hundred (100) feet.

B. Removal of native vegetation shall be avoided to the extent possible. Where removal of native vegetation cannot be avoided, it shall be minimized to protect shoreline ecological functions.

C. If non-native vegetation is to be removed, then it shall be replaced with native vegetation within the shoreline jurisdiction.

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

E. Development shall be located to avoid clearing and grading impacts to more mature or multistoried plant communities and to retain habitat connectivity.

F. Developments shall include provisions to ensure preservation of native vegetation and control erosion during construction.

G. Vegetation that cannot be replaced or restored within twenty (20) years shall be preserved.

H. Clearing by hand-held equipment of invasive or non-native shoreline vegetation or plants listed on the State Noxious Weed List is permitted in shoreline locations if native vegetation is promptly re-established in the disturbed area.

I. Topping trees is prohibited.

J. Thinning of trees is limited, as follows:

1. Removal of no more than twenty-five percent (25%) of the canopy of any tree or group of trees (calculated based on the area of the crown, or upper portion(s) comprised of branches and leaves or as determined by a certified arborist) in any given five (5) year period;
2. Pruning of trees that does not affect shoreline ecological functions. No more than twenty percent (20%) of the limbs on any single tree may be removed and no more than twenty percent (20%) of the canopy cover in any single stand of trees may be removed in a given five (5) year period. Pruning shall comply with the National Arborist Association pruning standards, unless the tree is a hazard tree as defined in Section 40.100.070.

K. Native plant materials which are equivalent to those which would typically occur with respect to size, structure, and diversity at maturation shall be used in restoration, rehabilitation, or enhancement projects.

L. Natural features such as snags, stumps, logs or uprooted trees, which support fish and other aquatic systems, and which do not intrude on the navigational channel or threaten agricultural land, existing structures and facilities, or public safety shall be left undisturbed.

M. Unless otherwise stated, the vegetation conservation regulations of this Program do not apply to commercial forest practices as defined by this Program when such activities are covered under the Washington State Forest Practices Act (Chapter 76.09 RCW), except where such activities are associated with a conversion to other uses or other forest practice activities over which local governments have authority, or with flood control levees required to be kept free of vegetation that damages their structural integrity. For the purposes of this Program, preparatory work associated with the conversion of land to nonforestry uses and/or developments shall not be considered a forest practice and shall be reviewed in accordance with the provisions for the proposed nonforestry use, the general provisions of this Program, and shall be limited to the minimum necessary to accommodate an approved use.

N. Aquatic weed control shall only occur to protect native plant communities and associated habitats or where an existing water-dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards and shall be done by a qualified professional.

(Added: Ord. 2012-07-16)

40.460.580 Views and Aesthetics

A. Visual access shall be maintained, enhanced, and preserved as appropriate on shoreline street-ends, public utility rights-of-way above and below the ordinary high water mark, and other view corridors.

B. Development on or over the water shall be constructed to avoid interference with views from surrounding properties to the adjoining shoreline and adjoining waters to the extent practical.

C. A new or expanded building or structure over thirty-five (35) feet in height above average grade level that obstructs the shoreline view of a substantial number of residents shall only be allowed when overriding considerations of the public interest will be served. The Shoreline Administrator shall require a view analysis including view corridors, view profiles, and vertical profiles from various locations to determine if shoreline views will be obstructed.

D. Clearing or pruning to preserve or create views shall be allowed as follows:

1. When shoreline stability and shoreline ecological functions are maintained; and
2. The applicable standards in Sections 40.460.560 and 40.460.570 are met.

(Added: Ord. 2012-07-16)

40.460.590 Water Quality and Quantity

A. The location, design, construction, and management of all shoreline uses and activities shall protect the quality and quantity of surface and groundwater adjacent to the site.

B. All shoreline development shall comply with the applicable requirements of Chapters 13.26A, Water Quality, 40.386, Stormwater and Erosion Control, and 40.410, Critical Aquifer Recharge Areas.

(Amended: Ord. 2015-12-12)

C. Best management practices (BMPs) for control of erosion and sedimentation (Chapter 40.386) and for meeting water quality standards (Chapter 13.26A) shall be implemented for all shoreline development.

(Amended: Ord. 2015-12-12)

D. Potentially harmful materials, including but not limited to oil, chemicals, tires, or hazardous materials, shall not be allowed to enter any body of water or wetland, or to be discharged onto the land. Potentially harmful materials shall be maintained in safe and leak-proof containers.

E. Herbicides, fungicides, fertilizers, and pesticides shall not be applied within twenty-five (25) feet of a water body, except by a qualified professional in accordance with state and federal laws. Further, pesticides subject to the final ruling in *Washington Toxics Coalition, et al., v. EPA* shall not be applied within sixty (60) feet for ground applications or within three hundred (300) feet for aerial applications of the subject water bodies and shall be applied by a qualified professional in accordance with state and federal law.

F. Any structure or feature in the Aquatic shoreline designation shall be constructed and/or maintained with materials that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants.

G. Septic systems should be located as far landward of the shoreline and floodway as possible. Where permitted, new on-site septic systems shall be located, designed, operated, and maintained to meet all applicable water quality, utility, and health standards.

(Added: Ord. 2012-07-16)

40.460.600 Specific Shoreline Use Regulations

40.460.610 General Provisions

A. This chapter contains the regulations that apply to specific uses, developments, and activities in the shoreline jurisdiction.

B. These regulations are intended to work in concert with all sections of this Program and in particular the goals and policies (Section 40.460.300) and general use and development regulations (Section 40.460.500).

(Added: Ord. 2012-07-16)

40.460.620 Shoreline Use, Modification, and Standards Table

A. Each shoreline designation shall be managed in accordance with its designated purpose as described in this Program. Table 40.460.620-1 identifies those uses that are prohibited, may be permitted or permitted with a conditional use approval in each shoreline designation. In the event conflicts exist between Table 40.460.620-1 and the text in this chapter, the text shall apply.

B. Table 40.460.620-1 also summarizes general setbacks and building heights for uses within each shoreline designation. These setbacks apply in conjunction with the requirements of the critical areas requirements established in Section 40.460.530. In the event a conflict exists between Table 40.460.620-1 and the requirements of Section 40.460.500, the most protective of shoreline ecological functions shall apply.

C. Residential densities and lot dimensions are the same as those described in the Clark County Comprehensive Growth Management Plan and this title for the respective zoning districts.

D. In Table 40.460.620-1, setbacks are measured landward from the ordinary high water mark (OHWM). For transportation facilities and utilities, the setback from OHWM pertains to the right-of-way and not just the structure or pipeline. In the Aquatic shoreline designation, the setback is waterward of the OHWM. Building heights are calculated according to WAC 173-27-030(9), or from the OHWM in the Aquatic shoreline designation.

E. All shoreline designations, even if they are not applied within the county or urban growth areas, are included in Table 40.460.620-1 to maintain consistency countywide (see Sections 40.460.430 and 40.460.440(E)).

Table 40.460.620-1. Shoreline Use, Modification, and Development Standards

Abbreviations P = Permitted; C = Conditional Use; X = Prohibited; N/A = Not Applicable; UNL = Unlimited.	AQ	NT	UC (UGA)	MI (UGA)	HI (UGA)	RC-RD	RC-RL
Shoreline Designation	Aquatic	Natural	Urban Conservancy	Medium Intensity	High Intensity	RC Residential	RC Resource Lands
Shoreline Uses							
Agriculture							
Agriculture	X	X	C	P	P	P	P
• <i>Structure Setback</i>	N/A	N/A	100'	100'	100'	100'	100'
• <i>Structure Height</i>	N/A	N/A	35'	35'	35'	35'	35'
Aquaculture							
Aquaculture, General	P	X	C	C	C	C	C
• <i>Structure Setback</i>	0'	N/A	50'	50'	50'	50'	50'
Boating Uses							
Motorized Boat Launches	P	X	C	C	P	P	P
Nonmotorized Boat Launches	P	C	P	P	P	P	P
Marinas	P	X	X	C	P	C	C
• <i>Structure Setback</i>	0'	N/A	N/A	25'	25'	25'	25'
• <i>Structure Height</i>							
- 0 – 100' from OHWM	20'	N/A	N/A	25'	35'	25'	35'
- >100' from OHWM	20'	N/A	N/A	35'	45'	35'	45'
Docks, Piers, Mooring Buoys	P ¹	X	P ¹	P ¹	P ¹	P ¹	P ¹
• <i>Structure Setback</i>	0'	N/A	0'	0'	0'	0'	0'
Commercial Uses							
Water-Dependent	C	X	X	P	P	C	C
• <i>Structure Setback</i>	0'	N/A	N/A	0'	0'	0'	0'
• <i>Structure Height</i>							
- 0 – 100' from OHWM	15'	N/A	N/A	35'	35'	35'	35'
- >100' from OHWM	15'	N/A	N/A	45'	60'	45'	45'
Water-Related, Water- Enjoyment	X	X	X	P	P	C	C
• <i>Structure Setback</i>	N/A	N/A	N/A	25'	25'	25'	25'
• <i>Structure Height</i>							

Abbreviations P = Permitted; C = Conditional Use; X = Prohibited; N/A = Not Applicable; UNL = Unlimited.	AQ	NT	UC (UGA)	MI (UGA)	HI (UGA)	RC-RD	RC-RL
Shoreline Designation	Aquatic	Natural	Urban Conservancy	Medium Intensity	High Intensity	RC Residential	RC Resource Lands
- 0' – 100' from OHWM	N/A	N/A	N/A	25'	35'	35'	35'
- >100' from OHWM	N/A	N/A	N/A	35'	45'	45'	45'
Non-Water-Oriented	X	X	X	C ²	C ²	X	X
• Structure Setback	N/A	N/A	N/A	100'	100'	N/A	N/A
• Structure Height	N/A	N/A	N/A	25'	25'	N/A	N/A
Forestry							
Log Storage	C	X	X	X	P	X	P
• Setback	0'	N/A	N/A	N/A	50'	N/A	50'
Timber Harvest	X	X	C	P	P	P	P
• Activity Setback	N/A	N/A	100'	100'	50'	100'	50'
Industrial Uses							
Water-Dependent	P	X	X	X	P	X	X
• Structure Setback	0'	N/A	N/A	N/A	0'	N/A	N/A
• Structure Height							
- 0 – 100' from OHWM	20'	N/A	N/A	N/A	UNL	N/A	N/A
- >100' from OHWM	20'	N/A	N/A	N/A	UNL	N/A	N/A
Water-Related	X	X	X	X	P	X	X
• Structure Setback	N/A	N/A	N/A	N/A	50'	N/A	N/A
• Structure Height							
- 0 – 100' from OHWM	N/A	N/A	N/A	N/A	UNL	N/A	N/A
- >100' from OHWM	N/A	N/A	N/A	N/A	UNL	N/A	N/A
Non-Water-Oriented	X	X	X	X	P	X	X
• Structure Setback	N/A	N/A	N/A	N/A	100'	N/A	N/A
• Structure Height	N/A	N/A	N/A	N/A	35'	N/A	N/A
Institutional Uses							
Water-Dependent	C	X	C	P	P	C	C
• Structure Setback	N/A	N/A	0'	0'	0'	0'	0'
• Structure Height							

Abbreviations P = Permitted; C = Conditional Use; X = Prohibited; N/A = Not Applicable; UNL = Unlimited.	AQ	NT	UC (UGA)	MI (UGA)	HI (UGA)	RC-RD	RC-RL
Shoreline Designation	Aquatic	Natural	Urban Conservancy	Medium Intensity	High Intensity	RC Residential	RC Resource Lands
- 0 – 100' from OHWM	N/A	N/A	25'	35'	35'	35'	35'
- >100' from OHWM	N/A	N/A	35'	45'	35'	45'	45'
Water-Related	X	X	X	P	P	C	X
• Structure Setback	N/A	N/A	N/A	25'	25'	50'	N/A
• Structure Height							
- 0 – 100' from OHWM	N/A	N/A	N/A	35'	45'	35'	N/A
- >100' from OHWM	N/A	N/A	N/A	45'	60'	35'	N/A
Non-Water-Oriented	X	X	X	C ²	C ²	X	X
• Structure Setback	N/A	N/A	N/A	100'	100'	N/A	N/A
• Structure Height	N/A	N/A	N/A	35'	35'	N/A	N/A
Mining							
Gravel Mining	C ³	X	X	X	C ³	C ³	C ³
• Activity Setback	0'	N/A	N/A	N/A	200'	200'	200'
Hard Rock Mining	X	X	X	X	C ³	C ³	C ³
• Activity Setback	N/A	N/A	N/A	N/A	100'	100'	50'
Parking							
Primary Use	X	X	X	X	X	X	X
• Structure or Surface Lot Setback	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Accessory Use	X	X	P	P	P	P	P
• Structure or Activity Setback	N/A	N/A	100'	100'	50'	100'	100'
• Structure Height	N/A	N/A	35'	35'	35'	35'	35'
Recreational Uses							
Water-Dependent	P	P ⁴	P	P	P	P	P
• Structure Setback	0'	0'	0'	0'	0'	0'	0'
• Structure Height	15'	15'	15'	35'	35'	35'	35'
Water-Related/Enjoyment (Trails, Accessory Buildings)	C ⁴	C ⁴	P	P	P	P	P
• Structure Setback	0'	50'5	50'5	50'5	20'	20'	20'
• Structure Height	15'	15'	15'	35'	35'	35'	35'

Abbreviations P = Permitted; C = Conditional Use; X = Prohibited; N/A = Not Applicable; UNL = Unlimited.	AQ	NT	UC (UGA)	MI (UGA)	HI (UGA)	RC-RD	RC-RL
Shoreline Designation	Aquatic	Natural	Urban Conservancy	Medium Intensity	High Intensity	RC Residential	RC Resource Lands
Non-Water-Oriented (Golf Courses, Sports Fields)	X	X	C	C	C	C	X
• <i>Structure Setback</i>	N/A	N/A	100'	100'	100'	200'	N/A
• <i>Structure Height</i>	N/A	N/A	25'	25'	25'	15'	N/A
Residential Uses							
Single-Family	X	X	P	P	X	P	P
• <i>Structure Setback</i>	N/A	N/A	100'	50'	N/A	100'	100'
• <i>Structure Height</i>	N/A	N/A	35'	35'	N/A	35'	35'
• <i>Density</i>	N/A	N/A	In accordance with the underlying zoning				
Floating Homes (New)	X	N/A	N/A	N/A	N/A	N/A	N/A
Floating On-Water Residence (New)	X	N/A	N/A	N/A	N/A	N/A	N/A
• <i>Structure Height</i>	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Floating Homes (Existing as of Jan. 1, 2011)	P	N/A	N/A	N/A	N/A	N/A	N/A
Floating On-Water Residence (Existing as of July 1, 2014)	P	N/A	N/A	N/A	N/A	N/A	N/A
• <i>Structure Height</i>	Existing	N/A	N/A	N/A	N/A	N/A	N/A
Multifamily	X	X	X	P	P	X	X
• <i>Structure Setback</i>	N/A	N/A	N/A	35'	35'	N/A	N/A
• <i>Structure Height</i>	N/A	N/A	N/A	35'	35'	N/A	N/A
• <i>Density</i>	N/A	N/A	N/A	In accordance with the underlying zoning		N/A	N/A
Signs							
Agricultural	X	X	P	X	P	P	P
Fascia or Wall Signs	X	X	X	P	P	P	P
Freestanding Informational	P	P	P	P	P	P	P
High School Electronic Message	X	X	P	P	P	P	P
Monument	X	P	P	P	P	P	P
Navigation	P	P	P	P	P	P	P
Transportation Uses							
Highways, Arterials, Railroads (Parallel to OHWM)	C	X	P	P	P	P	P
• <i>Right-of-Way Setback</i>	0'	N/A	200'	100'	100'	200'	200'

Abbreviations P = Permitted; C = Conditional Use; X = Prohibited; N/A = Not Applicable; UNL = Unlimited.	AQ	NT	UC (UGA)	MI (UGA)	HI (UGA)	RC-RD	RC-RL
Shoreline Designation	Aquatic	Natural	Urban Conservancy	Medium Intensity	High Intensity	RC Residential	RC Resource Lands
Secondary/Public Access Roads (Parallel to OHWM)	X	X	P	P	P	P	P
• <i>Right-of-Way Setback</i>	N/A	N/A	100'	50'	50'	100'	100'
Roads Perpendicular to the OHWM	X	X	P	P	P	P	P
• <i>Setback</i>	N/A	N/A	Limited to the setback for the use the road is serving ⁶				
Bridges (Perpendicular to Shoreline)	C	C	C	P	P	C	C
• <i>Structure Setback</i>	0'	0'	0'	0'	0'	0'	0'
Utility Uses							
Above-Ground Utilities (Parallel to Shoreline)	C	C	P	P	P	P	P
• <i>Right-of-Way Setback</i>	0'	200'	100'	50'	50'	100'	100'
• <i>Structure Height</i>	15'	15'	35'	35'	UNL	15'	15'
• <i>Distribution Pole Height</i>	0'	45'	45'	45'	UNL	45'	45'
Electrical Transmission Lines	C	C	C	C	C	C	C
• <i>Tower Height</i>	UNL	UNL	UNL	UNL	UNL	UNL	UNL
Underground Utilities (Parallel to Shoreline)	C	C	P	P	P	P	P
• <i>Right-of-Way Setback</i>	0'	200'	100'	50'	50'	50'	50'
Underground Utilities (Perpendicular to Shoreline)	C	C	C	C	C	C	C
• <i>Right-of-Way Setback</i>	0'	0'	0'	0'	0'	0'	0'
Unclassified Uses							
Unclassified Uses	C	C	C	C	C	C	C
• <i>Structure or Activity Setback</i>	0'	200'	100'	100'	100'	100'	100'
• <i>Structure Height</i>	15'	15'	35'	35'	35'	35'	35'
Shoreline Modification							
Dredging and Dredge Material Disposal							
Nonmaintenance Dredging	C	N/A	N/A	N/A	N/A	N/A	N/A
Maintenance Dredging	P	N/A	N/A	N/A	N/A	N/A	N/A
Dredge Material Disposal	C	X	X	C	C ⁷	C	C
Dredging and Disposal as Part of Ecological Restoration/Enhancement	P	C	P	P	P	P	P

Abbreviations P = Permitted; C = Conditional Use; X = Prohibited; N/A = Not Applicable; UNL = Unlimited.	AQ	NT	UC (UGA)	MI (UGA)	HI (UGA)	RC-RD	RC-RL
Shoreline Designation	Aquatic	Natural	Urban Conservancy	Medium Intensity	High Intensity	RC Residential	RC Resource Lands
Fill							
Speculative	X	X	X	X	X	X	X
Other	C ⁸	P ⁹	P	P	P	P	P
Flood Control Works and In-Stream Structures							
Dams, Dikes, and Levees	C	X	C	C	P	C	C
In-Stream Structures	C	N/A	N/A	N/A	N/A	N/A	N/A
Shoreline Restoration							
Ecological Restoration/ Enhancement/Mitigation	P	P	P	P	P	P	P
Shoreline Stabilization							
Bioengineered	P	P	P	P	P	P	P
Structural (i.e., Bulkheads and Revetments)	C	X	C	C	C	C	C
Breakwaters, Jetties, Rock Weirs, and Groins	C	X	C	C	C	C	C

¹ Private docks permitted as joint-use only (see Section 40.460.630(C)(4)(j)).

² See Section 40.460.630(D)(4).

³ In Surface Mining Overlay areas only.

⁴ Low intensity only.

⁵ Water-related/enjoyment features such as viewpoints, gazebos, or fishing piers may have a zero (0) foot setback when connected to a public access trail.

⁶ New roads may connect to existing roads within shoreline jurisdiction as long as the connection is landward of the existing road and the ordinary high water mark.

⁷ Permitted outside of channel migration zones.

⁸ See Section 40.460.560(B)(10).

⁹ Permitted for restoration only; otherwise prohibited.

Note: Setbacks are landward from the OHWM in the NT, UC, MI, HI, RC-RD, and RC-RL shoreline designations; setbacks are waterward of the OHWM in the AQ shoreline designation.

(Amended: Ord. 2012-07-16; Ord. 2014-08-10; Ord. 2018-01-01)

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; Ord. 2020-12-01)

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.
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; Ord. 2020-12-01)

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.
 - 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 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.
 - 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 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 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; Ord. 2020-12-01)

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:
 - 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; Ord. 2020-12-01)

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), 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; Ord. 2020-12-01)

F. Industrial Uses.

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, 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 reevaluated 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; Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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:
 - 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.

(Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

J. Recreational Uses.

1. Recreational developments shall provide for nonmotorized access to the shoreline such as pedestrian and bicycle paths.
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:

- 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; Ord. 2020-12-01)

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.

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:

(1) The expansion maintains the size of the footprint of the existing residence;

(2) The expansion does not exceed the allowed height limit; and

(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) of this section.

b. A one (1) time expansion of a floating on-water residence is allowed, as follows:

(1) The expansion maintains the size of the footprint of the existing residence;

(2) The expansion does not exceed the allowed height limit; and

(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 Sections 40.460.630(C) and 40.460.630(K) of this section.

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:
 - (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; Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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.
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.

(Amended: Ord. 2020-12-01)

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 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; Ord. 2020-12-01)

40.460.640 Shoreline Modification Regulations

A. General Requirements.

1. Structural modifications shall only be allowed where it can be demonstrated that the proposed activities are necessary to support or protect a legally existing shoreline use or primary structure that is in danger of loss or substantial damage, or are necessary for reconfiguration of the shoreline or bedlands for an allowed water-dependent use or for shoreline mitigation or enhancement purposes.
2. Modifications shall only be allowed when impacts are avoided, minimized, and mitigated to assure no net loss of shoreline ecological functions.
3. 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.

B. Dredging and Dredge Material Disposal.

1. Dredging.
 - a. Nonmaintenance dredging shall be avoided where possible. New dredging shall be permitted only where it is demonstrated that the proposed water-dependent or water-related uses will not result in significant or ongoing adverse impacts to water quality, fish and wildlife habitat conservation areas and other critical areas, flood holding capacity, natural drainage and water circulation patterns, significant plant communities, prime agricultural land, and public access to shorelines, unless one (1) or more of these impacts cannot be avoided. When such impacts are unavoidable, they shall be minimized and mitigated such that they result in no net loss of shoreline ecological functions.
 - b. Maintenance dredging of established navigation channels and basins shall be restricted to managing previously dredged and/or existing authorized location, depth and width.

- c. Dredging and dredge disposal shall be prohibited on or in archaeological sites that are listed on the National Register of Historic Places, the Washington Heritage Register, and/or the Clark County Historic Register until such time that they have been reviewed and approved by the appropriate agency.
 - d. Dredging shall be prohibited between the OHWM and minus fifteen (-15) feet CRD, unless shallow water habitat will be created to mitigate for the dredging project.
 - e. New dredging activity is prohibited in the following locations:
 - (1) Along net positive drift sectors and where geohydraulic/hydraulic processes are active and accretion shore forms would be damaged, altered, or irretrievably lost;
 - (2) In shoreline areas with bottom materials that are prone to significant sloughing and refilling due to currents or tidal activity which result in the need for continual maintenance dredging; and
 - (3) In habitats identified as critical to the life cycle of officially designated or protected fish, shellfish, or wildlife.
 - f. Dredging and dredge disposal shall be scheduled to protect biological productivity (including, but not limited to, fish runs, spawning, and benthic productivity) and to minimize interference with fishing activities. Dredging activities shall not occur in areas used for commercial fishing (including, but not limited to, drift netting and crabbing) during a fishing season unless specifically addressed and mitigated for in the permit.
 - g. Dredging techniques that cause minimum dispersal and broadcast of bottom material shall be used, and only the amount of dredging necessary shall be permitted.
 - h. Dredging shall be permitted only:
 - (1) For navigation or navigational access;
 - (2) In conjunction with a water-dependent use of water bodies or adjacent shorelands;
 - (3) As part of an approved habitat improvement project;
 - (4) To improve water flow or water quality; provided, that all dredged material shall be contained and managed so as to prevent it from re-entering the water;
 - (5) In conjunction with a bridge, navigational structure or wastewater treatment facility for which there is a documented public need and where other feasible sites or routes do not exist; or
 - (6) To acquire sand and gravel for commercial purposes from within the Columbia River.
 - i. Dredging for fill is prohibited except where the material is necessary for restoration of shoreline ecological functions.
2. Dredge Material Disposal.
- a. Dredge material disposal shall be avoided where possible. Dredge disposal shall be permitted only where it is demonstrated that the proposed water-dependent or water-related uses will not result in significant or ongoing adverse impacts to water quality, fish and wildlife habitat conservation areas and other critical areas, flood holding capacity, natural drainage and water circulation patterns, significant plant communities, prime agricultural land, and public access to shorelines. When such impacts are unavoidable, they shall be minimized and mitigated such that they result in no net loss of shoreline ecological functions.
 - b. Nearshore or landside disposal of dredge materials shall not be located upon, adversely affect, or diminish:

- (1) Stream mouths, wetlands, or significant plant communities (approved mitigation plans may justify exceptions);
 - (2) Prime agricultural land except as enhancement;
 - (3) Natural resources including but not limited to sand and gravel deposits, timber, or natural recreational beaches and waters except for enhancement purposes;
 - (4) Designated or officially recognized wildlife habitat and concentration areas;
 - (5) Water quality, quantity, and drainage characteristics; and
 - (6) Public access to shorelines and water bodies.
- c. Dredged material shall be disposed of on land only at sites reviewed and approved by the USACOE and the Shoreline Administrator. Applicants shall demonstrate that the proposed site will ultimately be suitable for a use permitted by this Program. Disposal shall be undertaken such that:
- (1) The smallest possible land area is affected, unless dispersed disposal is authorized as a condition of permit approval for soil enhancement or other purposes;
 - (2) Shoreline ecological functions and processes will be preserved, including protection of surface and groundwater;
 - (3) Erosion, sedimentation, floodwaters or runoff will not increase adverse impacts to shoreline ecological functions and processes or property; and
 - (4) Sites will be adequately screened from view of local residents or passersby on public rights-of-way to the maximum extent practicable.
- d. The following conditions shall apply to land disposal sites:
- (1) Springs and aquifers shall be identified and protected.
 - (2) Containment dikes and adequate settling basins shall be built and maintained so that the water discharged from the site carries a minimum of suspended sediment. Required basins shall be designed to maintain at least one (1) foot of standing water at all times to encourage proper settling.
 - (3) Proper diversion of surface discharge shall be provided to maintain the integrity of the natural streams, wetlands, and drainage ways.
 - (4) There shall be a single point of ingress and egress for removal of the de-watered material.
 - (5) Runoff shall be directed through grassy swales or other treatment features that assure protection of water quality and a location that maximizes circulation and fishing.
 - (6) Sites shall be revegetated with appropriate native species as soon as possible to retard erosion and restore wildlife habitat and other critical areas functions.
 - (7) Vegetation shall be maintained by the property owner.
 - (8) Dredge materials deposited upland and not part of a permitted dike or levee shall constitute fill, and when deposited within the jurisdiction of this Program shall comply with the fill regulations.
 - (9) The requirements of Chapter 13.26A shall be met.
- e. Dredged material shall be disposed of in water only at sites approved by the USACOE and the Shoreline Administrator. Disposal techniques that cause minimum dispersal and broadcast of bottom material shall be used, and only if:

- (1) Land disposal is infeasible, less consistent with this Program, or prohibited by law;
 - (2) Nearshore disposal as part of a program to restore or enhance shoreline ecological functions and processes is not feasible;
 - (3) Offshore habitat will be protected, restored, or enhanced;
 - (4) Adverse effects on water quality or biologic resources from contaminated materials will be mitigated;
 - (5) Shifting and dispersal of spoil will be minimal; and
 - (6) Water quality will not be adversely affected.
- f. The deposition of dredged materials in water or wetlands shall only be in approved, open water disposal sites, and shall be permitted only:
- (1) To improve wildlife habitat;
 - (2) To correct material distribution problems adversely affecting fish habitat;
 - (3) To create, expand, rehabilitate, or enhance a beach when permitted under this Program and any required state or federal permit; or
 - (4) When land deposition is demonstrated to be more detrimental to shoreline resources than water deposition.

C. Flood Control Works and In-Stream Structures.

1. Flood Control Works.

- a. Dikes and levees shall only be authorized by conditional use permit, and only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are infeasible, that impacts on shoreline ecological functions and critical areas can be mitigated to ensure no net loss, and that appropriate vegetation conservation actions are undertaken.
- b. Dikes and levees shall protect the natural processes and resource values associated with streamways and deltas including but not limited to wildlife habitat.
- c. Springs and aquifers shall be identified and protected.
- d. Public access shall be provided in accordance with public access policies and regulations of this Program.
- e. Dikes and levees shall be limited in size to the minimum height required to protect adjacent lands from the protected flood stage as identified in the applicable comprehensive flood control management plan or as required by FEMA for dike recertification.
- f. Dikes and levees shall not be constructed with material dredged from the adjacent wetland or stream area unless part of a comprehensive flood and habitat enhancement plan, and then only by conditional use.
- g. Removal of gravel for flood management purposes shall be consistent with an adopted flood hazard reduction plan and with this Program, and allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of shoreline ecological functions, and is part of a comprehensive flood management solution.

2. Flood Control Works Design.

- a. Dikes and levees shall be designed, constructed, and maintained in accordance with hydraulic project approval, and in consideration of resource agency requirements and recommendations.
 - b. Dikes and levees shall be set back at convex (inside) bends to allow streams to maintain point bars and associated aquatic habitat through normal accretion. Where bank dikes have already cut off point bars from the edge of the floodway, consideration should be given to their relocation in order to lower flood stages and current velocities.
 - c. Where dikes are necessary in intermediate gradient floodways to protect fringe areas, tangent diking is preferred over bank levees. Dikes and levees shall be located near the tangent to outside meander bends so that the stream can maintain normal meander progression and utilize most of its natural flood water storage capacity.
 - d. Proper diversion of surface discharge shall be provided to maintain the integrity of the natural streams, wetlands, and drainages.
 - e. The outside face of dikes shall be sloped at one and one-half to one (1.5:1) (horizontal to vertical) or flatter, and seeded with native grasses.
 - f. Structural flood hazard reduction measures shall be placed landward of associated wetlands and vegetation conservation areas unless there is no other feasible alternative to reduce flood hazard to existing development.
3. In-Stream Structures.
 - a. In-stream structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters. The county may condition the permit to achieve this objective by requiring that the development include features such as setbacks, buffers, or storage basins.
 - b. Natural in-stream features such as snags, uprooted trees, or stumps should be left in place unless it can be demonstrated that they are not enhancing shoreline ecological function or are a threat to public safety.
 - c. In-stream structures shall provide for adequate upstream or downstream migration of anadromous fish, where applicable.
 - d. In-stream structures shall preserve valuable recreation resources and aesthetic values such as point and channel bars, islands, and braided banks.
4. In-Stream Structures Design and Placement.
 - a. In-stream structures and their support facilities shall be located and designed to avoid the necessity for shoreline defense structures. Shoreline defense structures shall be minimized and any impacts mitigated. All diversion structures shall be designed to permit natural transport of bedload materials.
 - b. Materials adequate to immediately correct emergency erosion situations shall be maintained on site.
 - c. All debris, overburden and other waste materials from construction shall be disposed of in such a manner so as to prevent their entry into a water body, including a wetland, by erosion, from drainage, high water, or other vectoring mechanisms.
 - d. All heavy construction equipment, and fuel storage, repair, and construction material staging areas shall be located as far landward as necessary to avoid and minimize impacts to shoreline ecological functions. Powerhouses, but not raceways, shall be located farther than one hundred (100) feet from the OHWM unless there is no feasible alternative and any unavoidable impacts are minimized and mitigated. Penstocks shall be located, designed, and constructed so as to present as low a profile as possible. Powerhouses and penstocks shall be located and designed to return flow to the stream in as short a distance as possible.

- e. A mitigation plan that details the objectives of the mitigation activities shall be prepared by the applicant, and be subject to approval by the appropriate authority.

D. Shoreline Restoration and Enhancement.

1. Shoreline restoration and enhancement activities designed to restore shoreline ecological functions and processes and/or shoreline features should be targeted toward meeting the needs of sensitive and/or regionally important plant, fish, and wildlife species, and shall be given priority.
2. Shoreline restoration, enhancement, and mitigation activities designed to create dynamic and sustainable ecosystems to assist the county in achieving no net loss of shoreline ecological functions are preferred (see Section 40.460.550).
3. Restoration activities shall be carried out in accordance with an approved shoreline restoration plan, and in accordance with the provisions of this Program.
4. To the extent possible, restoration, enhancement, and mitigation activities shall be integrated and coordinated with other parallel natural resource management efforts, such as those identified in the shoreline restoration plan.
5. Habitat and beach creation, expansion, restoration, and enhancement projects may be permitted subject to required state or federal permits when the applicant has demonstrated that:
 - a. The project will not adversely impact spawning, nesting, or breeding fish and wildlife habitat conservation areas;
 - b. Upstream or downstream properties or fish and wildlife habitat conservation areas will not be adversely affected;
 - c. Water quality will not be degraded;
 - d. Flood storage capacity will not be degraded;
 - e. Impacts to critical areas and buffers will be avoided and where unavoidable, minimized and mitigated; and
 - f. The project will not interfere with the normal public use of the navigable waters of the state.
6. The county shall review the projects for consistency with this Program in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant (see Sections 40.460.230(B)(16) and 40.460.750).

E. Shoreline Stabilization – General.

1. New shoreline stabilization for new development is prohibited unless it can be demonstrated that the proposed use cannot be developed without shore protection or is necessary to restore ecological functions or hazardous substance remediation.
2. Proposed designs for new or expanded shore stabilization shall be designed in accordance with applicable Ecology and WDFW guidelines, must use best available science, must document that alternative solutions are not feasible or do not provide sufficient protection; must demonstrate that future stabilization measures would not be required on the project site or adjacent properties; and be certified by a qualified professional.
3. Land subdivisions and lot line adjustments shall be designed to assure that future development of the newly created lots will not require structural stabilization for subsequent development to occur.
4. New or expanded structural shoreline stabilization for existing primary structures, including roads, railroads, and public facilities, is prohibited unless there is conclusive evidence documented by a geotechnical

analysis that there is a significant possibility that the structure will be damaged within three (3) years as a result of shoreline erosion caused by stream processor waves, and only when significant adverse impacts are mitigated to ensure no net loss of shoreline ecological functions and/or processes.

5. Replacement of an existing shoreline stabilization structure with a similar structure is permitted if there is a demonstrated need to protect existing primary uses, structures or public facilities including roads, bridges, railways, and utility systems from erosion caused by stream undercutting or wave action; provided, that the existing shoreline stabilization structure is removed from the shoreline as part of the replacement activity. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. Proposed designs for new or expanded shore stabilization shall be in accordance with applicable Ecology and WDFW guidelines and certified by a qualified professional.
6. Where a geotechnical analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three (3) years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using bioengineering approaches.
7. Shoreline stabilization projects that are part of a fish habitat enhancement project meeting the criteria of RCW 77.55.181 are exempt and will be regulated under the state process. Stabilization projects that are not part of such a fish enhancement project will be regulated by this Program.
8. Small-scale or uncomplicated shoreline stabilization projects (for example, tree planting projects) shall be reviewed by a qualified professional to ensure that the project has been designed using best available science.
9. Large-scale or more complex shoreline stabilization projects (for example, projects requiring fill or excavation, placing objects in the water, or hardening the bank) shall be designed by a qualified professional using best available science. The applicant may be required to have a qualified professional oversee construction or construct the project.
10. Standards for new stabilization structures when found to be necessary include limiting the size to minimum, using measures to assure no net loss of shoreline ecological functions, using soft approaches, and mitigating for impacts.

F. Bioengineered Stabilization.

1. All bioengineered projects shall be designed in accordance with best available science and use a diverse variety of native plant materials including but not limited to trees, shrubs, forbs, and grasses, unless demonstrated infeasible for the particular site.
2. All cleared areas shall be replanted following construction and irrigated (if necessary) to ensure that within three (3) years' time all vegetation is fully re-established. Areas that fail to adequately re-establish vegetation shall be replanted with approved plant materials until such time as the plantings are viable.
3. Bank protection in the form of a buffer zone shall be provided for a minimum of three (3) years. The buffer zone shall exclude livestock, vehicles, and/or other activities that could disturb the site.
4. All bioengineered projects shall be monitored and maintained as necessary. Areas damaged by pests and/or the elements shall be promptly repaired.
5. All construction and planting activities shall be scheduled to minimize impacts to water quality and fish and wildlife aquatic and upland habitat, and to optimize survival of new vegetation.

G. Structural Stabilization.

Structural stabilization may be allowed when:

1. The requirements of Section 40.460.640(E) are met;

2. Alternative measures are demonstrated to be infeasible or insufficient through a geotechnical analysis by a qualified professional;
3. The structural stabilization is designed and installation overseen by a qualified professional;
4. The structural stabilization is designed so that future stabilization measures will not be necessary on the subject property or other properties;
5. The size of the shoreline stabilization structure is limited to the minimum necessary; and
6. Impacts are mitigated to result in no net loss of shoreline ecological functions.

H. Bulkheads

1. Bulkheads – General.
 - a. All bulkheads must be in support of an allowable shoreline use that is in conformance with the provisions of this Program, unless it can be demonstrated that such activities are necessary and in the public interest for the maintenance of shoreline environmental resources.
 - b. Bulkheads shall be allowed only when evidence is presented that conclusively demonstrates that one (1) of the following conditions exists:
 - (1) Serious wave erosion threatens an established primary use or existing primary building(s) on upland property;
 - (2) Bulkheads are necessary to the operation and location of water-dependent and water-related activities consistent with this Program; provided, that all alternatives have proven infeasible (i.e., use relocation, use design, nonstructural shore stabilization options), and that such bulkheads meet other policies and regulations of this chapter; or
 - (3) Proposals for bulkheads have first demonstrated that use of natural materials and processes and nonstructural solutions to bank stabilization are unworkable in protecting existing development.
 - c. Use of a bulkhead to protect a platted lot where no structure presently exists is prohibited.
 - d. Natural materials and processes such as protective berms, drift logs, brush, beach feeding, or vegetative stabilization shall be utilized to the maximum extent possible.
 - e. The construction of a bulkhead for the primary purpose of retaining or creating dry land that is not specifically authorized as a part of the permit shall be prohibited.
 - f. Bulkheads are prohibited for any purpose if they will cause significant erosion or beach starvation.
2. Bulkhead Location.
 - a. Bulkheads shall not be located on shores where valuable geohydraulic/hydraulic or biological processes are sensitive to interference and critical to shoreline conservation, such as feeder bluffs, marshes, wetlands, or accretion shore forms such as spits, hooks, bars, or barrier beaches.
 - b. Bulkheads are to be permitted only where local physical conditions such as foundation bearing material, surface, and subsurface drainage are suitable.
 - c. On all shorelines, bulkheads shall be located landward of the OHWM, landward of protective berms (artificial or natural), and generally parallel to the natural shoreline. In addition:

(1) On bluff or bank shorelines where no other bulkheads are adjacent, the construction of a bulkhead shall be as close to the bank as possible, and in no case shall it be more than three (3) feet waterward from the toe of the natural bank.

(2) Bulkheads may tie in flush with existing bulkheads on adjoining properties; provided, that (1) the adjoining bulkheads were built at or near the OHWM, and (2) the new bulkhead does not extend more than three (3) feet waterward of OHWM at any point. If there is an existing bulkhead on only one (1) of the adjacent properties, the proposed bulkhead may tie in flush with the adjacent bulkhead at or landward of the OHWM, and shall be contoured to minimize the land area waterward of the required setback, that shall be met on the side not abutting an existing bulkhead.

d. Replacement bulkheads may be located immediately in front of and abutting (sharing a common surface) an existing bulkhead; provided, that replacement bulkheads shall not be authorized abutting an abandoned or neglected bulkhead, or a bulkhead in serious disrepair that is located more than three (3) feet waterward of OHWM. Replacement of such bulkheads shall be located at OHWM.

3. Bulkhead Design.

a. Bulkhead design and development shall conform to all other applicable state agency policies and regulations, including the WDFW criteria governing the design of bulkheads.

b. When a bulkhead is required at a public access site, provision for safe access to the water shall be incorporated into bulkhead design.

c. Bulkheads shall be designed with the minimum dimensions necessary to adequately protect the development for the expected life of the development.

d. Bulkheads shall be designed to permit the passage of surface or groundwater without causing ponding or saturation of retained soil/materials.

e. Adequate toe protection consisting of proper footings, a fine retention mesh, etc., shall be provided to ensure bulkhead stability without relying on additional riprap.

f. Stairs or other permitted structures may be built into a bulkhead, but shall not extend waterward of it.

g. Materials used in bulkhead construction shall meet the following standards:

(1) Bulkheads shall utilize stable, nonerosional, homogeneous materials such as concrete, wood, rock riprap, or other suitable materials that will accomplish the desired end with the maximum preservation of natural shoreline characteristics.

(2) Beach materials shall not be used for fill behind bulkheads unless it is specifically authorized by the permit, and then only when it is demonstrated that leaving the material on the beach would be detrimental to shoreline resources.

h. Gabions (wire mesh filled with concrete or rocks) shall not be used in bulkhead construction where alternatives more consistent with this Program are feasible, because of their limited durability and the potential hazard to shore users and the shoreline environment.

i. Fill behind bulkheads shall meet the requirements in Section 40.460.560(B) for grading, fill, and excavation.

I. Revetments.

1. Revetments – General.

- a. Revetments must be in support of an allowable shoreline use that is in conformance with the provisions of this Program, unless it can be demonstrated that such activities are necessary and in the public interest for the maintenance of shoreline environmental resources.
- b. Design of revetments shall include and provide improved access to public shorelines whenever possible and appropriate. All forms of revetments shall be constructed and maintained in a manner that does not reduce water quality and/or fisheries habitat.
- c. Design of the proposed revetment shall incorporate proper consideration of:
 - (1) Data on local geophysical conditions;
 - (2) Data on stream flow, velocity, and/or flood capacity; and
 - (3) Effects on adjacent properties.
- d. Bank revetments, where permitted, shall be placed at the extreme edge or bank of the shoreline.
- e. Revetments shall only be used when habitat-friendly alternatives are not feasible.

2. Revetment Design.

- a. When permitted, the siting and design of revetments shall be performed using appropriate engineering principles, including guidelines of the Natural Resources Conservation Service and the USACOE.
- b. Revetments shall be constructed using techniques and materials that will enhance natural shoreline values and functions, including fish and wildlife habitat, water quality, vegetation, and aesthetics. The following techniques and materials shall be used:
 - (1) Riprap material shall consist of clean quarried rock, free of loose dirt and any pollutants, and shall be of sufficient size and weight to prevent movement by wave or current action. Tires, automobile bodies, scrap metal paper products, and other inappropriate solid waste materials shall not be used for riprap.
 - (2) Use of downed logs, snags, or rock-work to enhance habitat and to provide a more natural appearance to the shoreline shall be incorporated into the design where appropriate.
 - (3) Where on-site environmental conditions allow, vegetation shall be integrated into the riprap design to reduce erosion, provide cover, shade and habitat, and improve the natural appearance of the shoreline, consistent with the applicable vegetation management provisions of this Master Program.
- c. If an armored revetment is employed, the following design criteria shall be met:
 - (1) The size and quantity of the material shall be limited to only that necessary to withstand the estimated energy intensity of the hydraulic system;
 - (2) Filter cloth must be used to aid drainage and help prevent settling; and
 - (3) The toe reinforcement or protection must be adequate to prevent a collapse of the system from river scouring or wave action for the anticipated life of the project.
- d. The area shall be restored as nearly as possible to pre-project condition, including replanting with native species and maintenance care until the newly planted vegetation is established.

J. Breakwaters, Jetties, Rock Weirs, and Groins.

1. Breakwaters, Jetties, Rock Weirs, and Groins – General.

- a. Breakwaters, jetties, rock weirs, and groins are allowed only by conditional use and where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purposes such as protection from strong wave action. Applicants proposing groins, jetties, and solid breakwaters shall notify all shoreline landowners within the same drift sector. If it is not possible to make a reasonable determination of the drift sector, all shoreline landowners within one (1) mile of the project proposal shall be notified.
 - b. The effect of proposed breakwaters, jetties, rock weirs, and groins on sand movement shall be evaluated during permit review. The beneficiaries and/or owners of large-scale defense works that substantially alter, reduce, or block littoral drift, and cause new erosion of downdrift shores, shall be required to establish and maintain an adequate long-term beach feeding program either by artificially transporting sand to the downdrift side of an inlet with jetties or by artificial beach feeding in the case of groins, breakwaters, and rock weirs.
 - c. The effect of proposed breakwaters, jetties, rock weirs, and groins on bank margin habitat, channel migration, and floodplain processes should be evaluated during permit review.
2. Breakwaters, Jetties, Rock Weirs, and Groins Location.
 - a. Breakwaters shall be prohibited in lakes.
 - b. Jetty, rock weir, or groin development that would result in a net adverse impact on adjacent and nearby properties and shorelines is prohibited.
3. Breakwaters, Jetties, Rock Weirs, and Groins Design.
 - a. Proposed designs for new or expanded breakwaters, jetties, rock weirs, and groins shall be designed and certified by a registered civil engineer.
 - b. The design of breakwaters, jetties, rock weirs, and groins shall conform to all applicable requirements established by WDFW and the USACOE. Breakwaters, jetties, rock weirs, and groins shall be designed and constructed in a manner that will prevent detrimental impacts on water circulation, sand movement, and aquatic life. The design shall also minimize impediments to navigation and to visual access from the shoreline.
 - c. The design of new breakwaters, groins, and jetties shall incorporate provisions for public access such as sightseeing and public fishing if it is determined such access is feasible and desirable. Open-pile or floating breakwaters shall be the only type allowed unless it can be shown that solid breakwaters will have no significant adverse effect on the aquatic biology and shore processes, or that such adverse effects can be adequately mitigated.
 - d. Materials used for the construction of breakwaters, jetties, rock weirs, and groins shall exhibit the qualities of long-term durability, ease of maintenance, and compatibility with local shore features, processes, and aesthetics. The use of solid waste, junk, or abandoned automobiles, asphalt, or any building demolition debris is prohibited.
 - e. Floating breakwaters shall be used in place of solid, rubble mound types wherever they can withstand anticipated wave action in order to maintain sand movement and protect fish and aquatic habitat.

(Added: Ord. 2012-07-16)

40.460.700 Administration and Enforcement

40.460.705 General Provisions

- A. 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.
- B. The requirements of this Program are only applicable within the county's shoreline jurisdiction.

C. Classification of a use or development as permitted does not necessarily mean the use/development is allowed. It means the use/development may be allowed subject to review and approval by the county and/or Ecology. The county may attach conditions of approval to any permitted use via a permit as necessary to assure consistency of a project with the Act and this Program.

D. To be authorized under this Program, all uses and developments shall be planned and carried out in a manner that is consistent with the county codes and this Program regardless of whether a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit is required.

E. Applicants requesting review for permits under this Program have the burden to prove that the proposed development or activity is consistent with the criteria that must be met before a permit is granted.

F. The Shoreline Administrator has the authority under Section 40.100.050 to interpret and apply the provisions of this Program. The Shoreline Administrator shall consult with Ecology to ensure that any formal written interpretations are consistent with the purpose and intent of Chapter 90.58 RCW and the applicable guidelines.

G. The county shall not issue any permit for development within the shoreline jurisdiction until approval has been granted pursuant to this Program.

H. A development or use that does not comply with the bulk, dimensional, and/or performance standards of this Program shall require a shoreline variance even if the development or use does not require a substantial development permit.

I. A development or use that is listed as a conditional use pursuant to this Program, or is an unlisted use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.

J. Issuance of a shoreline substantial development permit, shoreline variance or shoreline conditional use permit does not constitute approval pursuant to any other federal, state or county laws or regulations.

(Added: Ord. 2012-07-16)

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 (3) members: the Shoreline Administrator (Chairman) and two (2) additional members from different county departments as designated by the responsible official, 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;

- 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 Section 40.460.710(A)(3) may be ceded to the Hearing Examiner pursuant to Sections 40.510.030 and 40.460.725(D)(1).

(Amended: Ord. 2018-11-06; Ord. 2020-12-01)

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; Ord. 2020-12-01)

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; Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

E. Ecology Review.

1. Clark County shall notify Ecology 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 shall notify Ecology 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).

(Amended: Ord. 2020-12-01)

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 data, 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; Ord. 2020-12-01)

40.460.715 Pre-Application Conference

A pre-application conference is required prior to filing a permit application for a shoreline substantial development permit, variance, or conditional use permit decision.

(Added: Ord. 2012-07-16)

40.460.720 Permit Submittal Requirements

A. The Shoreline Administrator shall provide written informational materials, procedures, instructions, and forms, required to submit an application for a shoreline substantial development permit, variance, or conditional use permit.

B. These materials could include a plan cover sheet; JARPA form; SEPA checklist; fee schedule; review criteria; process and timelines to assist potential applicants and interested parties on the permit application submittal and review process.

(Added: Ord. 2012-07-16)

40.460.725 Application Review Requirements

A. Upon receipt of a fully complete completed shoreline substantial development permit, shoreline variance, or shoreline conditional use permit application, the county will issue a notice of application as required for a Type III action pursuant to Section 40.510.030(E).

(Amended: Ord. 2018-11-06)

B. The comment period for such applications shall be thirty (30) days.

(Amended: Ord. 2018-11-06)

C. An application for a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be reviewed using the timelines for a Type III action pursuant to Section 40.510.030(F).

(Amended: Ord. 2018-11-06)

D. To the fullest extent possible, the shoreline permit process shall be integrated with other planning and licensing procedures of this title. Shoreline applications may accompany another related application through the review process, and interested persons may present views thereon, but no formal public hearing is required.

(Amended: Ord. 2018-11-06)

E. Proposed actions that would alter designated critical areas or their buffers, as established by this Program (Section 40.460.530) shall be reviewed for compliance with this Program. If required, the applicable critical area report and/or mitigation plan and/or habitat management plan shall be submitted as part of the development application. The critical area review shall be conducted and processed in conjunction with the highest threshold of review that is applicable to the primary development proposed:

1. Review pursuant to Section 40.460.230 (list of exemptions);
2. Land use permit or building permit;
3. Excavation, grading, clearing and erosion control permit;
4. SEPA threshold determination;

5. Shoreline substantial development permit;
6. Shoreline conditional use permit; or
7. Shoreline variance.

(Amended: Ord. 2018-11-06)

F. The county shall review restoration projects for consistency with this Program in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant.

(Amended: Ord. 2018-11-06)

G. Issuance of shoreline permits approved by SMRC shall be the responsibility of the Shoreline Administrator.

(Amended: Ord. 2018-11-06)

H. All shoreline permits issued for development or use within shoreline jurisdiction shall include written findings prepared by the Shoreline Administrator, documenting compliance with bulk and dimensional policies and regulations of this Program. The Shoreline Administrator may attach conditions to the approval as necessary to assure consistency with Chapter 90.58 RCW and this Program. Such conditions may include a requirement to post a performance bond assuring compliance with permit requirements, terms and conditions.

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

I. Special permit review procedures apply for WSDOT projects pursuant to RCW 47.01.485 and 90.58.140.

(Added: Ord. 2018-11-06)

40.460.730 Revisions to Permits

A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this Program and/or the policies and provisions of Chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision. All revisions shall be processed in accordance with WAC 173-27-100.

(Added: Ord. 2012-07-16)

40.460.735 Appeals

A. Appeals of any final permit decision may be made to the Shorelines Hearings Board as governed by the procedures established in RCW 90.58.180 (Appeals from Granting, Denying, or Rescinding Permits) and Chapter 461-08 WAC (Practice and Procedure, Review of the Granting, Denying or Rescinding of Substantial Development Permits, Hearings).

B. All appeals of any final permit decision must be made to the Shorelines Hearings Board within twenty-one (21) days after the county's or Ecology's final decision concerning the shoreline permit or formal approval to revisions of the permit.

(Added: Ord. 2012-07-16)

40.460.740 Commencement of Development Activity and Permit Validity

A. No construction pursuant to a substantial development permit, shoreline variance or shoreline conditional use authorized by this Program shall begin or be authorized and no building, grading or other construction permits shall be issued by county until twenty-one (21) days from the date the permit decision was filed or until all review proceedings are terminated.

B. Construction may be commenced no sooner than thirty (30) days after the date the appeal of the Shorelines Hearings Board's decision is filed if a permit is granted by the local government, and:

1. The granting of the permit is appealed to the Shorelines Hearings Board within twenty-one (21) days of the date of filing;
2. The Hearings Board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit; and
3. An appeal for judicial review of the Hearings Board decision is filed pursuant to Chapter 34.05 RCW.

Any applicant who wishes to begin construction pursuant to this section prior to termination of all review proceedings does so at the applicant's own risk.

C. Construction activities shall be commenced, or where no construction activities are involved, the use or activity shall be commenced, within two (2) years of the effective date of a shoreline substantial development permit. The Shoreline Administrator may authorize a single extension for a period not to exceed one (1) year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of proposed extension is given to parties of record on the substantial development permit and to the department.

D. Authorization to conduct construction activities shall terminate five (5) years after the effective date of a substantial development permit. The Shoreline Administrator may authorize a single extension if it has been filed before the expiration date and notice of the proposed extension is given to parties of record and Ecology.

(Added: Ord. 2012-07-16)

40.460.745 Enforcement

A. General Enforcement.

1. The enforcement provisions of RCW 90.58.210 and WAC 173-27-240 through 173-27-310 shall apply.
2. The Shoreline Management Act calls for a cooperative enforcement program between local and state government. It provides for both civil and criminal penalties, orders to cease and desist, orders to take corrective action and permit rescission. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or degree of bad faith of the persons subject to the enforcement action, the benefits that accrue to the violator, and the cost of obtaining compliance may also be considered.
3. The Shoreline Administrator, and/or authorized representative, shall have the authority to enforce the shoreline regulations of the county.
4. The Shoreline Administrator with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, may enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by this Program.
5. These shoreline regulations shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.
6. No provision of, or term used in, this code is intended to impose upon the county, or any of its officers or employees, any duty which would subject them to damages in a civil action.

B. Investigation and Notice of Violation.

1. An investigation shall be made of any structure or use which the county reasonably believes does not comply with the standards and requirements of this Program.

2. If, after an investigation, it is determined that the standards or requirements of this title have been violated, a notice of violation shall be served, by first class mail, upon the owner, tenant or other person responsible for the condition.
3. The compliance period shall not be less than two (2) weeks, except where substantial life safety issues exist.

C. Penalties.

Any person found to have willfully engaged in activities on the county's shorelines in violation of the Act or in violation of this Program, and rules or regulations adopted pursuant thereto, shall be subject to the penalty provisions of Title 32.

D. Violations – Subsequent Development and Building Permits.

No building permit or other development permit shall be issued for any parcel of land developed or divided in violation of this Program. All purchasers or transferees of property shall comply with provisions of the Act and this Program and each purchaser or transferee may recover damages from any person, firm, corporation, or agent selling, transferring, or leasing land in violation of the Act or this Program. Damages may include any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of the Act or this Program as well as costs of investigation, suit, and reasonable attorneys' fees occasioned thereby. Such purchaser, transferee, or lessor, as an alternative to conforming their property to these requirements, may rescind the sale, transfer, or lease and recover costs of investigation, litigation and reasonable attorneys' fees occasioned thereby from the violator.

(Added: Ord. 2012-07-16)

40.460.750 Public and Private Redress

A. Any person subject to the regulatory program of this Program who violates any provision of this Program or the provisions of a permit issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation.

B. The County Prosecutor may bring suit for damages under this section on behalf of the county. Nothing in this section precludes private persons from bringing suit for damages on their own behalf. If liability has been established for the cost of restoring an area affected by violation, the court shall make provisions to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including monetary damages, the court, in its discretion, may award attorneys' fees and costs of the suit to the prevailing party.

(Added: Ord. 2012-07-16)

40.460.755 Fees for Permits Obtained After Development

A. Permits obtained following, rather than prior to, the commencement of a development or use shall be three (3) times the normal amount. This provision is in addition to the enforcement measures contained in this chapter and in Title 32.

B. Delinquent permit penalties shall be paid in full prior to resuming the use or activity.

(Added: Ord. 2012-07-16)

40.460.760 Revocation of Permits

A. Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. Noncompliance could result from either a failure to take corrective action in response to a violation, or a misrepresentation of the facts in the permit application. When required, corrective action shall be completed within ninety (90) days of the issuance of the order by the Shoreline Administrator.

B. If Ecology is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If Ecology is of the opinion that the noncompliance continues to exist thirty (30) days after the date of the notice, and the local government has taken no action to revoke the permit, Ecology may petition the Shorelines Hearings Board for a revocation of the permit upon written notice of the petition to the local government and the permittee if the request by Ecology is made to the Hearings Board within fifteen (15) days of the end of the thirty (30) day notice to the local government.

C. Revocation of a permit does not preclude the assessment of penalties in Section 40.460.745. Appeals of the revocation order shall be in accordance with Section 40.460.735.

(Added: Ord. 2012-07-16)

40.460.800 Definitions

For purposes of this Program and this chapter, the following definitions shall apply. Additional definitions applicable to this Program can be found in Section 40.100.070.

Accessory structure	"Accessory structure" means a subordinate building incidental to the use of the main building.
Accessory use	"Accessory use" means any use or activity incidental and subordinate to a primary use or development.
Accretion	"Accretion" means the growth of a beach by the addition of material transported by wind and/or water. Included are such shore forms as barrier beaches, points, spits, hooks, and tombolos.
Act	"Act" means the Washington State Shoreline Management Act of 1971 (Chapter 90.58 RCW), as amended.
Adjacent lands	"Adjacent lands" means lands adjacent to the shorelines of the state (not in shoreline jurisdiction) (RCW 90.58.340).
Aggrieved person	"Aggrieved person" means a person who is suffering from an infringement or denial of legal rights or claims.
Agricultural activities	"Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities; provided, that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.
Agricultural equipment and facilities	<p>"Agricultural equipment" and "agricultural facilities" include, but are not limited to:</p> <ul style="list-style-type: none"> The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains; Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; Farm residences and associated equipment, lands, and facilities; and Roadside stands and on-farm markets for marketing fruit or vegetables.
Agricultural land	"Agricultural land" means those specific land areas on which agricultural activities, as defined in WAC 173-26-020(3), are conducted. (Amended: Ord. 2018-11-06)
Agricultural products	"Agricultural products" includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty (20) years of planting; and livestock including both the animals themselves

	and animal products including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products.
Amendment	“Amendment” means a revision, update, addition, deletion, and/or re-enactment to an existing shoreline master program.
Appurtenance	“Appurtenance” means a structure or development normally and necessarily connected to a primary use.
Appurtenance, normal	“Appurtenance, normal” means appurtenances for residential uses limited to garages (up to three (3) cars), shops (up to one thousand (1,000) square feet), decks, driveways, utilities, and fences.
Aquaculture	“Aquaculture” means the cultivation or farming of fish, shellfish, or other aquatic plants and animals (WAC 173-26-020(6)).
Associated wetlands	“Associated wetlands” means those wetlands which are in proximity to and either influence or are influenced by waters of a lake, river or stream subject to the Shoreline Management Act.
Average grade level	“Average grade level” means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. For structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure (WAC 173-27-030(3)).
Beach enhancement	“Beach enhancement” means the process of restoring a beach to a state more closely resembling a natural beach, using beach feeding, vegetation drift sills, and other nonintrusive means as applicable.
Bedlands	“Bedlands” means those submerged lands, including tidelands where appropriate, underlying navigable waters.
Berm	<p>“Berm” means:</p> <ul style="list-style-type: none"> • A linear mound or series of mounds of earth, sand and/or gravel generally paralleling the water at or landward of the line of ordinary high water; or • A linear mound used to screen an adjacent activity, such as a parking lot, from transmitting excess noise and glare.
Best available science	“Best available science” means the most reliable and available scientific information, most often used in the context of local government compliance with the State Growth Management Act (RCW 36.70A.172) for developing policies and development regulations regarding critical areas (Chapter 365-195 WAC).
Best available technology	“Best available technology” means the most effective method, technique, or product available which is generally accepted in the field, and which is demonstrated to be reliable, effective, and preferably low maintenance.
Bioengineering	“Bioengineering” means project designs or construction methods which use live woody vegetation or a combination of live woody vegetation and specially developed natural or synthetic materials to establish a complex root grid within the existing bank which is resistant to erosion, provides bank stability, and maintains a healthy riparian environment with habitat features important to fish life. Use of wood structures or limited use of clean angular rock may be allowable to provide stability for establishment of the vegetation (WAC 220-110-020(12)).
Boat	“Boat” means any floating vessel or watercraft, including ships and barges, which is designed and used for navigation for commerce or recreation.
Boat house	“Boat house” means an over-water structure designed for storage of boats.
Boat launch facility	“Boat launch facility” means a facility or structure providing access in and out of the water for boats, such as ramps, rails, or lift stations.
Boatyard	<p>“Boatyard” means a facility engaged in the construction, repair, and maintenance of small vessels, where eighty-five percent (85%) of those vessels are sixty-five (65) feet or less in length, or the boatyard generates more than eighty-five percent (85%) of its gross receipts working on those vessels. Services typically provided include, but are not limited to: pressure washing hulls, painting and coating, engine and propulsion system repair or replacement, hull repair, joinery, bilge cleaning, fuel and lubrication system repair or replacement, welding and grinding of the hull, buffing and waxing, marine sanitation device (MSD) repair and replacement, vessel deconstruction activity on land, and other activities necessary to maintain a vessel. This definition includes mobile and do-it-yourself activities.</p> <p>(Added: Ord. 2018-11-06)</p>

Breakwater	“Breakwater” means a structure aligned parallel to shore, sometimes shore-connected, that provides protection from waves.
Buffer area	“Buffer area” means a tract or strip of land that is designed and designated to permanently remain vegetated in a natural condition to protect an adjacent aquatic or wetland site from upland impacts, improve water quality, and to provide habitat for wildlife.
Bulkhead	“Bulkhead” means a solid, open-pile, or irregular wall of rock, rip-rap, concrete, steel, or timber or combination of these materials erected parallel to and near ordinary high water mark to provide a protective vertical wall resistant to water and wave action.
Channel	“Channel” means an open conduit for water either naturally or artificially created, but does not include artificially created irrigation, return flow, or stock-watering channels (WAC 173-27-030(8b)).
Channel migration zone	“Channel migration zone” means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.
Clean Water Act	“Clean Water Act” means the primary federal law providing water pollution prevention and control, previously known as the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).
Commercial	“Commercial” means a business use or activity at a scale greater than a home business or cottage industry involving retail or wholesale marketing of goods and services. Examples of commercial uses include restaurants, offices, and retail shops.
Commercial fishing	“Commercial fishing” means the activity of capturing fish and other seafood under a commercial license.
Conditional use	“Conditional use” means a use, development, or substantial development which is classified as a conditional use, or is not classified within this Program, and requires a conditional use permit (WAC 173-27-030(4)).
Covered moorage	“Covered moorage” means a boat moorage, with or without walls, that has a roof to protect a boat.
Critical habitat	“Critical habitat” means specific geographical areas that possess physical or biological features that are essential to the conservation of federally listed species. These designated areas may require special management considerations or protection.
Date of filing	<p>“Date of filing” means the date of actual receipt by Ecology of the county’s decision.</p> <ul style="list-style-type: none"> For a variance or conditional use permit, the date of filing is the date Ecology’s decision is transmitted to the county. For a variance or conditional use permit decision in conjunction with a shoreline substantial development permit decision, the date of filing is the date Ecology’s decision is transmitted to the county.
Development	<p>“Development” means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any stage of water level (RCW 90.58.030(3)(a)). “Development” does not include dismantling or removing structures if there is no other associated development or redevelopment.</p> <p>(Added: Ord. 2018-11-06)</p>
Development regulations	“Development regulations” means the controls placed on development or land uses, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under Chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto (WAC 173-26-020(8)).
Dike	“Dike” means an artificial embankment normally set back from the bank or channel in the floodplain for the purpose of keeping floodwaters from inundating adjacent land.
Dock	“Dock” means a landing or moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances.
Dredge material	“Dredge material” means material removed by dredging.
Dredging	“Dredging” means the removal or displacement of earth or sediments such as gravel, sand, mud, silt, or debris from below the OHWM.

Dredging, maintenance	“Maintenance dredging” means dredging for the purpose of maintaining a prescribed minimum depth previously authorized by a federal, state, and/or local permit as part of any specific waterway project. Maintenance dredging also includes dredging that maintains the previously authorized width of a channel, boat basin or berthing area.
Dredging, nonmaintenance	“Nonmaintenance dredging” means any dredging that is not maintenance dredging.
Drift sector	“Drift sector” means the extent of the littoral drift area downstream from and caused by a breakwater, jetty, rock weir or groin.
Ecology	“Ecology” means the Washington Department of Ecology.
Ecosystem-wide processes	“Ecosystem-wide processes” means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions (WAC 173-26-020(12)).
Effective date of permit	“Effective date of permit” means, for shoreline substantial development, conditional use, and variance permits, the date of filing as provided in RCW 90.58.140(6) which includes completion of all appeals or legal actions.
Emergency	“Emergency” means the unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with Chapter 173-27 WAC.
Enhancement	“Enhancement” means alterations performed to improve the condition of an existing degraded area so that shoreline functions provided are of a higher quality. Enhancements are to be distinguished from resource creation or restoration projects.
Erosion	“Erosion” means the general process or the group of processes whereby the materials of the earth’s crust are loosened, dissolved, or worn away, and simultaneously moved from one place to another, by natural forces that include weathering, solution, corrosion, and transportation, but usually exclude mass wasting.
Exempt/exemption	“Exempt/exemption” means developments that are not required to obtain a Shoreline Substantial Development Permit but which must otherwise comply with applicable provisions of the Act and this Program.
Fair market value	“Fair market value” means the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials (WAC 173-27-030(8)).
Feasible	<p>“Feasible” means an action, such as a development project, mitigation, or preservation requirement, that meets all of the following conditions:</p> <ul style="list-style-type: none"> • The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; • The action provides a reasonable likelihood of achieving its intended purpose; and • The action does not physically preclude achieving the project’s primary intended legal use. <p>In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action’s infeasibility, the reviewing agency may weigh the action’s relative public costs and public benefits, considered in the short- and long-term time frames.</p>
Feeder bluff	“Feeder bluff” means any bluff (or cliff) experiencing periodic erosion from waves, sliding, or slumping, whose eroded earth, sand, or gravel material is naturally transported (littoral drift) via a driftway to an accretion shore form. Feeder bluff exceptional segments lack a backshore, old or rotten logs, and coniferous bluff vegetation.
Fill	“Fill” means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation of or creates dry land (WAC 173-26-020(16)).
Fill, speculative	“Speculative fill” means the placement of fill material not associated with an approved project.

Fish and wildlife habitat conservation area	“Fish and wildlife habitat conservation areas” means habitat for endangered, threatened and sensitive species; priority habitats and areas associated with priority species; habitats of local importance; and water bodies, and that are designated in Chapter 40.440.
Float	“Float” means a fixed platform structure anchored in and floating upon a water body that does not connect to the shore, and that provides landing for water-dependent recreation or moorage for vessels or watercraft.
Floating home	“Floating home” means a single-family dwelling unit constructed on a float that is moored, anchored, or otherwise secured in waters, and is not a boat, even though it may be capable of being towed.
Floating on-water residence	“Floating on-water residence” means any floating structure other than a floating home, as defined above, that is designed or used primarily as a residence on the water and has detachable utilities, and whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or a sublease to use space in a marina, since a date prior to July, 1, 2014.
Flood hazard reduction	“Flood hazard reduction” means measures taken to reduce flood damage or hazards. Flood hazard reduction measures may consist of nonstructural or indirect measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, bioengineering measures, and stormwater management programs; and of structural measures, such as dikes, levees, and floodwalls intended to contain flow within the channel, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.
Floodplain	See “special flood hazard area.”
Floodway	“Floodway” means the area that has been established in Federal Emergency Management Agency flood insurance rate maps or floodway maps. The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state (RCW 90.58.030). (Amended: Ord. 2018-11-06)
Forb	“Forb” means an herbaceous, nonwoody plant other than grass.
Forest practices	“Forest practices” means any activity conducted on or directly related to forest land and relating to growing, harvesting, or processing timber. These activities include but are not limited to: road and trail construction, final and intermediate harvesting, pre-commercial thinning, reforestation, fertilization, prevention and suppression of disease and insects, salvage of trees, and brush control (WAC 222-16-010(21)).
Gabion	“Gabion” means a structure composed of masses of rocks, rubble, or masonry held tightly together usually by wire mesh so as to form blocks or walls. They are sometimes used on heavy erosion areas to retard wave action, to reduce mass wasting, or as foundations for breakwaters or jetties.
Geologic hazard area study	“Geological hazard area study” means a scientific study or evaluation of geological, hydrological, geochemical and/or geomorphological aspects of a site conducted by a qualified expert that meets the requirements of Section 40.430.030(C)(4).
Grassy swale	“Grassy swale” means a vegetated drainage channel that is designed to remove various pollutants from stormwater runoff through biofiltration.
Groin	“Groin” means a barrier-type structure extending from the backshore or stream bank into a water body for the purpose of the protection of a shoreline and adjacent upland by influencing the movement of water and/or deposition of material.
Height	“Height” means the distance measured from the average grade level to the highest point of a structure; provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where it obstructs the view of a substantial number of residences on areas adjoining such shorelines (or the Master Program provides otherwise); and provided further that temporary construction equipment is excluded in this calculation (WAC 173-27-030(9)).
Hook	“Hook” means a spit or narrow cape of sand or gravel which turns landward at its outer end.
Institutional use	“Institutional use” means a use and related structure(s) for the provision of educational, medical, cultural, public safety, social and/or recreational services to the community, including but not limited to schools, colleges, museums, community centers, and the relevant essential public facilities identified in WAC 365-196-550.
In-stream structure	“In-stream structure” means a structure placed by humans within a stream or river waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service

	transmission, fish habitat enhancement, or other purpose. A stormwater outfall is not an in-stream structure.
Interested party	“Interested party” means a person who has notified local government of their desire to receive a copy of the final order on a permit under WAC 173-27-030.
Invasive	<p>“Invasive” means a non-native plant or animal species that:</p> <ul style="list-style-type: none"> • Causes or may cause significant displacement in range or significant reduction in abundance of native species; or • Threatens or may threaten natural resources or their use in the state; or • Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or • Threatens or harms human health (RCW 77.08.010(28)).
Jetty	“Jetty” means a structure usually projecting out into the water for the purpose of protecting a navigation channel, a harbor, or to influence water currents.
Joint-use moorage facility	<p>“Joint-use moorage facility” means a moorage for pleasure craft and/or landing for water sports for use in common by shoreline residents with adjoining lots, each with water frontage, or of a certain subdivision or community within shoreline jurisdiction or for use by patrons of a public park or quasi-public recreation area, including rental of nonpowered craft. A joint-use moorage facility is a marina if:</p> <ul style="list-style-type: none"> • It provides commercial goods or services; • It is of a large scale (more than ten (10) slips); • Moorage is proposed to be leased to upland property owners; or • The proposal includes a boat launching facility other than a ramp.
Lake	“Lake” means a body of standing water in a depression of land or expanded part of a river, including reservoirs, of twenty (20) acres or greater in total area. A lake is bounded by the ordinary high water mark or, where a stream enters a lake, the extension of elevation of the lake’s ordinary high water mark within the stream (RCW 90.58.030(2)(c); WAC 173-20-030; WAC 173-22-030(4)).
Levee	“Levee” means a large dike or embankment, often having an access road along the top, which is designed as part of a system to protect land from floods.
Limited utility extension	“Limited utility extension” means the extension of a utility service that is categorically exempt under Chapter 43.21C RCW for natural gas, electricity, telephone, water or sewer to service an existing use and which will not extend more than twenty-five hundred (2,500) linear feet within the shorelines of the state.
Littoral	“Littoral” means the area of the shore from the OHWM waterward to a depth of two meters below ordinary low water or to the maximum extent of nonpersistent emergent plants.
Littoral drift	“Littoral drift” means the mud, sand, or gravel material moved parallel to the shoreline in the nearshore zone by waves and current.
Live-aboard	“Live-aboard” means a boat or vessel principally used as an over-water residence. Principal use as an over-water residence means that it is occupied in a single location for a period exceeding two (2) months in any one (1) calendar year. Live-aboards are licensed and designed for use as a mobile structure with detachable utilities or facilities, anchoring, and the presence of adequate self-propulsion and steering equipment to operate as a boat.
Local government	“Local government” means any county, incorporated city, or town which contains within its boundaries shorelines of the state subject to Chapter 90.58 RCW.
Log booming	“Log booming” means the placement in or removal of logs and log bundles from the water, and the assembly and disassembly of rafts for waterborne transportation.
Marina	“Marina” means a water-dependent commercial use which consists of a system of piers, buoys, or floats that provides moorage for at least ten (10) boats. For the purposes of this Program, large community moorage facilities, yacht club facilities, and camp or resort moorage areas are also considered marinas. Boat launch facilities and supplies and services for small commercial or pleasure craft are often associated with marinas. Uses accessory to marinas may include fuel docks and storage, boating equipment sales and rental, repair services, public launching, bait and tackle shops, potable water, waste disposal, administration, parking, groceries, and dry goods.

	<p>“Foreshore marinas” are marinas located waterward of the ordinary high water mark.</p> <p>“Backshore marinas” are marinas located landward of the ordinary high water mark. There are two (2) common types of backshore marinas:</p> <ul style="list-style-type: none"> • A wet-moorage marina that is dredged out of the land artificially creating a basin; and • A dry-moorage marina which has upland storage with a hoist, marine travel lift, or ramp for water access.
Marine railway	“Marine railway” means a set of steel rails running from the upland area into the water upon which a cart or dolly can carry a boat to be launched.
Marine travel lift	“Marine travel lift” means a mechanical device that can hoist vessels off trailers and transport them into the water. Often associated with dry land moorage.
May	“May” means the action is acceptable, provided it conforms to the provisions of this Program.
Merchantable trees	“Merchantable trees” means live trees, six (6) inches in diameter at breast height (DBH) and larger, unless documentation of current, local market conditions is submitted and accepted by the local jurisdiction indicating nonmarketability. “Merchantable trees” shall not include trees smaller than four (4) inches DBH.
Mining	“Mining” means the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses (WAC 173-26-241).
Mitigation	“Mitigation” means to avoid, minimize or compensate for adverse impacts to shoreline ecological functions and processes.
Mixed-use project	“Mixed-use project” means a development which includes a combination of components, such as residential uses, hotels, marinas, habitat improvement actions, public access provisions, and other uses.
Moorage	“Moorage” means a pier, dock, buoy or float, either fixed or floating, to which boats may be secured.
Mooring buoy	“Mooring buoy” means a floating object anchored to the bottom of a water body that provides tie-up capabilities for boats or watercraft.
Multifamily dwelling	“Multifamily dwelling” means a building containing two (2) or more dwelling units including but not limited to duplexes, apartments, and condominiums.
Must	“Must” means a mandate; the action is required.
Navigable waters	“Navigable waters” means that a body of water is capable or susceptible of having been or being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court (WAC 332-30-106).
Navigational channels	“Navigational channels” means those routes on the waters of Clark County beyond the outer harbor line, commonly used by ships for useful commerce.
Nonconforming structure	“Nonconforming structure” means a structure that was lawfully constructed or established prior to the effective date of the applicable Act or Program provision, and that no longer conforms to the applicable shoreline provisions (WAC 173-27-080(1)).
Nonconforming use	“Nonconforming use” means a use or activity that was lawfully established prior to the effective date of the applicable Act or Program provision, and that no longer conforms to the applicable shoreline provisions. (WAC 173-27-080(1)).
Normal maintenance	<p>“Normal maintenance” means those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition (WAC 173-27-040(2)(b)), except for maintenance that would cause substantial adverse effects to shoreline resources or environment; and, provided, that the replacement of demolished existing single-family residences and their appurtenances is not considered normal maintenance; and further provided, that maintenance of nonconforming structures and developments is subject to the provisions of Sections 40.420.010 and 40.460.250. See also “normal repair.”</p> <p>(Amended: Ord. 2015-12-12)</p>
Normal repair	“Normal repair” means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except for repair that would cause substantial adverse effects to shoreline resources or environment; and, provided, that the replacement of a demolished existing single-family residence and its appurtenances is not considered normal repair;

	and further provided, that repair or replacement of nonconforming uses is subject to Sections 40.420.010 and 40.460.250. See also “normal maintenance.” (Amended: Ord. 2015-12-12)
Noxious weeds	“Noxious weeds” means non-native plants which are destructive, competitive, and difficult to control, as defined by the Washington State Noxious Weed Control Board.
Operation	“Operation” means an industrial, commercial, institutional, or residential activity that may be publicly or privately owned and operated, and may involve the use of stationary facilities, equipment, transport vehicles, or transfer equipment. To the extent allowed by state or federal law, this definition includes all federal, state, or local government entities.
Ordinary high water mark	“Ordinary high water mark” means that mark found by examining the bed and banks of a body of water and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or Ecology; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the OHWM adjoining fresh water shall be the line of mean high water (RCW 90.58.030(2)(c) and WAC 173-22-030(6)).
Outer harbor line	“Outer harbor line” means the line located and established by the Department of Natural Resources in navigable waters that delineates the extent of water area that may be leased to private interests.
Over-water structure	“Over-water structure” means a structure or other construction located waterward of the ordinary high water mark (OHWM) or a structure or other construction erected on piling above the surface of the water, or upon a float.
Parking	“Parking” means the temporary storage of automobiles or other motorized vehicles. Accessory parking is that which directly serves an approved shoreline use.
Party of record	“Party of record” means all persons, agencies or organizations who have submitted written comments in response to a notice of application, made oral comments in a formal public hearing conducted on the application, or requested in writing to be a “party of record.” Notwithstanding any of the foregoing, no person shall be a party of record who has not furnished an accurate post office mailing address.
Permit	“Permit” means any substantial development, variance, conditional use permit, or revision authorized under Chapter 90.58 RCW.
Permitted use	“Permitted use” means a use which is allowed under the rules and regulations of this Program.
Person	“Person” means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.
Pier	“Pier” means a fixed platform structure supported by piles in a water body that abuts the shore to provide landing for water-dependent recreation or moorage for vessels or watercraft and does not include above-water storage.
Pierhead line	“Pierhead line” means the waterward limit to which open pile work may be constructed as designated by the federal government.
Point	“Point” means a low profile shoreline promontory of more or less triangular shape, the top of which extends seaward. A point may be the wavecut shelf remnant of a headland bluff or a purely accretional deposit which began as a hooked spit and becomes a point by subsequently closing the lagoon gap between the headland and the tip of the hook. Points are characterized by converging berms that normally enclose a lagoon, marsh, or meadow, depending on the point’s stage of development.
Port	“Port” means a municipal corporation which is a special purpose district of local government authorized by the Washington State Constitution and regulated by RCW Title 53.
Potentially harmful materials	“Potentially harmful materials” means hazardous materials as defined in this section as well as other materials such as the following which, if discharged or improperly disposed, may present a risk to water resources: <ul style="list-style-type: none"> • Petroleum products including but not limited to petroleum fuel and petroleum based coating and preserving materials; • Oils containing PCBs;

	<ul style="list-style-type: none"> • Antifreeze and other liquid automotive products; • Metals, either in particulate or dissolved form, in concentrations above established regulatory standards; flammable or explosive materials; • Radioactive material; • Used batteries; corrosives, acids, alkalis, or bases; • Paints, stains, resins, lacquers or varnishes; • Degreasers; • Solvents; • Construction materials; • Drain cleaners and other toxic liquid household products; • Pesticides, herbicides, fungicides or fertilizers unless applied in accordance with local, state and federal standards; • Steam cleaning and carpet cleaning wastes; • Car wash water; • Laundry wastewater; • Soaps, detergents, ammonia; • Swimming pool backwash; • Chlorine, bromine, and other disinfectants; • Heated water; • Domestic animal wastes; • Sewage; • Recreational vehicle waste; • Animal carcasses, excluding salmonids; • Food wastes; • Collected lawn clippings, leaves or branches; • Trash or debris; • Silt, sediment, or gravel; • Dyes; and • Untreated or unapproved wastewater from industrial processes.
Priority species	<p>“Priority species” means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the following criteria:</p> <ul style="list-style-type: none"> • State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the Department of Fish and Wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

	<ul style="list-style-type: none"> • Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations. • Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation. • Species listed under the federal Endangered Species Act as proposed, threatened, or endangered (WAC 173-26-020(25)).
Program (Shoreline Master Program)	“Program” means the comprehensive use plan for the county’s shorelands, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program approved under Chapter 90.58 RCW shall be considered an element of Clark County’s comprehensive plan. All other portions of the Shoreline Master Program for Clark County adopted under Chapter 90.58 RCW, including use regulations, shall be considered a part of Clark County’s development regulations.
Project area	“Project area” means the area which will be directly physically affected by a proposed development.
Provisions	“Provisions” means policies, regulations, standards, guideline criteria, or environment designations.
Public access	“Public access” means the physical ability of the general public to reach, touch and enjoy the water’s edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations (WAC 173-26-221).
Public interest	“Public interest” means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development (WAC 173-27-030(14)).
Qualified professional	“Qualified professional” means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4).
Recreational use	<p>“Recreational use” means a use and related structures for the provision of recreational activities, as follows:</p> <ul style="list-style-type: none"> • Active recreational use/facility: involves a large number of participants or viewers; requires high levels of maintenance; or that results in high levels of noise. Examples are sports fields, golf courses, skate parks, and motorized boat launches. • Passive recreational use/facility: involves a small number of participants or viewers at any given time; requires low levels of maintenance; or that results in little noise generation. Examples are wildlife viewing areas, picnic tables, hand launch facilities and nonmotorized trails.
Residential use	“Residential use” means the development of single-family and multifamily dwellings and their normal appurtenances, and the creation of new residential lots through land division.
Restoration	“Restoration” means to re-establish or upgrade impaired ecological processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.
Revetment	“Revetment” means a sloped wall constructed of riprap or other material placed on stream banks or other shorelines to retard bank erosion and minimize lateral stream movement. A revetment typically slopes waterward and has rough or jagged facing. The slope differentiates it from a bulkhead, which is a vertical structure.
Riprap	“Riprap” means a foundation or retaining wall of stones or rock placed along the water’s edge or on an embankment to prevent erosion.
Rock weir	See “groin.”
Setback	“Setback” means the distance an activity or structure must be located from the ordinary high water mark.
Shall	“Shall” means a mandate; the action must be done.

Shorelands	“Shorelands” means those lands extending landward for two hundred (200) feet in all directions as measured on a horizontal plane from the OHWM; floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways; the full extent of floodplains; and all wetlands and river deltas associated with the streams and lakes and tidal waters that are subject to the provisions of this Program; the same to be designated as to location by Ecology.
Shoreline Administrator	“Shoreline Administrator” means the responsible official or his/her designee.
Shoreline designations	“Shoreline designations” means the categories of shorelines established by this Program in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas.
Shoreline ecological functions	“Shoreline ecological functions” means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem (WAC 173-26-200(2)(c)).
Shoreline jurisdiction	“Shoreline jurisdiction” means all shorelines of the state and shorelands, as defined in RCW 90.58.030 and in Section 40.460.210(A) of this Program.
Shoreline modifications	“Shoreline modifications” means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.
Shoreline restoration project	“Shoreline restoration project” means a project designed to restore impaired ecological function of a shoreline.
Shoreline stabilization	“Shoreline stabilization” means actions taken to address erosion impacts to property and structures caused by processes such as current, flood, wind, or waves. Structural measures include but are not limited to bulkheads, revetments and rip-rap. Nonstructural measures include building setbacks, relocation of structures, and bioengineered methods that use vegetation or wood.
Shoreline substantial development permit	“Shoreline substantial development permit” means the permit required by this Program for uses that are substantial developments in shoreline jurisdiction.
Shorelines	“Shorelines” means all of the water areas of Clark County, including reservoirs, and their associated shorelands, together with the lands underlying them, except: (a) shorelines of statewide significance; (b) shorelines on segments of streams upstream of a point where the mean annual flow is twenty (20) cubic feet per second or less, and the wetlands associated with such upstream segments; and (c) shorelines on lakes less than twenty (20) acres in size and wetlands associated with such small lakes. (RCW 90.58.030(2)(e) and Chapters 173-18, 173-22 and 173-26 WAC).
Shorelines Hearings Board	“Shorelines Hearings Board” means the quasi-judicial body established by the Shoreline Management Act of 1971 to hear appeals by any aggrieved party on the issuance of substantial development permits, conditional uses, variance, or enforcement penalties.
Shorelines of statewide significance	“Shorelines of statewide significance” means a select category of shorelines of the state, defined in RCW 90.58.030(2)(f), where special policies apply, and as described below: <ul style="list-style-type: none"> • Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand (1,000) acres or more, measured at the ordinary high water mark, and their associated shorelands; and • Those natural rivers or segments thereof, downstream of a point where the mean annual flow is measured at one thousand (1,000) cubic feet per second or more, and their associated shorelands.
Shorelines of the state	“Shorelines of the state” means the total of all “shorelines” and “shorelines of statewide significance” within the state.
Should	“Should” means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and Chapter 173-26 WAC, against taking the action.
Sign	“Sign” means any structure, device, advertisement, advertising device, or visual representation intended to advertise, identify, or communicate information to attract the attention of the public for any reason. Informational signs are noncommercial and intended to communicate safety, directional, navigation, educational, or interpretive information.
Significant vegetation removal	“Significant vegetation removal” means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, where it does not affect ecological functions, does not constitute significant vegetation removal (WAC 173-26-020(33)).

Solid waste facility	“Solid waste facility” means any land or structure where solid waste is stored, collected, transported, or processed in any form, whether loose, baled or containerized, including but not limited to the following: transfer stations, landfills, or solid waste loading facilities. Solid waste handling and disposal facilities do not include the following: handling or disposal of solid waste as an incidental part of an otherwise permitted use; and solid waste recycling and reclamation activities not conducted on the same site as and accessory to the handling and disposal of garbage and refuse.
Special flood hazard area	“Special flood hazard area” means the one hundred (100) year floodplain and refers to the land area susceptible to inundation with a one percent (1%) chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood hazard maps as adopted in Chapter 40.420 or a reasonable method which meets the objectives of the Act (WAC 173-26-020(15)).
Stormwater	“Stormwater” means runoff resulting from precipitation or snowmelt, including surface runoff, drainage, and interflow.
Substantial development	“Substantial development” means any development of which the total cost or fair market value exceeds seven thousand forty-seven dollars (\$7,047), or as adjusted by the State Office of Financial Management, or any development which materially interferes with the normal public use of the water or shorelines of the state, except as specifically exempted pursuant to RCW 90.58.030(3)(e) and WAC 173-27-040. (Amended: Ord. 2018-11-06)
Substantially degrade	“Substantially degrade” means to cause significant ecological impact (WAC 173-26-020(35)).
Surface water	“Surface water” means water that flows across the land surface, in channels, or is contained in depressions in the land surface, including but not limited to ponds, lakes, rivers, and streams.
Terrestrial	“Terrestrial” means of or relating to land as distinct from air and water.
Transmit	“Transmit” means to send from one person or place to another by mail or hand delivery. The date of transmittal for mailed items is the date that the document is certified for mailing or, for hand-delivered items, is the date of receipt at the destination (WAC 173-27-030(16)).
Transportation facility	“Transportation facility” means a road, railway, bridge, and related structures such as culverts, fills, and embankments, for the purpose of moving people or freight using motorized and nonmotorized means of transport, including the relevant essential public facilities identified in WAC 365-196-550.
Upland	“Upland” means generally the dry land area above and landward of the OHWM.
Variance	“Variance” means to grant relief from the specific bulk, dimensional or performance standards set forth in the applicable Master Program and not a means to vary a use of a shoreline. See RCW 90.58.160 and WAC 173-27-030(17).
Vegetation conservation	“Vegetation conservation” means activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and non-native species (WAC 173-26-221).
Vessel	“Vessel” means a floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency (WAC 173-27-030). (Amended: Ord. 2018-11-06)
View corridor	“View corridor” means a portion of a viewshed reserved through development regulations for the purpose of retaining the ability of the public to see a particular object (such as a mountain or body of water) or a landscape within a context which fosters appreciation of its aesthetic value.
Water-dependent use	“Water-dependent” means a use or a portion of a use which requires direct contact with the water and cannot exist at a nonwater location due to the intrinsic nature of its operations.
Water-enjoyment use	“Water-enjoyment use” means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public’s ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that foster shoreline enjoyment.
Water frontage	“Water frontage” means the portion of a parcel adjacent to the OHWM between property lines.

Water-oriented use	“Water-oriented use” means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.
Water quality	“Water quality” means the characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. (WAC 173-26-020(42)).
Water quantity	“Water quantity” means development and uses affecting water quantity, such as impermeable surfaces and stormwater handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of groundwater or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340 (WAC 173-26-020(42)).
Water-related use	<p>“Water-related use” means a use or portion of use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:</p> <ul style="list-style-type: none"> • Of a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or • The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.
Watershed restoration project	<p>“Watershed restoration project” means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one (1) or more of the following activities (RCW 89.08.460):</p> <ul style="list-style-type: none"> • A project that involves less than ten (10) miles of stream reach, in which less than twenty-five (25) cubic yards of sand, gravel, or soil are removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings; • A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or • A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state; provided, that any structure, other than a bridge or culvert or in-stream habitat enhancement structure associated with the project, is less than two hundred (200) square feet in floor area and is located above the ordinary high water mark of the stream.
Weir	“Weir” means a structure in a stream or river for measuring or regulating stream flow.

(Amended: Ord. 2012-07-16; Ord. 2014-08-10; Ord. 2018-01-01; Ord. 2018-11-06)

SUBTITLE 40.4

CRITICAL AREAS AND SHORELINES

40.410 CRITICAL AQUIFER RECHARGE AREAS (CARAs)

40.410.010 Introduction

A. Purpose.

This chapter is intended to protect public health, safety, and welfare by preventing degradation, and where possible, enhance the quality and quantity of groundwater which will be, or might likely be, used in the future for drinking water or business purposes. This will be accomplished by limiting potential contaminants within designated critical aquifer recharge areas (CARAs). The requirements of this chapter are intended to fulfill obligations of state law under the Growth Management Act, Chapter 36.70A RCW; the Public Water Systems Penalties and Compliance, Chapter 70.119A RCW; the Washington State Wellhead Protection Program and the Public Water Supplies, Chapter 246-290 WAC; the Dangerous Waste Regulations, Chapter 173-303 WAC; the Water Quality Standards for Groundwater of the State of Washington, Chapter 173-200 WAC; the Underground Injection Control Program, Chapter 173-218 WAC; and the Regulation of Public Ground Waters, Chapter 90.48 RCW.

(Amended: Ord. 2005-04-15; Ord. 2018-01-03; Ord. 2020-03-01)

B. Applicability and Exemptions.

1. **Applicability.** This chapter applies to all critical aquifer recharge areas as defined in Section 40.410.010(C). Parcels that are partly within Category I and Category II shall be subject to the Category I provisions in this chapter. Parcels that are partly inside Category II, but outside Category I, shall be subject to the Category II provisions in this chapter. Where pre-applications are required for projects, applicants are encouraged to use the pre-application process for pre-screening CARA exemptions.
2. **Exempt Activities and Uses.** The following activities and uses do not require a CARA permit:
 - a. Existing activities that currently and legally existed on July 31, 1997;
 - b. All residential uses other than those having activities covered by Section 40.410.020(A);
 - c. Group A public water system source development and associated infrastructure;
 - d. Public water supply aquifer storage and recovery (ASR) facilities;
 - e. Public water pipelines;
 - f. Public water supply storage structures;
 - g. Other uses not listed in Sections 40.410.020(A), (B) or (C);
 - h. Activities already permitted and regulated by the state or the Clark County Health Department to incorporate best management practices; and
 - i. Any uses where containment is provided and approved by the Clark County Building and Fire Departments.
3. The following underground storage tank (UST) systems and facilities, including any piping connected thereto, are exempt from the requirements of this chapter:
 - a. Any UST system holding hazardous wastes subject to Subtitle C of the Federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;
 - b. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act;

- c. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
- d. Any UST system whose capacity is one hundred ten (110) gallons or less;
- e. Any UST system that contains a de minimis concentration of regulated substances;
- f. Any emergency spill or overflow containment UST system that is expeditiously emptied after use;
- g. Farm or residential UST systems of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes (i.e., not for resale);
- h. UST systems used for storing heating oil for consumptive use on the premises where stored; except that such systems which store in excess of one thousand one hundred (1,100) gallons are subject to the release reporting requirements of WAC 173-360-372;
- i. Septic tanks;
- j. Any pipeline facility (including gathering lines) regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.); or
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.); or
 - (3) Which is a pipeline facility regulated under state laws comparable to the provisions of the law referred to in Section 40.410.010(B)(3)(j)(1) or (2) of this definition;
- k. Surface impoundments, pits, ponds, or lagoons;
- l. Stormwater or wastewater collection systems;
- m. Class V injection wells for stormwater infiltration meeting current stormwater code requirements, subject to Clark County review and approval;
- n. Flow-through process tanks;
- o. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or
- p. Storage tanks situated in an underground area (such as a basement, cellar, vault, mineworking drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(Amended: Ord. 2005-04-15; Ord. 2018-01-03; Ord. 2020-03-01)

C. Definitions.

For the purposes of this chapter, the following definitions shall apply:

Category I CARA	"Category I CARA" means the highest priority critical aquifer recharge area, represented by the one (1) year time-of-travel for Group A water wells.
Category II CARA	"Category II CARA: means the primary critical aquifer recharge area, represented by the ten (10) year time-of-travel for Group A water wells. This area also consists of the unconsolidated sedimentary aquifer and the Troutdale gravel aquifer.

(Amended: Ord. 2005-04-15; Ord. 2018-01-03; Ord. 2020-03-01)

D. Map.

The map entitled Clark County, Washington Critical Aquifer Recharge Areas is adopted in the twenty (20) year Clark County Comprehensive Growth Management Plan as best available science. If a conflict exists between the map and on-site conditions, the on-site conditions shall supersede the map. The county will update the CARA map as warranted by new information. GIS Map Store produces maps for free in the following link: Critical Areas Ordinances Maps (<https://gis.clark.wa.gov/gishome/mapstore/#/mapProducts>).

(Amended: Ord. 2005-04-15; Ord. 2009-03-02; Ord. 2018-01-03; Ord. 2020-03-01)

40.410.020 Standards

A. Activities requiring a CARA permit in Categories I and II include the following:

1. Above- and below-ground storage tanks (tanks and pipes used to contain an accumulation of regulated substances) unless containment is approved by the Clark County Building Department and the Fire Marshal;
2. Facilities that conduct biological research;
3. Boat repair shops;
4. Chemical research facilities;
5. Dry cleaners;
6. Gasoline service stations;
7. Pipelines not otherwise exempted from this chapter;
8. Printing and publishing shops (that use printing liquids);
9. Below-ground transformers and capacitors;
10. Sawmills (producing over ten thousand (10,000) board feet per day);
11. Solid waste handling and processing;
12. Vehicle repair, recycling, and recyclable materials – automotive;
13. Funeral services;
14. Furniture stripping;
15. Motor vehicle service garages (both private and government);
16. Photographic processing;
17. Chemical manufacture and reprocessing;
18. Creosote and asphalt manufacture and treatment;
19. Petroleum and petroleum products refining, including reprocessing;
20. Wood products preserving;
21. Golf course;
22. Regulated waste treatment, storage, disposal facilities that handle hazardous material; and
23. Uses that generate a medium or large quantity of dangerous, acutely hazardous, and toxic extremely hazardous waste and as defined by WAC Title 173.

(Amended: Ord. 2005-04-15; Ord. 2018-01-03; Ord. 2020-03-01)

B. Prohibited Activities in Category I.

The following activities are considered high-impact uses due to the probability and/or potential magnitude of their adverse effects on groundwater. These activities are prohibited in Category I, and require a permit for Category II:

1. Landfills;
2. Class V injection wells with the exception of wells for stormwater infiltration meeting current stormwater requirements, subject to Clark County review and approval;
3. Agricultural drainage wells;
4. Untreated sewage waste disposal wells;
5. Cesspools;
6. Industrial process water and disposal wells;
7. Radioactive waste disposal;
8. Radioactive disposal sites;
9. Surface mining operations; and
10. Electroplating activities.

(Amended: Ord. 2005-04-15; Ord. 2018-01-03; Ord. 2020-03-01)

C. Additional Standards.

The following additional standards apply in all CARAs:

1. Pesticides, herbicides and fertilizers shall be applied in accordance with federal law.
2. Vehicle repair and servicing.
 - a. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment if leaks occur.
 - b. No Class V stormwater infiltration wells are allowed in CARAs on sites for vehicle repair and servicing unless oil water separators are installed. Dry wells on the site prior to the facility establishment must be abandoned using techniques approved by the Department of Ecology or an oil water separator will need to be installed prior to commencement of the proposed facility.

(Amended: Ord. 2004-06-11; Ord. 2005-04-15; Ord. 2018-01-03; Ord. 2020-03-01)

40.410.030 Administration

A. Permit Requirements.

1. To receive a CARA permit required by Section 40.410.020, the applicant must demonstrate, through a Level 1 site evaluation report, how they will integrate necessary and appropriate best management practices (BMPs) to prevent degradation of groundwater. The applicant must also meet existing local, state, and federal laws and regulations.

2. If an applicant wants to avoid implementation of the standard, they must submit a Level 2 site evaluation report that demonstrates how the applicant will prevent degradation to groundwater. The applicant must also meet existing local, state and federal laws and regulation.
3. Applicants that agree to implement all relevant BMPs are exempt from preparing a site evaluation report. Applicants will demonstrate how the implementation of BMPs will be used to prevent degradation to groundwater.

(Amended: Ord. 2005-04-15; Ord. 2018-01-03; Ord. 2018-01-09; Ord. 2020-03-01)

B. Level 1 Site Evaluation Report/Approval Criteria.

1. For all proposed activities to be located in a critical aquifer recharge area, the site evaluation report shall include a Level 1 assessment by an engineer as defined in Section 40.386.010. The report will identify appropriate BMPs and show how they will prevent degradation of groundwater. Examples of pollution source controls are described in the Building Code, Fire Code, Clark County Stormwater Manual and Chapter 173-218 WAC, Underground Injection Control Program.
2. The report will identify how the applicant will follow the requirements of Chapter 90.48 RCW (Water Pollution Control), Chapter 70.105D RCW (Model Toxics Control Act), Chapter 173-340 WAC, and the Dangerous Waste Regulations, Chapter 173-303 WAC, in the event hazardous material is released onto the ground or into groundwater.
3. The report will be reviewed by the department, in consultation with the Clark County Health Department and the local water purveyor, in conjunction with the same process as the primary development permit. If approved, the applicant will receive a CARA permit allowing the activity on the subject property.

(Amended: Ord. 2005-04-15; Ord. 2018-01-03; Ord. 2018-01-09; Ord. 2020-03-01)

C. Level 2 Site Evaluation Report/Approval Criteria.

1. A qualified groundwater professional as defined in Section 40.100.070 will determine whether the proposed activity will have any adverse impacts on groundwater in CARAs. This determination must be based upon the requirements of the Safe Drinking Water Act and the Wellhead Protection Area Program, Public Water Supplies, Chapter 246-290 WAC; Groundwater Quality Standards for the State of Washington, Chapter 173-200 WAC; and Dangerous Waste Regulations, Chapter 173-303 WAC. By this reference, Chapters 173-200, 173-218, 173-303, and 246-290 WAC, as written and hereafter updated, will be part of this chapter.
2. The Level 2 site evaluation report will include the following:
 - a. Identification of the proposed development plan, along with potential impacts (e.g., on-site septic systems and other on-site activities) that may adversely impact groundwater quality underlying or down gradient of the project or project area;
 - b. Site plans or diagrams at an appropriate scale (1:2,400 or one (1) inch to two hundred (200) feet) showing the location of abandoned and active wells, springs, and surface water bodies within one thousand (1,000) feet of the project or project area; and
 - c. A description of the geologic and hydrologic characteristics of the subject property including the following:
 - (1) Lithologic characteristics and stratigraphic relationships;
 - (2) Aquifer characteristics including recharge and discharge areas, depth to and static water-flow patterns, and an estimate of groundwater-flow velocity;
 - (3) Contaminant fate and transport including probable migration pathways and travel time of a potential contaminant release from the site through the unsaturated zone to the aquifer(s) and through

the aquifer(s), and how the contaminant(s) may be attenuated within the unsaturated zone and the aquifer(s);

(4) Appropriate hydrogeologic cross-sections which depict lithology, stratigraphy, aquifer, units, potential or probable contaminant pathways from a chemical release, and rate of groundwater flow; and

(5) Existing groundwater quality.

3. The report will be reviewed by the department, in consultation with the Clark County Health Department and the local water purveyor, in conjunction with the same process as the primary development permit. If approved, the applicant will receive a CARA permit allowing the activity on the subject property.

(Amended: Ord. 2005-04-15; Ord. 2018-01-03; Ord. 2020-03-01)

D. Appeals.

Appeals of county decisions under this chapter may be filed under the provisions of Chapter 40.510.

(Amended: Ord. 2005-04-15; Ord. 2018-01-03; Ord. 2020-03-01)

E. Penalties.

Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of this chapter shall be subject to penalties as defined in Chapter 70.119A RCW; Chapters 173-200 and 246-290 WAC; Title 32 of this code; and other local, state, and federal laws.

(Amended: Ord. 2005-04-15; Ord. 2018-01-03; Ord. 2020-03-01)

40.420 FLOOD HAZARD AREAS

40.420.010 Introduction

A. Purpose.

The purpose of this chapter is to safeguard public health, safety and welfare by placing limitations on development in areas susceptible to flood waters consistent with the requirements of the Growth Management Act and WAC 365-190-080.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15; Ord. 2018-01-03)

B. Applicability.

1. This chapter applies to all development in identified special flood hazard areas within the jurisdiction of Clark County. After the adoption of this chapter, no structure shall hereafter be constructed, substantially improved, located, extended, converted, or replaced, nor any land altered without full compliance with the terms of this chapter and other applicable regulations.
2. This chapter is not intended to repeal or impair any existing easements, covenants or deed restrictions.
3. Where this chapter and another code or ordinance conflict or overlap, that which imposes the more stringent restrictions shall prevail.
4. In the interpretation and application of this chapter, all provisions shall be:
 - a. Considered as minimum requirements;
 - b. Liberally construed to achieve the purposes of this chapter; and
 - c. Deemed neither to limit nor repeal any other powers granted under state statutes.
5. Federal Flood Insurance Program. Council assures the Federal Insurance Administration that it will take legislative action needed to meet the requirements of the National Flood Insurance Regulations and will take such other appropriate official actions as may be reasonably necessary to carry out the requirements of the program.

(Amended: Ord. 2005-04-15; Ord. 2009-03-02; Ord. 2012-07-15; Ord. 2018-01-03; Ord. 2019-05-07)

C. Definitions.

For purposes of this chapter, the following definitions shall apply:

Base flood	"Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year and is also referred to as the one-hundred-year (100-year) flood.
Base flood elevation	"Base flood elevation" means the height in relation to the North American Vertical Datum (NAVD) 1988 expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.
Basement	"Basement" means any area of the building having its floor subgrade below ground level on all sides.
Critical facility	"Critical facility" means the following: <ul style="list-style-type: none">• Structures or facilities that produce, use or store highly volatile, flammable, explosive, toxic and/or water-reactive materials;• Hospitals, nursing homes, and housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a flood;

	<ul style="list-style-type: none"> Police stations, fire stations, vehicle and equipment storage facilities, and emergency operations centers that are needed for flood response activities before, during and after a flood; and Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood.
Development	<p>“Development” means, in addition to the definition in Section 40.100.070:</p> <ul style="list-style-type: none"> Storage of equipment and materials.
Elevation certificate	<p>“Elevation certificate” means the official form (FEMA 81-31) used to record the elevation of a structure on a given property relative to the NAVD 1988.</p>
Encroachment	<p>“Encroachment” means the intrusion of any building, structure, vegetation, fill, excavation, or other development or use into a special flood hazard area which may impede or alter the flow through or storage capacity of a special flood hazard area.</p>
FEMA	<p>“FEMA” means the Federal Emergency Management Agency.</p>
Flood or flooding	<p>“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:</p> <ul style="list-style-type: none"> The overflow of inland waters, and/or The unusual and rapid accumulation of runoff of surface waters from any source.
Flood Insurance Rate Maps	<p>“Flood Insurance Rate Maps” (FIRMs) mean the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the county.</p>
Flood Insurance Study	<p>“Flood Insurance Study” means an official report published by FEMA in conjunction with the community’s Flood Insurance Rate Maps (FIRMs). The study contains such background data as the base flood discharges and water surface elevations that were used to prepare the FIRMs.</p>
Floodproofing	<p>“Floodproofing” means any combination of structural and nonstructural additions, changes or adjustments to properties and structures which reduce or eliminate flood damages to lands, water and sanitary facilities, and structures and their contents.</p>
Floodway	<p>“Floodway” means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.</p>
Lowest floor	<p>“Lowest floor” means the lowest floor of the lowest enclosed area (including the basement). An unfinished or flood-resistant enclosure usable solely for parking of vehicles or for building access or storage in an area other than a basement area is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of Section 40.420.020(E)(1)(b).</p>
Special flood hazard area, or floodplain	<p>“Special flood hazard area” or “floodplain” means any land area subject to a one percent (1%) or greater chance of flooding in any given year.</p>
Start of construction	<p>“Start of construction” means, in addition to the definition in Section 40.100.070, for a substantial improvement, the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.</p>
Structure	<p>“Structure” means, in addition to the definition in Section 40.100.070:</p> <ul style="list-style-type: none"> A gas or liquid storage tank that is principally above ground; A manufactured home.
Substantial damage	<p>“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.</p>
Substantial improvement	<p>“Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which is equal to or greater than fifty percent (50%) of the market value of the structure either:</p> <ul style="list-style-type: none"> Before the improvement or repair is started; or If the structure has been damaged and is being restored, before the damage occurred. <p>Substantial improvement can exclude:</p>

	<ul style="list-style-type: none">• Any project for improvement of a structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been identified by a code enforcement official and which are the minimum necessary to assure safe living conditions; or• Any alteration of a structure listed on the National Register of Historic Places or the Clark County Heritage Register.
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(Amended: Ord. 2005-04-15; Ord. 2012-07-15; Ord. 2018-01-03)

D. Flood Insurance Study and Maps.

1. 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" (FIS), effective January 19, 2018, and accompanying Flood Insurance Rate Maps (FIRMs) and any revisions thereto are hereby adopted by reference. The FIS and the FIRMs are on file with the Public Works Department.
2. For the FIS and the FIRMs, the vertical datum was converted from the National Geodetic Vertical Datum of 1929 (NGVD29) to the North American Vertical Datum of 1988 (NAVD88). In addition, the Transverse Mercator, State Plane coordinates, previously referenced to the North American Datum of 1927 (NAD27), are now referenced to the North American Datum of 1983 (NAD83).
3. The best available information for flood hazard area identification as outlined in Section 40.420.030(D)(6)(c) shall be the basis for regulation until new information is incorporated into the FIRMs.

(Amended: Ord. 2012-07-15; Ord. 2018-01-03)

E. Warning and Disclaimer of Liability.

The degree of flood protection required by this chapter 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 special 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 made thereunder.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15; Ord. 2018-01-03)

40.420.020 Standards

A. Uses.

1. Allowed Uses in Special Flood Hazard Areas.
 - a. Outside of shoreline jurisdiction, development may be allowed for those uses in the underlying zoning district with a flood hazard permit pursuant to Section 40.420.030(D).
 - b. Within shoreline jurisdiction, development may be allowed for those uses allowed in the shoreline master program, with a flood hazard permit pursuant to Section 40.420.030(D) as part of the shoreline permit process.
 - c. Park, recreational, agricultural and other similar open space uses allowed in the underlying zoning district, which do not involve development as defined in this chapter, are permitted outright in special flood hazard areas.
2. Prohibited Uses in Special Flood Hazard Areas.

a. Construction or reconstruction of residential structures is prohibited in the floodway except, in accordance with Chapter 86.16 RCW, for repairs, reconstruction, or improvements to a lawfully established structure:

- (1) Which do not increase the ground floor area; and
- (2) That are not a substantial improvement.

b. 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 through calculations that the encroachment will not result in increased flood levels, all new nonresidential construction and nonresidential substantial improvements shall comply with all applicable flood hazard reduction provisions of this chapter.

3. Special Flood Hazard Area with Base Flood Elevation but No Floodways. In areas with base flood elevation but where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point in the county.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

B. Land Divisions.

All land divisions shall:

1. Identify lots and portions of lots in special flood hazard areas as part of preliminary plat submittal;
2. Be designed to minimize flood damage;
3. Have any public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
4. Have roadways designed such that, in the event of a one-hundred- (100-) year flood, one (1) travel lane in either direction shall not be covered by more than six (6) inches of water; and
5. Have adequate drainage provided to reduce exposure to flood damage.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

C. Building Permits.

Permits for buildings and structures in special flood hazard areas are subject to the requirements of this chapter.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

D. General Construction Standards.

In all special flood hazard areas, the following standards shall be met:

1. Anchoring, in Accordance with FEMA Requirements.
 - a. All new construction and any substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

b. All manufactured homes shall be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors, and additional techniques referenced in the current FEMA guidebook FEMA P-85, "Protecting Manufactured Homes From Floods and Other Hazards."

2. Construction Materials and Methods, in Accordance with FEMA Technical Bulletin 2.

a. All new construction and any substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. All new construction and any substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed, elevated and located so as to prevent water from entering or accumulating within the components during flooding.

3. Utilities.

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

b. Water wells shall not be located in the floodway or in areas subject to ponding.

c. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.

d. On-site waste disposal systems shall be located or designed to avoid impairment to them or contamination from them during flooding.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

E. Specific Construction Standards.

In all special flood hazard areas, once base flood elevation data has been provided as required in Section 40.420.010(D)(1), or as established in Section 40.420.010(D)(2), the following standards shall be met:

1. Residential Construction.

a. New residential construction and substantial improvement of any residential structure shall have the lowest floor (including the basement) elevated at least one (1) foot above base flood elevation.

b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, unless designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a licensed professional engineer registered in the state of Washington or must meet or exceed the following minimum criteria:

(1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided;

(2) The bottom of all openings shall be no higher than one (1) foot above grade; and

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

c. Below-Grade Crawl Spaces.

(1) Below-grade crawl spaces will not be considered basements if constructed to the following criteria:

(a) The interior grade of the crawl space is not more than two (2) feet below the lowest adjacent exterior grade.

(b) The height of the below-grade crawl space, measured from the interior grade of the crawl space to the top of the crawl space foundation wall, must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

(c) There must be an adequate drainage system that removes floodwaters from the interior area of the crawl space.

(d) The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawl space. For velocities in excess of five (5) feet per second, other foundation types should be used.

(e) Utility systems within the crawl space, particularly ductwork, must be elevated above the base flood elevation, or designed so that floodwaters cannot enter or accumulate within system components, or be damaged during flood conditions.

(f) All insulation must be located above the base flood elevation.

(2) Buildings that have below-grade crawl spaces may have higher flood insurance premiums than buildings that have the preferred crawl space construction with the interior elevation at or above the lowest adjacent grade.

(3) For additional information and diagrams see FEMA Technical Bulletin 11.

2. Nonresidential Construction.

a. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including the basement, elevated to at least one (1) foot above base flood elevation; or, together with attendant utility facilities, shall:

(1) Be floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water up to an elevation one (1) foot above the base flood elevation;

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

(3) Be certified by a licensed professional engineer registered in the state of Washington that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be on FEMA Form 81-65 and provided to the responsible official as set forth in Section 40.420.030(D).

b. Nonresidential structures that are elevated, but not floodproofed, must meet the same standards for space below the lowest floor as described in Section 40.420.020(E)(1)(b).

c. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates for floodproofing to one (1) foot below the floodproofed level.

3. Manufactured Homes. All manufactured homes to be placed or substantially improved within a special flood hazard area shall be elevated on a permanent foundation such that the lowest floor of the manufactured

home is at least one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement in accordance with the provisions of Section 40.420.020(D)(1)(b).

4. Travel Trailers and Recreational Vehicles. Travel trailers and recreational vehicles are allowed as follows:

- a. In a floodway between May 1st and September 30th of the same year.
- b. In a special flood hazard area outside of a floodway on a temporary basis for fewer than one hundred eighty (180) consecutive days unless:
 - (1) The vehicle remains fully licensed or has a valid trip permit from the Washington State Department of Licensing and is ready for highway use, on wheels or a jacking system, attached to the site only by quick disconnect type utilities and security devices, and with no permanently attached additions; or
 - (2) The requirements of Section 40.420.020(E)(3) are met.

5. Critical Facilities.

- a. New critical facilities shall be constructed outside of special flood hazard areas unless no feasible alternative sites are available.
- b. Critical facilities constructed within special flood hazard areas shall have:
 - (1) The lowest floor elevated three (3) feet above the base flood elevation or to the height of the five-hundred- (500-) year flood, whichever is higher;
 - (2) Access to and from the critical facility as required in Section 40.420.020(B)(4); and
 - (3) Floodproofing and sealing measures to ensure that toxic substances will not be displaced by or released into floodwaters.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

40.420.030 Administration

A. The Public Works Director or his/her designee is the responsible official for purposes of administering this chapter.

(Added: Ord. 2012-07-15)

B. Shoreline Master Program.

For developments on parcels within both shoreline jurisdiction and a special flood hazard area, a flood hazard permit pursuant to Section 40.420.030(D) is required, whether the development is exempt from a shoreline permit or not.

(Added: Ord. 2012-07-15)

C. Flood Hazard Inquiry.

1. For development proposed on parcels outside of shoreline jurisdiction, the applicant may submit an inquiry on a form furnished by the responsible official requesting the department to determine if the proposed development is in a special flood hazard area.
2. The responsible official shall review the application and other pertinent information, and make a determination as to whether the proposed development is in a special flood hazard area and a flood hazard

permit is required. The responsible official shall inform the applicant in writing whether or not a permit is required.

(Added: Ord. 2012-07-15)

D. Flood Hazard Permit.

1. A flood hazard permit must be obtained before construction or development begins within any special flood hazard area. The review shall be for all structures and development as defined in Section 40.100.070 and this chapter.
2. For land divisions, a flood hazard permit will be issued as part of the land division review process. The following information is required:
 - a. Floodplain and floodway limits;
 - b. Finished grading;
 - c. Building envelopes; and
 - d. Hydrologic and hydraulic calculations used to determine the impact of the proposed development on base flood elevation. Where base flood elevation data is not available from the Flood Insurance Study, FIRMs, or from another authoritative source, it shall be provided by the applicant for subdivisions and other proposed development which contain at least fifty (50) lots or five (5) acres, whichever is less. This documentation shall be prepared by a licensed professional engineer registered in the state of Washington.
3. For building permits, a flood hazard review will be done as part of the building permit review process. The following information is required:
 - a. Floodplain and floodway limits;
 - b. Finished grading; and
 - c. Hydrologic and hydraulic calculations used to determine the impact of the proposed development on base flood elevation. Where base flood elevation data is not available from the Flood Insurance Study, FIRMs, or from another authoritative source, the applicant shall assure that proposed construction will be reasonably safe from flooding. The test of reasonableness shall be a judgment of the responsible official who shall consider historical data, high water marks, and photographs of past flooding, where available. This documentation shall be prepared by a licensed professional engineer registered in the state of Washington. Failure to elevate the lowest floor at least two (2) feet above the highest adjacent grade in these zones may result in higher insurance rates.
4. Application for a flood hazard permit shall be made to the responsible official on a form furnished by the responsible official.
5. The application shall include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question, and existing and proposed structures, fill, excavation, storage of materials, and drainage facilities. Specifically, the following information is required:
 - a. Elevation, in relation to mean sea level as determined by the North American Vertical Datum (NAVD) of 1988, of the lowest floor (including the basement) of all structures;
 - b. Elevation, in relation to the NAVD of 1988, to which any structure has been floodproofed;
 - c. Certification by a licensed professional engineer registered in the state of Washington that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 40.420.020(E)(2);

- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
 - e. Hydrologic and hydraulic calculations used to determine the impact of the proposed development on base flood elevation. If hydraulic modeling software is utilized for these calculations, all electronic files shall be submitted prior to flood hazard permit or shoreline substantial development permit approval.
6. The responsible official will:
- a. Review all proposed developments with respect to the Flood Insurance Study and accompanying maps and zoning district boundaries;
 - b. Make interpretations, where needed, as to the exact location of special flood hazard area boundaries;
 - c. When base flood elevation data has not been provided in accordance with Section 40.420.010(D), obtain, review and reasonably utilize any base flood elevation and floodway data available from an agency of federal or state government, or other sources, in order to enforce the provisions of this chapter;
 - d. Review all proposals to determine that the requirements of this chapter have been satisfied;
 - e. Review all proposals to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required; and
 - f. Issue a flood hazard permit with any conditions necessary to insure that the development meets the requirements of this chapter.
7. Elevation Certificates Required. Elevation certificates are required to verify elevations of structures and above-ground equipment, and shall be submitted prior to receiving an inspection for footing, framing and certificate of occupancy. Elevation certificates shall be prepared by a licensed professional surveyor registered in the state of Washington.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

E. Variances.

- 1. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from flood elevations should be quite rare.
- 2. A Type I administrative variance may be granted pursuant to Section 40.510.010, the National Flood Insurance Program and applicable state law, and shall only be issued if all of the following are met:
 - a. The proposal has been designed to minimize the impact on the floodplain and its functions;
 - b. No increase in flood levels during the base flood discharge would result;
 - c. The variance is the minimum necessary, considering the flood hazard, to afford relief;
 - d. Failure to grant the variance would result in exceptional hardship to the applicant;
 - e. The hardship is not created by the property owner or his or her immediate predecessor in the title; and
 - f. The granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense; create nuisances; cause fraud on or victimization of the public as identified in Section 40.420.030(F); nor conflict with existing local laws or ordinances.

3. Variances may be issued for new construction and substantial improvements on lots of one-half (1/2) acre or less in size and abutting and surrounded by lots with existing structures constructed below the base flood level; provided, that the items in Section 40.420.030(E)(2) have been fully considered.
4. Variances may be issued for commercial, industrial, and accessory buildings to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria, and otherwise complies with Section 40.420.020(E).
5. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
6. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the significantly increased risk resulting from the reduced lowest floor elevation.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

F. Appeals.

1. Administrative decisions rendered by the responsible official are subject to appeal pursuant to Section 40.510.020(H).
2. In acting on appeals, the Hearing Examiner shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this chapter; and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters, and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

3. Upon consideration of the factors of Section 40.420.030(E)(2) and the purposes of this chapter, the Hearing Examiner may attach such conditions to actions on appeals as it deems necessary to further the purposes of this chapter.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

G. The responsible official shall obtain and/or maintain the following:

1. Where base flood elevation data is provided through the Flood Insurance Study, FIRMs, or as required as in Section 40.420.030(D)(6)(c), obtain and record the actual elevation (in relation to mean sea level based on the NAVD 1988) of the lowest floor (including the basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
2. For all new or substantially improved floodproofed nonresidential structures, verify and record the actual elevation (in relation to mean sea level based on the NAVD 1988) to which the structure was floodproofed, and maintain the floodproofing certifications required in Section 40.420.030(D)(5)(c).
3. All records for public inspection pertaining to the provisions of this chapter.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

H. For alteration of any watercourses, the responsible official will:

1. Notify adjacent communities and the Washington Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA; and
2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

40.430 GEOLOGIC HAZARD AREAS

40.430.010 Introduction

A. Purpose.

The purpose of this chapter is to safeguard public health, safety and welfare by placing limitations on development in geologically hazardous areas consistent with the requirements of the Growth Management Act and WAC 365-190-080.

(Amended: Ord. 2005-04-15; Ord. 2012-02-03; Ord. 2018-01-09)

B. Applicability and Exemptions.

1. **Applicability.** This chapter applies to all construction, development, earth movement, clearing, or other site disturbance which requires a permit, approval or authorization from the county in or within one hundred (100) feet of a geologic hazard area except for exempt activities listed in Section 40.430.010(B)(3). Regulated geologic hazards include steep slope hazard areas, landslide hazard areas, seismic hazard areas, and volcanic hazard areas.

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 geohazard review as part of the shoreline permit process.

3. **Exempt Activities and Uses.** The following activities and uses are exempt from the provisions of this chapter:

- a. Emergency activities which require immediate action to prevent an imminent threat to health, safety or property. As soon as practical, the responsible party shall provide written notification to the responsible official and obtain all applicable permits;
- b. Residential remodels that do not alter the footprint or increase the gross floor area of the structure;
- c. Any replacement, operation, repair, modification, installation or construction by a state or locally franchised utility company in an improved right-of-way or utility corridor;
- d. Normal and routine maintenance and repair of existing utility facilities, equipment and appurtenances;
- e. Any development activity on or within one hundred (100) feet of steep slopes that have been created through previous, legal grading activities is exempt from steep slope hazard regulations; and
- f. Applications for short plats in the rural area that are certified by a registered geologist or professional engineer licensed in the state of Washington to be exempt from the requirements of this chapter even though a mapped geohazard exists on the plat or within one hundred (100) feet of the boundaries of the plat. Certification shall be provided with the preliminary plat application by means of one of the following:
 - (1) A development envelope is designated on the plat which is certified to be over one hundred (100) feet from any regulated geologic hazard area. A stamped letter which documents how the designated envelope is exempt from the requirements of this chapter shall accompany the development envelope diagram; or
 - (2) A stamped letter which documents there are no areas within the boundaries of the plat that are within one hundred (100) feet of any regulated geologic hazard area.
- g. All forest practices other than Class IV G (conversions).

4. This chapter applies to Class IV G forest practices (conversions).

(Amended: Ord. 2005-04-15; Ord. 2012-02-03; Ord. 2012-07-16; Ord. 2018-01-09)

C. Definitions.

For purposes of this chapter, the following definitions shall apply:

1. "Steep slope hazard area" means an area where there is not a mapped or designated landslide hazard, but where there are steep slopes equal to or greater than forty percent (40%) slope. Steep slopes which are less than ten (10) feet in vertical height and not part of a larger steep slope system, and steep slopes created through previous legal grading activity are not regulated steep slope hazard areas. The presence of steep slope suggests that slope stability problems are possible.
2. "Landslide hazard area" means an area that, due to a combination of slope inclination, soil type and presence of water is susceptible to landsliding in accordance with the following criteria:
 - a. Areas of previous slope failures including areas of unstable old or recent landslides;
 - b. Areas with all three (3) of the following characteristics:
 - (1) Slopes steeper than fifteen percent (15%),
 - (2) Hillsides intersecting geologic contacts with permeable sediment overlying a low permeability sediment or bedrock, and
 - (3) Any springs or groundwater seepage;
 - c. Slopes that are parallel or sub-parallel to planes of weakness, such as bedding planes, joint systems and fault planes in subsurface materials;
 - d. Areas mapped by:
 - (1) Washington Department of Natural Resources Open File Report: Slope Stability of Clark County, 1975, as having potential instability, historical or active landslides, or as older landslide debris, and
 - (2) The Washington Department of Natural Resources Open File Report Geologic Map of the Vancouver Quadrangle, Washington and Oregon, 1987, as landslides;
 - e. Slopes greater than eighty percent (80%), subject to rock fall during earthquake shaking;
 - f. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and stream undercutting the toe of a slope;
 - g. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows, debris torrents or catastrophic flooding;
 - h. Areas within one hundred (100) feet of an open-pit mine sites subject to steep slope hazard or landslide hazard.
3. "Seismic hazard area" means an area subject to severe risk of damage as a result of earthquake-induced soil liquefaction, ground shaking amplification, slope failure, settlement, or surface faulting. Relative seismic hazard is mapped on the NEHRP Site Class Map of Clark County, published by the Washington Department of Natural Resources.
4. "Volcanic hazard area" means an area subject to possible low and high density pyroclastic flows as shown on the Volcanic Hazard Map of Clark County.

(Amended: Ord. 2005-04-15)

D. Maps.

1. Adopted Maps. The following geologic hazard maps signed by Council are adopted by reference and are on file with the County Auditor:

- a. Clark County, Washington Severe Erosion Hazard Areas;
- b. Clark County, Washington NEHRP Site Classes;
- c. Clark County, Washington Steep Slopes and Landslide Hazards;
- d. Clark County, Washington Liquefaction Susceptibility; and
- e. Clark County, Washington Volcanic Hazard.

2. Identification. Geologic hazards are usually localized individual occurrences that may affect only small, separate areas. In addition, activities such as grading and clearing can create or increase slope instability where none was previously identified. Because of this, geologic hazard areas have not been identified on a site-specific basis. Where the geologic hazard area maps and definitions conflict, the definitions shall prevail.

3. Source Data. The approximate location and extent of geologic hazard areas are shown on the geologic hazard area maps adopted herein. The maps are intended to meet the designation criteria listed in WAC 365-190-080 and are based on the best available information, including:

- a. Slope Areas Mapping for Clark County, Clark County Department of Assessment and GIS;
- b. Slope Stability of Clark County, Washington Department of Natural Resources, 1975 and landslides mapped in Geologic Map of the Vancouver Quadrangle, Washington and Oregon, Washington Department of Natural Resources, 1987;
- c. Construction of Liquefaction Susceptibility and NEHRP Soil-type Maps for Clark County, Washington, Washington Department of Natural Resources, 2004;
- d. Volcanic hazard zonation for Mount St. Helens, Washington, U.S. Geological Survey, 1995; and
- e. Natural Resources Conservation Service, Soil Survey Geographic Database (SSURGO), 2004.

4. Map Updates. Results of binding pre-determinations and other site investigations required under this chapter and the building code will be compiled by the department and incorporated into future geologic hazard area map revisions. The county will adopt updated maps as more detailed information becomes available. The review of such new information shall include local geologists and engineers familiar with the requirements of this chapter and how it is applied to new development.

(Amended: Ord. 2005-04-15; Ord. 2019-05-07)

E. Relationship to Chapter 40.570 Environmental Impacts.

Geologic hazard area protective measures required by this section shall constitute adequate mitigation of significant adverse environmental impacts related to geologic hazards for purposes of Chapter 40.570.

(Amended: Ord. 2005-04-15)

F. Reasonable Use Assurance.

Nothing in this section shall preclude the issuance of a single-family building permit on a lawfully created lot.

(Amended: Ord. 2005-04-15)

G. Density Transfer.

Land divisions regulated by this section may be eligible for density transfers under Section 40.220.010(C)(5).

(Amended: Ord. 2005-04-15)

H. Open Space Tax Incentives.

Tax incentives may be available for owners of land set aside in landslide protection hazard areas through the open space taxation program.

(Amended: Ord. 2005-04-15)

40.430.020 Standards

A. General.

The following requirements for development activities in geologic hazard areas list prohibited activities, buffer requirements, and setback requirements. The following section describes required buffers and setbacks, and general requirements for development activities in geologic hazard areas.

1. Development on steep slope hazard areas is regulated to prevent potential landslide damage by placing improvements away from steep slopes and leaving steep slopes in natural vegetation.
2. Development in landslide hazard areas is generally not allowed, and requires buffers that keep vegetation in a natural state on and around the landslide hazard area.
3. Seismic hazards due to liquefaction, ground shaking amplification and landslides exist for large areas of the county. Only detailed site analysis can determine how soils and structures will respond at a particular site. Site investigation requirements of the International Building Code are used to ensure that structures are built to minimum safety standards based on existing knowledge of earthquake hazard. Section 40.430.020(F) provides additional guidelines describing where site investigations should be required for seismic design.
4. If an applicant wishes to perform development activities not allowed by Sections 40.430.020(D) and (E), a geologic hazard area study meeting the requirements of Section 40.430.030(C)(5) must be completed. The development proposal may be approved, approved with conditions, or denied based on the responsible official's evaluation of the suitability of the mitigation measures proposed by the geologic hazard area study to protect life, safety, and slope stability on abutting properties.

(Amended: Ord. 2005-04-15)

B. Erosion Requirements.

All activities on hillsides subject to severe erosion hazard must minimize erosion by following management practices prescribed by the erosion control standards of Chapter 40.386.

(Amended: Ord. 2005-04-15; Ord. 2009-01-01; Ord. 2015-11-24)

C. Stormwater Requirements.

For projects within one hundred (100) feet of steep slope hazard areas or landslide hazard areas, runoff shall not be infiltrated into the ground. Runoff should be directed through a water-tight pipe beyond the base of the slope or landslide area and discharged to a suitable drainage way. An energy dissipating device shall be placed at the discharge point.

(Amended: Ord. 2005-04-15)

D. Steep Slope Hazard Areas.

1. Except for mineral extraction practices, development activity on or within one hundred (100) feet of slopes steeper than forty percent (40%) that do not have a mapped or designated landslide hazard shall comply with the requirements of this section.
2. Buffer and Setback Distances.
 - a. Activities at the base of ascending slopes (building at the bottom of a steep slope):
 - (1) For slopes greater than or equal to forty percent (40%) and less than one hundred percent (100%), buffers shall extend a distance away from the toe of the slope that is equal to the vertical height of the slope divided by two, but not to exceed fifteen (15) feet (Figure 40.430.020-1). For slopes less than one hundred percent (100%), the toe of the slope is defined as a distinct break in slope at the base of a steep slope.
 - (2) For slopes greater than one hundred percent (100%), the buffer shall extend a distance back from the toe of the slope equal to the height of the slope divided by two, not to exceed fifteen (15) feet. The buffer shall be measured horizontally from a plane, drawn tangent to the top of the slope at an angle of forty-five (45) degrees to the proposed structure (Figure 40.430.020-3).
 - (3) The setback shall be eight (8) feet beyond the buffer.
 - b. Activities at the tops of descending slopes (building at the top of a steep slope):
 - (1) For slopes greater than or equal to forty percent (40%) and less than one hundred percent (100%), buffers shall extend a distance back from the top of the slope equal to the vertical height of the slope divided by three (3), but not to exceed forty (40) feet. The top of the slope is defined as a distinct break in slope at the top of a steep slope (Figure 40.430.020-1).
 - (2) For slopes greater than one hundred percent (100%), the buffer shall extend a distance back from the top of the slope equal to the height of the slope divided by three (3), but not to exceed forty (40) feet. The buffer shall be measured horizontally from a plain drawn at forty-five (45) degrees (one hundred percent (100%) slope) from the toe of the slope to the proposed structure (Figure 40.430.020-2).
 - (3) The setback shall be eight (8) feet beyond the buffer.
 - c. For projects not required to have a landslide protection area under Section 40.430.030(B), the setback from the steep slope shall be equal to the buffer distance set in this subsection.
3. The responsible official 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).
4. The responsible official may increase buffers or setbacks where necessary to meet requirements of the International Building Code.
5. All portions of steep slope hazard areas and steep slope buffers on the site which are planned to be undisturbed by permitted development activities shall be designated as landslide protection areas in accordance with Section 40.430.030(B).
6. Other than for exemptions listed in Sections 40.430.010(B)(3) and 40.430.030(B), vegetation removal is not allowed on slopes over forty percent (40%) without an approved geologic hazard area study described in Section 40.430.030(C)(5).
7. Buffers, landslide protection areas and setbacks for steep slopes on projects having approved grading shall be based on regulated steep slopes that remain after that grading.

(Amended: Ord. 2005-04-15)

E. Landslide Hazard Areas.

1. A development proposal on a site containing a landslide hazard area shall meet the following requirements:
 - a. A minimum buffer of fifty (50) feet shall be established from all edges of the landslide hazard area. The buffer shall be extended as required to mitigate a steep slope or erosion hazard or as otherwise necessary to protect the public health, safety and welfare. In cases where the diameter of the landslide area is smaller than fifty (50) feet, the buffer width may be reduced to less than fifty (50) feet at the discretion of the department;
 - b. All portions of landslide hazard areas and buffers shall be designated as landslide protection areas in accordance with Section 40.430.030(B).
2. Other than exempt activities, clearing or alteration of a landslide is allowed only if the following are met:
 - a. A development proposal does not decrease slope stability on contiguous properties;
 - b. Mitigation is based on best available engineering and geological practice and is described in an approved geologic hazard area study as specified in Section 40.430.030(C)(5);
 - c. Such clearing or alteration of a landslide is certified safe as designed and under anticipated conditions by a registered geotechnical engineer or geologist licensed in the state of Washington.
3. Neither buffers nor a landslide protection area will be required if the activity meets the requirements of Section 40.430.020(E)(2).

(Amended: Ord. 2005-04-15)

F. Seismic Hazard Areas.

1. Development activity in a seismic hazard area shall meet all applicable provisions of the most recently adopted version of the International Building Code, as adopted by the county.
2. Buffers are not required for seismic hazard areas, except for fault rupture hazard areas where the buffer will be a minimum of fifty (50) feet and shall be one hundred (100) feet for critical facilities.

Figures 40.430.020-1 through Figure 40.430.020-3

Slope Setback Diagrams

Figure 40.430.020-1

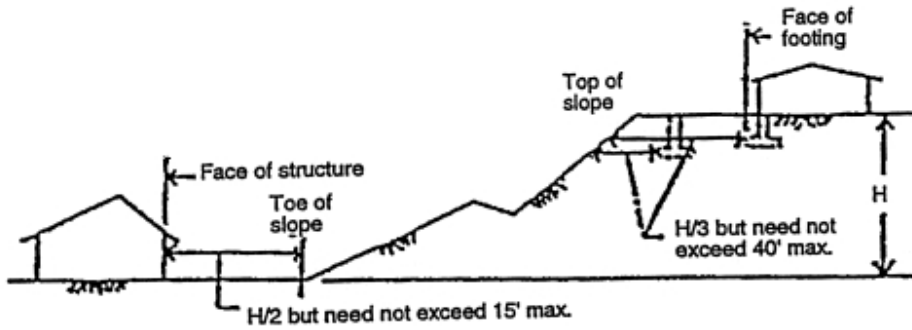


Figure 40.430.020-2

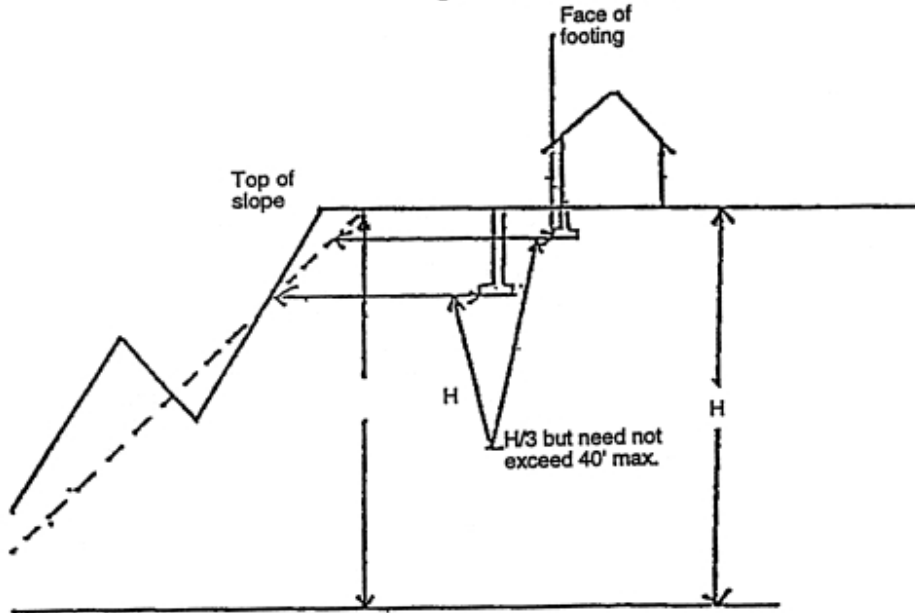
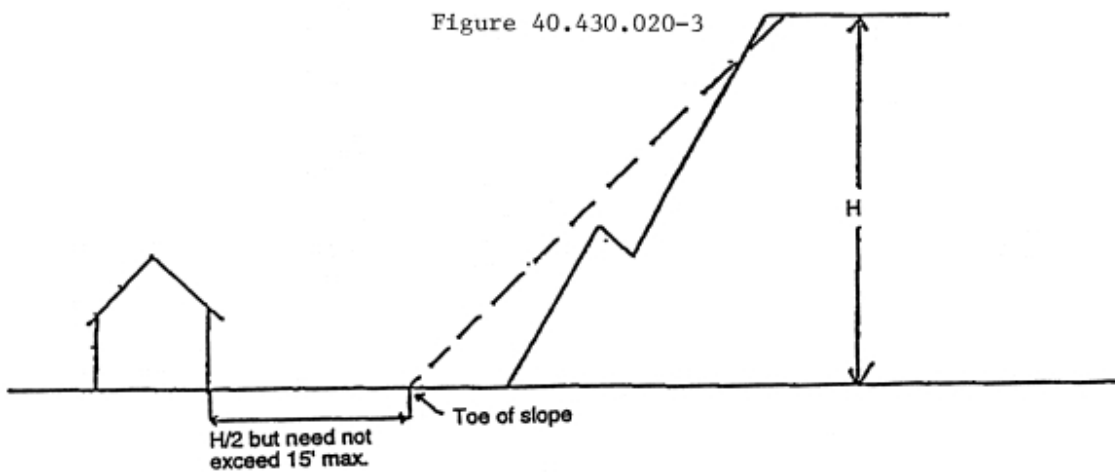


Figure 40.430.020-3



(Amended: Ord. 2005-04-15)

40.430.030 Administration

A. Binding Pre-Determination.

Prior to submittal of a triggering application, a person may request from the responsible official, through a Type II application process described in Section 40.510.020, a written binding pre-determination of whether a probable regulated geologic hazard area exists on or within one hundred (100) feet of any parcel less than forty (40) acres. The pre-determination shall be binding on the responsible official for a period of three (3) years; provided, that such pre-determination shall be subject to administrative appeal upon its application in conjunction with a triggering application. The fee for a pre-determination is set forth in Chapter 6.110A. A complete pre-determination shall include a list of the submittal requirements for a site description under Section 40.430.030(C)(4). Additional submittal requirements may later be required as a part of a geologic hazard area study under Section 40.430.030(C)(5) if the proposal intends to develop within a steep slope or landslide hazard area, or their buffers.

(Amended: Ord. 2005-04-15; Ord. 2006-09-13)

B. Establishment of Landslide Protection Areas.

1. Steep slope hazard areas and landslide hazard areas and buffers for which permanent protection is required pursuant to Sections 40.430.020(D) and (E) shall be designated landslide protection areas.
2. Landslide protection area requirements apply only to site plans and land divisions.
3. For all development activities subject to this section, landslide protection areas shall be delineated on binding site plans and plots which shall be recorded with the County Auditor.
4. A conservation covenant applicable to the designated landslide protection area shall be recorded in a form approved by the Prosecuting Attorney as adequate to incorporate the restrictions of this chapter.
5. Prior to any site development activity, the applicant shall mark with temporary markers in the field the boundary of all landslide protection areas required by this chapter, or the limits of the proposed site disturbance outside of the landslide protection areas, using methods and materials acceptable to the county.
6. Landslide protection area boundaries shall be permanently marked on the site prior to final inspection by the county using methods and materials acceptable to the county.
7. Vegetation clearing requirements for development in landslide protection areas, steep slope hazard areas and landslide hazard areas.
 - a. Clearing or vegetation removal in landslide protection areas, steep slope hazard areas or landslide hazard areas or their buffers is prohibited except for:
 - (1) Activities included in an approved geologic hazard area study as defined in Section 40.430.030(C)(5);
 - (2) Limited vegetation removal for surveying and testing necessary for development approvals;
 - (3) Emergency or fire hazard removal authorized by the fire marshal;
 - (4) Removal of nuisance vegetation using methods which minimize disruption of soil and non-nuisance vegetation;
 - (5) Clearing necessary for placement or maintenance of fencing;
 - (6) Clearing necessary for hillside vegetation restoration;

(7) Clearing necessary for vegetation or resource conservation projects authorized by a public agency; and

(8) Clearing for three (3) foot wide or narrower foot paths surfaced with wood, soil or gravel.

b. Proposals for clearing may also be subject to other critical areas regulations. Wildlife habitat near streams, which have clearing requirements under the habitat conservation regulations, often overlap with steep slopes included in geologic hazard areas.

(Amended: Ord. 2005-04-15)

C. Submittal Requirements.

1. For development activity regulated by this chapter, submittal requirements will vary depending on the type of project and the type of hazard mitigations that are proposed. Pursuant to Section 40.500.010, a review of a geologic hazard area will be conducted in conjunction with the primary development application. Projects are required to submit a basic site description sufficient to verify that the location of proposed building and access road improvements comply with buffers, setbacks, and vegetation preservation required by Sections 40.430.020(D) and (E). If a regulated activity is proposed within a geologic hazard area, additional information in the form of a geologic hazard area study must be provided to assure the project is feasible and will not cause an increased geologic hazard. The information required for a site description is included in Section 40.430.030(C)(4). The requirements for a geologic hazard area study for projects wishing to build in a geologic hazard area are included in Section 40.430.030(C)(5). To avoid duplication, the information required by this section shall be coordinated by the county with the assessments and requirements for other associated permits.

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 geohazard review pursuant to Section 40.460.530(E) and Sections 40.430.020 and 40.430.030(C).

3. The responsible official shall waive parts of the submittal requirements if it is determined that they are not applicable to the proposed activity.

4. Site Description. As part of the development permit application, the following information describing the subject property and areas within twenty-five (25) feet of the property lines or smaller area of concern as deemed appropriate by the responsible official, drawn to an engineering scale no larger than one (1) inch equals twenty (20) feet (1" = 20') and no smaller than one (1) inch equals one hundred (100) feet (1" = 100') as deemed appropriate by the responsible official:

- a. The site boundary lines;
- b. The topography at contour interval of no greater than five (5) feet;
- c. The location and size of all existing and proposed site improvements including structures, wells, drainfields, drainfield reserve areas, public and private right-of-way easements, and utilities;
- d. The location of all drainage-flow characteristics, streams, groundwater seeps, springs, and evidence of seasonal surface water runoff or groundwater;
- e. The location and extent of all existing and proposed grading activities and existing natural or artificial drainage control facilities and systems;
- f. The location and description of all geologic hazards located on the site and observed on properties within one hundred (100) feet of site boundaries;
- g. The general location of all vegetation and the general location, number and description of all trees over six (6) inch diameter measured three (3) feet above the ground; and

- h. The location of all proposed buffers and setbacks.

5. Geologic Hazard Area Study. A geologic hazard area study is required if the proposed development does not comply with requirements of Sections 40.430.020(D) and (E). Geologic investigation may also be required in some cases to meet International Building Code requirements for foundations and for seismic design. Geologic hazard area studies shall be prepared, stamped and signed by a registered geotechnical engineer or geologist who meets the requirements defined in Section 40.100.070. Based on the site characteristics and the information submitted by the applicant, the responsible official may require all or part of the following information to be included in a geotechnical report:

- a. The requirements for the site description listed above in Section 40.430.030(C)(4);
- b. Site geology information:
 - (1) Topographic contours at two (2) foot intervals or as specified by the responsible official;
 - (2) Subsurface data that includes the exploration method, location of soil borings, borings, logs, soil and rock stratigraphy and groundwater levels including seasonal changes;
 - (3) The location of landslides, or down-slope soil movement, faults, and geologic contacts on the subject property and adjacent properties;
 - (4) A site history that describes any prior grading, soil instability or slope failure; and
 - (5) A description of the site vulnerability to seismic events;
- c. Geotechnical Information and Plan Requirements.
 - (1) A slope stability study and opinion of slope stability on the subject property and adjacent properties;
 - (2) Grading plan;
 - (3) Structural foundation requirements and estimated foundation settlements;
 - (4) Soil compaction criteria;
 - (5) Allowable soil-bearing pressure for foundations, minimum footing widths, piling recommendations for foundations, and design pressure for retaining walls;
 - (6) Laboratory data and soil index properties for soil samples;
 - (7) Suitability for fill;
 - (8) Lateral earth pressures;
 - (9) Description of erosion vulnerability and an erosion control plan as required in Chapter 40.386;
 - (10) An evaluation of proposed surface and subsurface drainage in a stormwater control plan as required in Chapter 40.386;
 - (11) Building limitations; and
 - (12) A vegetation management and restoration plan or other means for maintaining long-term stability of slopes;
- d. A site evaluation that describes the suitability of the site to accommodate the proposed activity;

- e. Such additional information describing existing physical features for the site and surrounding area as required by the responsible official to complete review of the project under standards of the International Building Code.

(Amended: Ord. 2005-04-15; Ord. 2009-01-01; Ord. 2012-07-16; Ord. 2015-11-24)

40.440 HABITAT CONSERVATION

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; Ord. 2020-12-01)

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. Nondevelopment clearing activities are proposals which are not otherwise subject to county review, but involve the alteration or removal of vegetation in designated habitat areas.
 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; Ord. 2020-12-01)

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 Areas (PHS) as defined in the most current WDFW Priority Habitats and Species List, including areas within one thousand (1,000) feet of individual species points mapped by WDFW. 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. The most current Washington Department of Fish and Wildlife Priority Habitats and Species List and Maps;
 - b. The most current Washington Department of Fish and Wildlife management recommendations for 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.

(Amended: Ord. 2020-12-01)

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

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 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 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 within the habitat area	Exempt	None
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	Exempt	None

Table 40.440.010-1. Exempt and Reviewed Activities		
Proposal	Is a clearing review required?	Are any additional fees or review timelines required?
consistent with Regional Road Maintenance ESA Program Guidelines		
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
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; Ord. 2020-12-01)

40.440.020 Standards and Nonregulatory Measures

A. Approval Criteria.

Approval shall be granted for all proposals demonstrating compliance with the following criteria. Approval shall be required prior to clearing or development.

1. **Intent.** Designated habitats are to be protected through avoidance or reduction of the impacts of activities. This section provides standards for the review of proposed nonexempt activities within designated habitat areas.
2. **Basic Criteria.** Applicants proposing activities subject to this chapter shall demonstrate that the activity:
 - a. Substantially maintains the level of habitat functions and values as characterized and documented using best available science; and
 - b. Minimizes habitat disruption or alteration beyond the extent required to undertake the proposal.
3. **Mitigation Measures.**

- a. Mitigation measures may be established pursuant to the above basic criteria.
- b. Disrupted functions and values shall be mitigated on site as a first priority, and off site thereafter.
- c. An up-to-date science-based guide such as the “Clark County Guide to Best Management Practices for Permitted Development in Habitat Areas” should be used to guide on-site mitigation. Off-site mitigation should be guided by applicable watershed, fish recovery, sub-basin or other science-based plans. Any science used to guide mitigation actions, whether on site or off site, must meet the criteria and characteristics of best available science listed in WAC 365-195-905 (Criteria for determining which information is the “best available science”), or the state standards in effect at the time of application.
- d. Subject to individual circumstances, potential mitigation measures may include, but are not limited to, the following:
 - (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (2) Exploring alternative on-site locations to avoid or reduce impacts of activities;
 - (3) Preserving important vegetation and natural habitat features by establishing buffers or by limiting clearing or alteration;
 - (4) Replacing invasive exotic plants with native species (refer to the Clark County Native Plant Communities Guide or other relevant publication for guidance);
 - (5) Prohibiting introduction of invasive plant species in habitat areas;
 - (6) Enhancing, restoring or replacing vegetation or other habitat features and functions. In riparian areas, this may include riparian zone averaging as specified in Section 40.440.020(C)(3);
 - (7) Using native plants where appropriate when planting within habitat areas (refer to the Clark County Native Plant Communities Guide or other relevant publication for guidance);
 - (8) Managing access to habitat areas, including exclusionary fencing for livestock if needed;
 - (9) Stream crossings:
 - (a) Using existing stream crossings whenever a review of suitability, capacity, access and location, habitat impacts of alternatives, maintenance, liability and economics indicate the existing crossing is feasible;
 - (b) Constructing new stream crossings, when necessary, in conformance to the water crossing structure standards in WAC 220-110-070 (Hydraulic Code Rules), which are incorporated by reference;
 - (10) Seasonally restricting construction activities;
 - (11) Implementing best management practices and integrated management practices;
 - (12) Monitoring or review of impacts and assurance of stabilization of the area;
 - (13) Establishing performance measures or bonding;
 - (14) Establishing conservation covenants and other mechanisms to ensure long-term preservation or maintenance of mitigation actions;
 - (15) Utilizing low impact development techniques;
 - (16) Promoting water quality by limiting the use of lawn and garden chemicals in habitat areas; and/or

- (17) Avoiding topsoil removal and minimizing topsoil compaction;
 - (18) Providing off-site mitigation, subject to the following conditions:
 - (a) When the combination of on-site and off-site mitigation fails to substantially maintain functions and values within the stream system, the application shall be denied;
 - (b) All reasonable on-site mitigation alternatives have been exhausted;
 - (c) Off-site mitigation is functionally equivalent to the impacts;
 - (d) Off-site mitigation is appropriate in size and scale to the impacts that are not fully mitigated on the original site;
 - (e) Proposed off-site mitigation is reviewed by the county on a case-by-case basis with input from WDFW;
 - (f) Off-site mitigation may be in the form of:
 - (i) The purchase of credits from a permitted habitat bank, or
 - (ii) A voluntary contribution to the established Cumulative Effects Fund for the watershed within which the project is located, or
 - (iii) A specific mitigation project:
 - [a] Specific off-site mitigation projects for riparian habitat areas must be located within the same watershed as the original site,
 - [b] Specific off-site mitigation projects for all other habitat areas must be in an unincorporated area as close as possible to the original site,
 - [c] Public regional development activities that are reviewed and approved by federal and state agencies are exempt from these geographic restrictions;
 - (g) Adequate enforcement authority must be delegated to the county, as approved by the Prosecuting Attorney;
4. The responsible official shall approve, approve with conditions or deny proposals based on compliance with the criteria and the adequacy of proposed mitigation measures to ensure compliance, and applicable reasonable use assurances of Section 40.440.020(B).
5. The responsible official shall retain final authority for such determinations, which shall be issued consistent with the review timelines of Chapter 40.510 (Type I, II, III and IV Processes), and shall be based on best scientific information and analysis available within those timelines.
6. Modifications to conservation covenants established under Section 40.440.020(A)(3)(d)(14) shall be consistent with the standards of this chapter and will be processed subject to the following:
- a. Modification to a covenant approved by a Type I decision shall be subject to a Type I review process.
 - b. 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:
 - (1) Does not increase the potential adverse impact to habitat; and
 - (2) Does not involve an issue of broad public interest, based on the record of the decision; and

- (3) Does not require further SEPA review.
 - c. 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.
 - d. 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:
 - (1) Provides an increased benefit to habitat; and
 - (2) Does not involve an issue of broad public interest, based on the record of the decision; and
 - (3) Does not require further SEPA review.
 - e. 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:
 - (1) Does not increase the potential adverse impact to habitat allowed by the covenant or SEPA determination; and
 - (2) Does not involve an issue of broad public interest, based on the record of the decision.
 - f. 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.
 - g. Modification requests submitted with other applications will be processed as specified in Section 40.500.010(D)(2).
7. Removal of conservation covenants shall be approved by Clark County Council.
8. The responsible official shall consult with and substantially follow the resulting recommendations of WDFW, unless alternative determinations are supported by scientific analysis.

(Amended: Ord. 2008-06-02; Ord. 2009-12-01; Ord. 2018-10-02; Ord. 2019-05-07)

B. Reasonable Use Assurances.

The county assures property owners of the following, as long as impacts are mitigated to the maximum extent practicable, permit conditions limiting locations and requiring mitigations may be imposed, and erosion control measures required:

- 1. This chapter shall not be used to prohibit:
 - a. Placement of a single-family residence and residential accessory structures on an otherwise legally buildable lot of record;
 - b. Expansion of a home existing prior to 1997, not to exceed twenty-five percent (25%) of the 1997 footprint;
 - c. Replacement of a single-wide mobile or manufactured home with another dwelling; or
 - d. Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or fire chief guidelines.
- 2. This chapter shall not be used to deny all reasonable economic use of private property. These criteria must be met in order to verify denial of all reasonable economic use:
 - a. The application of this chapter would deny all reasonable economic use of the property;

- b. No other reasonable economic use of the property has less impact on the habitat area;
 - c. Any habitat alteration is the minimum necessary to allow for reasonable economic use of the property; and
 - d. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after May 30, 1997.
- 3. This chapter shall not be used to deny or reduce the number of lots of a proposed rural land division allowed under applicable zoning density.
- 4. This chapter shall not be used to deny a development proposal from a public agency or public utility, if:
 - a. There is no practical alternative to the proposed project with less impact on the habitat area;
 - b. The ability of the public agency or utility to provide services to the public would be unreasonably restricted; and
 - c. The application is approved through a Type III process pursuant to Section 40.510.030, (Type III Processes). Fees are subject to the Type III Variance fee schedule in Section 6.110A.010 (Development Fees).
- 5. The reasonable use assurances in this chapter do not apply to habitat conservation areas within shoreline jurisdiction. In such cases, reasonable use requests shall be subject to the shoreline variance process pursuant to Section 40.460.260.

(Amended: Ord. 2012-07-16; Ord. 2018-10-02)

- C. The following regulatory alternatives or incentives shall apply in implementing the standards of this chapter:
 - 1. Proposed land divisions involving critical areas may transfer density as follows:
 - a. Rural area land divisions may utilize the cluster provisions of Section 40.210.020(D) (Rural Cluster Development).
 - b. Urban area land divisions may utilize density transfer provisions of Section 40.220.010(C)(5) (Density Transfer).
 - 2. Existing abutting nonconforming lots under common ownership may be reconfigured under the standards of Section 40.210.010(D) (Nonconforming Lots – Lot Reconfiguration Standards).
 - 3. Required riparian zone widths on clearing proposals on existing lots may be varied through the use of internal riparian zone averaging. Subject to review under this chapter, for clearing proposals on existing lots, portions of the riparian zone can be reduced up to fifty percent (50%) from the normal standards of this chapter if riparian zone widths are correspondingly increased elsewhere within the applicant parcel, such that the overall size and function and values of the riparian zone are maintained in the parcel. Riparian zone averaging proposals must clearly identify the existing riparian functions and values on the parcel and any impacts that the proposed averaging may have upon them.
 - 4. In evaluating forest practice conversion applications under this chapter, the county may allow for modest levels of short-term degradation of habitat function if it is offset by long-term benefits provided by a conservation covenant or other permanent protective measure. Such allowances shall only be made following the recommendation of WDFW.

(Amended: Ord. 2018-10-02)

- D. Individual Stewardship Plans.

1. To encourage educational and voluntary conservation measures, the county shall notify property owners potentially impacted by wildlife habitat area regulations, and shall assist any owners interested in developing individual stewardship plans which will establish parameters and guidelines for future on-site activities in designated habitat areas. In addition, property owners may consult with WDFW and other agencies or private groups or individuals to develop the scientific information for their stewardship plans.
2. The county shall provide information on best management practices and other educational and explanatory materials to property owners. The county shall coordinate with WDFW and other agencies or private groups with expertise in wildlife or land management in the development and distribution of these materials.
3. The county shall work cooperatively with interested property owners to establish and record a notice of stewardship plan. Stewardship plans should at a minimum include the following:
 - a. Mapping of existing structures, roads, driveways and known utilities, and property lines;
 - b. Mapping of existing designated habitat areas, water bodies, known wetlands, vegetation and wildlife types, and yards or cultivated areas;
 - c. Identification of functions and values associated with the habitat areas, water bodies, wetlands and vegetation and wildlife;
 - d. Mapping and written description of future activities on the site including time frame; and
 - e. Mapping and description of the protective and mitigative measures for the identified functions and values to be undertaken as part of plan.
4. Notice of stewardship plans shall be recorded and shall run with the land unless and until a request for revocation or modification has been submitted by the property owner and approved by the county. The county shall approve all such requests unless there are any uncompleted mitigation measures which were agreed to in the stewardship plan as necessary to compensate for clearing of habitat areas undertaken pursuant to the plan. Revocation may trigger the tax penalties associated with withdrawal from an open space taxation program, if applicable.
5. Property owners with approved stewardship plans are exempt from regulation under this chapter for non-development proposals which are consistent with the stewardship plan and do not otherwise require county building, grading, or other review.
6. Stewardship plans shall be approved under criteria in Section 40.440.020(A).
7. Appeals may be filed under the provisions of Chapter 40.510 (Type I, II, III and IV Processes).

(Amended: Ord. 2018-10-02)

E. Nonregulatory Implementation Measures.

As part of the implementation of this chapter and related efforts towards wildlife conservation, the county will undertake the following additional nonregulatory measures:

1. Education and Outreach Measures.
 - a. Notify property owners within critical areas;
 - b. Develop clear and understandable manuals explaining recommended best management practices for typical rural and urban land owner activities;
 - c. Provide seminars and presentations for interested owners and groups;

- d. Coordinate efforts with existing conservation, stewardship or small resource user groups with expertise in wildlife or habitat area land management issues;
 - e. Expand local wildlife inventory information through baseline survey of local habitats and species;
 - f. Provide cooperative outreach to individual property owners in critical areas who wish to develop stewardship plans to establish parameters for future activities involving clearing on their property.
2. Incentive Measures.
- a. Create and/or expand incentives through the current use taxation program;
 - b. Develop and/or expand land acquisition programs;
 - c. Develop nonmonetary incentives for project proponents to exceed mitigation requirements.

(Amended: Ord. 2018-10-02)

F. Specific Activities.

Special procedures and standards apply to certain specific activities as provided for in Section 40.440.040.

(Amended: Ord. 2018-10-02)

G. Habitat Banking. (Reserved).

(Amended: Ord. 2005-04-15; Ord. 2005-05-20; Ord. 2006-06-09; Ord. 2006-07-09; Ord. 2006-08-03; Ord. 2018-10-02)

40.440.030 Administration

A. Coordination with Other Permits.

- 1. Development proposals requiring review under this chapter which involve other county permits shall be reviewed under the timelines of the existing review; provided, that application information required under this chapter (Section 40.440.030(C)) is submitted and approval criteria (Section 40.440.020(A)) are addressed.
- 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 habitat review pursuant to Section 40.460.530(F) and Sections 40.440.020 and 40.440.030.

(Amended: Ord. 2008-07-05; Ord. 2012-07-16)

B. Non-Development Proposals.

Non-development proposals not involving any other county application development reviews shall be reviewed as a Type I application under the timelines and procedural standards of Section 40.510.010 (Type I Process). Section 40.440.030(C) indicates application information to be submitted.

C. Submittal Information.

- 1. Applications for nonexempt activities requiring review under this chapter shall be submitted with the following:
 - a. Development applications involving other county review shall submit application materials according to specifications of other reviews involved, and shall also include a completed proposed habitat activity form.

- b. Non-development applications not involving other county review shall be submitted with a completed proposed habitat activity form.
 2. Where required by state law, a completed environmental checklist pursuant to the State Environmental Policy Act (SEPA) shall also be submitted unless categorically exempted by the SEPA Rules.
 3. The county shall develop and make available proposed habitat activity forms. These forms shall clearly and concisely provide direction to applicants on what information is needed in the following areas:
 - a. Name, address, location, and basic tracking information for the application;
 - b. Existing conditions information, natural and manmade features on the site;
 - c. Description and mapping of proposed activities and how this would change existing conditions on the site.
 4. Proposals under this chapter are encouraged but not required to include a report or other assistance from a biologist, botanist, ecologist, or other similarly qualified or trained professional.
 5. Persons interested in establishing an individual stewardship plan for future activities as specified in Section 40.440.020(D) should contact the department.

D. Permit Authority and Timelines.

1. An approval granted under this chapter shall remain valid until proposed activities are undertaken and completed. An approved permit not acted upon shall be valid for two (2) years, and upon showing of good cause, may be extended for an additional twelve (12) months.
2. Approval for habitat area activities as part of other county development approvals shall be valid for a time period specified by the other permit(s) involved.
3. Approved stewardship plans shall remain valid as specified in Section 40.440.020(D).

E. Appeals.

Appeals of county decisions under this chapter may be filed under the provisions of Chapter 40.510 (Types I, II, III and IV Processes).

F. 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 (Enforcement), and may also include the following:

1. Applications for county land use permits on sites that have been found to be in violation of this chapter pursuant to the process set forth in Title 32 of this code (Enforcement), shall not be processed until three (3) years after the completion of clearing. The three (3) years may be reduced upon approval and implementation of a restoration or mitigation plan, to include the following:
 - a. A plan for the replanting of trees, brush and groundcover of a type and distribution comparable to that existing prior to clearing; provided, that the responsible official may approve alternative species in order to promote expedient soil stabilization, and may require additional tree planting as mitigation for the loss of mature trees; and
 - b. A monitoring plan to assure at least a ninety percent (90%) survival rate of re-established plantings after at least three (3) but not more than eight (8) growing seasons; and

- c. Where fish and wildlife habitat areas are cleared in violation of this chapter, a plan to restore habitat functionality, as it existed prior to the violation, subject to the review and evaluation of WDFW.
- d. Satisfaction of the terms and conditions of any judgement or order entered based upon the violation.
- e. Financial assurances in the form of a bond or other security acceptable to the county, in an amount sufficient to re-establish the mitigation in the event of failure or subsequent disturbance may be required by the responsible official. The financial assurances shall remain in place for the length of the time specified for monitoring in the plan and shall be released after a request by the applicant and a final inspection. In the event of failure of the mitigation, failure to fully execute the mitigation plan, or subsequent disturbance, forfeiture of the financial assurances shall be required and the funds shall be used to re-establish the mitigation or to complete the execution of the plan. In the event that such re-establishment or completion is deemed impractical by the director, the funds shall accrue to the established cumulative effects fund for the watershed within which the site is located.

2. In the absence of any mitigation measures approved by the department for sites cleared in violation of this standard, the county may refuse to approve any permit for up to an additional three (3) years.

G. Specific Activities.

Special procedures and standards apply to certain specific activities as provided for in Section 40.440.040.

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

40.440.040 Specific Activities

The following specific activities are subject to special procedures and standards as set forth below.

A. Routine Utility and Public Facility Maintenance and Operations.

The responsible official may issue programmatic permits for routine maintenance and operations of utilities and public facilities. The programmatic permit process shall not deny or unreasonably restrict a utility's or public agency's ability to provide services to the public. Programmatic permits only authorize activities specifically identified in the permit approval.

- 1. Application Submittal Requirements. Unless waived by the responsible official with specific findings in the approval document, applications for programmatic habitat 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 habitat areas;
 - c. Identification of the geographical area to be covered by the permit;
 - d. The range of functions and values within designated habitat areas covered by the permit;
 - e. Specific measures and performance standards to be taken to avoid, minimize and mitigate impacts on the functions and values:
 - (1) Procedures for identification of designated habitat areas;
 - (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 habitat 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.
 - (9) Training all employees, contractors and individuals under the supervision of the applicant who are involved in permitted work.
2. Permit Review.
 - a. Programmatic permit applications that are exempt from SEPA are subject to Type I review.
 - b. Programmatic permit applications that are not exempt from SEPA are subject to Type II review.
 - c. Programmatic permit applications under Type II review shall not be subject to the distribution requirements of Section 40.510.020(E)(2)(a)(3), (Public Notice). 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.
3. Findings and Approval.
 - a. A decision approving, denying or re-authorizing a programmatic permit shall be supported by findings of fact relating to the standards and requirements of this chapter.
 - b. An approved programmatic permit must, at a minimum, include:
 - (1) A programmatic permit plan; and
 - (2) A provision stating the 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 subsections (A)(1) through (3) of this section.
 - (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.

B. Agricultural Uses, Including Animal Husbandry.

1. Applicability.

a. Non-Riparian Habitat.

- (1) Agricultural activities in existence on July 11, 2006, within designated non-riparian habitat areas are presumed not to cause substantial degradation of existing habitat functions and values and are, therefore, exempt from regulation under this chapter. Determining what agricultural activities are in existence on July 11, 2006, shall take into account agricultural cycles that involve varying intensity of agricultural use.
- (2) The conversion of designated non-riparian habitat areas to agricultural use subsequent to July 11, 2006, shall be subject to the non-development clearing rules of this chapter. Conversion does not include changes from one agricultural use to another agricultural use or changes in crops.

b. Riparian Habitat.

- (1) Agricultural activities in existence on July 11, 2006, within designated riparian habitat areas, and the expansion thereof onto adjacent lands not to exceed twenty-five percent (25%) of the footprint of the existing agricultural use (agricultural/habitat protection plan only), shall be subject to the agricultural module provided below. Determining what agricultural activities are in existence on July 11, 2006, shall take into account agricultural cycles that involve varying intensity of agricultural use.
- (2) The conversion of designated riparian habitat areas to agricultural use, other than an expansion allowed for in subsection (B)(1)(b)(1) of this section, subsequent to July 11, 2006, shall be subject to:
 - (a) The agricultural/habitat protection plan option (Section 40.440.040(B)(2)(a)), if undertaken on lands zoned agriculture, forest, or ag-wildlife;
 - (b) The non-development clearing rules of this chapter if undertaken on lands not zoned agriculture, forest, of ag-wildlife;
 - (c) Conversion does not include changes from one agricultural use to another agricultural use or changes in crops.

2. Agricultural Module. Where applicable, the following options are available to be used for compliance with this section.

a. Agricultural/Habitat Protection Plan Option.

- (1) Regulated Area. For the purposes of an agricultural/habitat protection plan, the regulated riparian area shall be one hundred (100) feet from the ordinary high water mark of Type S streams, one hundred (100) feet from the ordinary high water mark of Type F streams, seventy-five (75) feet from the ordinary high water mark of Type Np streams, and seventy-five (75) feet from the ordinary high water mark of Type Ns streams. The plan may include practices and other mitigation measures on land outside the regulated riparian area to achieve the standard set forth in subsection (B)(2)(a)(2) of this section.
- (2) Standard. An agricultural/habitat protection plan shall be approved if its implementation will not substantially degrade habitat functions and values that existed within the area designated in subsection (B)(2)(a)(1) of this section on July 11, 2006, considering normal fluctuations due to the agricultural cycle. A plan may be submitted by a group of neighborhood owners whose properties are in close proximity in which case the foregoing standard shall be applied to the common plan.
- (3) Plan Contents. Agricultural/habitat protection plans shall, at a minimum, include the following:
 - (a) An approximate mapping of existing and proposed structures, roads, driveways, utilities, property lines, and agricultural uses.
 - (b) A map of regulated riparian habitat areas.

- (c) Identification of existing habitat functions and values within the regulated habitat area on July 11, 2006, taking into account agricultural cycles that involve varying intensity of agricultural use.
 - (d) A description of best management practices and other mitigation measures to be undertaken in order to achieve the standard in subsection (B)(2)(a)(2) of this section.
 - (e) The owner's signature attesting that the information in the plan is accurate to the best of the owner's knowledge, and the mitigation measures specified in the plan will be implemented.
 - (f) The signature of an ag-habitat technician certified by the county attesting that he/she has inspected the area covered by the plan and that the plan satisfies the standard in subsection (B)(2)(a)(2) of this section.
- (4) Guidelines. The responsible official shall work with a committee appointed by Council to include interest group representatives (at least one of whom shall be a designee of the Clark-Cowlitz Farm Bureau, whose view(s) shall be given appropriate weight to ensure that the guidelines will be both practical and cost effective) and habitat professionals to develop for Council adoption following a duly advertised public hearing a set of guidelines which:
- (a) Includes a checklist to identify riparian habitat functions and values; and
 - (b) Identifies potential positive and negative habitat effects of various agricultural activities; and
 - (c) Describes best management practices and other measures to enhance the positive effects and mitigate or minimize any potential negative effects; and
 - (d) Includes "off-the-shelf" agricultural/habitat protection plans which may be applied to typical agricultural properties and activities.
- The guidelines shall provide that pesticide use within riparian areas must be described in the management plan and conform to label instructions.
- (5) Approval. Agricultural/habitat protection plans shall be prepared or reviewed and approved by an ag-habitat technician certified by the responsible official to have completed a training program on application of the guidelines. Ag-habitat technicians shall have received training in application of this chapter, which training program shall be made available to any interested party. Training classes may be facilitated by interest groups such as the Clark-Cowlitz Farm Bureau using trainers from the Clark Conservation District, WSU Extension, Natural Resource Conservation Service, or other groups as may be certified as qualified trainers by the responsible official. An ag-habitat technician shall approve the plan as meeting the standard and content requirements of Sections 40.440.040(B)(2)(a)(2) and (3). An owner dissatisfied with the review by an ag-habitat technician may seek approval of the proposed management plan by the responsible official whose Type I decision may be appealed under the provisions of Chapter 40.510 (Type I, II, III and IV Processes).
- (6) Filing. The ag-habitat technician shall notify the county responsible official of the adoption of an approved agricultural/habitat protection plan by a property owner indicating the property covered by the plan and, at the choice of the property owner, either providing a copy of the plan or summarizing the contents of the plan. Notice of such approval shall also be recorded with the Clark County Auditor and run with the land unless the plan is modified or rescinded.
- (7) Modification/Rescission. Agricultural/habitat protection plans may be modified by the owner at any time utilizing the same process as applicable to initial approval. Plans may be rescinded by the owner with approval of the responsible official if the owner certifies either that future agricultural activities will be undertaken utilizing the default option or agricultural activities have ceased. Notice of modification/rescission shall be recorded with the Clark County Auditor.

b. Default Option.

(1) Regulated Area. For the purposes of the default option, the regulated riparian area is divided into two zones. Except as provided below, the inner zone, closest to the stream, extends from the ordinary high water mark outward fifty (50) feet on Types S and F streams and thirty (30) feet on Type N streams. The outer zone extends an additional fifty (50) feet on Types S and F streams and forty-five (45) feet on Type N streams. Where slopes exceed twenty-five percent (25%), the inner zone is the greater of the prescribed zone or the top of the slope break. Where wetlands are present within the inner zone, the zone is extended to the greater of the prescribed width of the inner zone or the wetland buffer as designated in Chapter 40.450 (Wetland Protection). However, in no case is the inner zone greater than the combined widths prescribed for in the inner and outer zones for that stream type. Where there is an existing road within the inner zone, the zone stops at the edge of the road improvement that is closest to the stream and the outer zone extends outward from that edge.

(2) Standard. Clearing within the inner zone is allowed only to enhance habitat functions and values. Animal husbandry within the inner zone is prohibited. Clearing and animal husbandry within the outer zone shall not substantially degrade habitat functions and values as they existed on July 11, 2006, after considering normal fluctuations due to the agricultural cycle. Although it is presumed that continuation of agricultural activities within the outer zone that existed on July 11, 2006, will not substantially degrade existing habitat functions and values, evidence of substantial degradation, such as excess sediment, nutrients or chemicals moving from the outer zone into the stream resulting from agricultural activities, constitute grounds for enforcement action which may require restoration of lost functions and values. Pesticide application within the outer zone must conform to label specifications and application within the inner zone must be by a licensed applicator.

(3) Reasonable Use. If the inner zone impacts more than fifty percent (50%) of a parcel that is ten (10) acres or less in area, or more than twenty-five percent (25%) of a parcel that is five (5) acres or less in area, the responsible official may approve a reasonable use reduction to the width of the inner zone. In such case, clearing and animal husbandry may be allowed up to ten (10) feet from the ordinary high water mark; provided, that reasonable practices and other appropriate mitigation measures are employed to limit sediment, nutrients and chemicals from entering the stream.

3. Administration.

a. No application fees apply to the approval of agriculture/habitat protection plans.

b. No county review is associated with the default option unless the owner seeks approval of a reasonable use reduction of the inner zone, which application shall be processed without application fees.

c. Evidence of violation of the standards in Section 40.440.040(B)(2)(a)(2) or (B)(2)(b)(2) shall be grounds for enforcement action under the provisions of Title 32 (Enforcement) and Section 40.440.030(F).

(Amended: Ord. 2006-06-09; Ord. 2006-07-09; Ord. 2006-08-03; Ord. 2019-05-07)

40.450 WETLAND PROTECTION

40.450.010 Introduction

A. Purpose.

It is the purpose of this chapter to provide balanced wetland protection measures pursuant to the Washington State Growth Management Act (GMA, RCW 36.70A.172) that:

1. Include best available science to protect the functions and values of wetlands with special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries;
2. Further the goal of no net loss of wetland functions;
3. Encourage restoration and enhancement of degraded and low quality wetlands;
4. Provide a high level of protection for higher-quality wetlands;
5. Complement state and federal wetland protective measures; and
6. Allow reasonable use of property.

B. Applicability.

1. The provisions of this chapter apply to all lands, all land uses and development activity, and all structures and facilities in the county, whether or not a permit or permit authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the county. No person, company, agency, or applicant shall alter a wetland or wetland buffer except as consistent with this chapter.
2. The county will not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a wetland or wetland buffer, without first ensuring compliance with the requirements of this chapter, including, but not limited to, the following development permits:
 - a. Building permit;
 - b. Grading permit;
 - c. Forest practices conversion permit regulated by Section 40.260.080;
 - d. Conditional use permit;
 - e. Short subdivision;
 - f. Subdivision;
 - g. Planned unit development;
 - h. Site plan; or
 - i. Zoning variance.
3. 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 pursuant to Section 40.460.230(C) or an application with a wetlands review as part of the shoreline permit process.

4. Reasonable Use Exceptions. The following exceptions shall apply in implementing the standards of this chapter, although the standards shall be applied to the maximum extent practicable to avoid and minimize impacts on wetland functions and values. Mitigation for unavoidable adverse impacts shall be required. The standards of this chapter shall not be used to preclude the following activities in wetland areas:

a. The placement of a single-family residence and normal accessory structures on an otherwise legally buildable lot of record. Standards may be applied on established properties to limit the proposed location and size of structures, and proposed removal of vegetation.

(1) The expansion of a home on a lot that does not show building or development envelopes, wetlands or wetland buffers on the recorded plat, not to exceed twenty-five percent (25%) of the existing building footprint;

(2) The replacement of single-wide mobile home with another dwelling and normal accessory structures; and

(3) Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or fire chief guidelines.

b. The standards of this chapter shall not be used to deny all reasonable economic use of private property. The following criteria must be met in order to verify that all reasonable economic use of the property has been denied:

(1) The application of this chapter would deny all reasonable economic use of the property;

(2) No other reasonable economic use of the property has less impact on the wetland and buffer area;

(3) Any wetland or buffer alteration is the minimum necessary to allow for reasonable economic use of the property; and

(4) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the date of adoption of the ordinance codified in this chapter.

c. The standards of this chapter shall not be used to deny or reduce the number of lots of a proposed rural land division allowed under applicable zoning density.

(1) Standards may be applied on established properties to limit the proposed location and size of structures and proposed removal of vegetation.

(2) Land divisions in rural zoning districts (R-5, R-10 and R-20) may utilize the cluster provisions of Section 40.210.020(D).

d. The application of this chapter shall not be used to deny a development proposal for a linear facility from a public agency or public utility, provided the agency or utility meets the following criteria:

(1) There is no practical alternative to the proposed project with less impact on the wetland and buffer area; and

(2) The application of this chapter would unreasonably restrict the ability to provide public utility services to the public.

e. The reasonable use provisions in this chapter do not apply to wetlands protection within shoreline jurisdiction. In such cases, reasonable use requests shall be subject to the shoreline variance process pursuant to Section 40.460.260.

5. Approval of a development permit application pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

(Amended: Ord. 2012-07-16)

C. Exemptions.

1. Exempt Activities and Impacts to Wetlands. All exempted activities shall use reasonable methods to avoid potential impacts to wetlands and buffers. Exemptions from permits are not exemptions from wetland stewardship responsibilities. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter; provided, that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

- a. Reconstruction of damaged or destroyed structures within the same building footprint. Expansion or reconstruction within a new or expanded footprint that affects a nonexempt wetland or wetland buffer is subject to the provisions of this title.
- b. The harvesting or normal maintenance of vegetation in a manner that is not injurious to the natural reproduction of such vegetation.
- c. Existing agricultural activities and structures:
 - (1) Agricultural activities and structures in operation at the time of adoption of the ordinance codified in this chapter that are affecting wetlands not associated with a riparian corridor are exempt from regulation under this chapter;
 - (2) Changes in agricultural practices within the same “footprint” as the existing agricultural activities in subsection (C)(1)(c)(1) of this section, including reconstruction of existing agricultural structures, or construction of new agricultural structures, are exempt from regulation under this chapter;
 - (3) Agricultural activities and structures in operation at the time of adoption of the ordinance codified in this chapter that are affecting wetlands associated with riparian corridors shall be regulated through Chapter 40.440, Habitat Conservation.
- d. The removal or eradication of noxious weeds so designated in Title 7 of this code or other exotic nuisance plants including non-native blackberries; provided, that ground disturbing heavy machinery (scraping, ripping, etc.,) is not used. Cutting, mowing, and ground disturbance with hand tools is allowed.
- e. Site investigative work necessary for land use application submittals such as surveys, soil logs, and percolation tests.
- f. Emergency clearing to abate immediate danger to persons or property. For emergency clearing of hazard trees, remove only that portion of the hazard tree as necessary to remediate the hazard.
- g. Clearing necessary for the emergency repair of utility or public facilities. Notification of emergency work that causes substantial degradation to functions and values must be reported in a timely manner.
- h. Clearing for operation, maintenance, or repair of existing utilities or public facilities that does not further increase the impact to, or encroach further within, the wetland or wetland buffer.
- i. Forest practices regulated by the State of Washington Department of Natural Resources (DNR) under the Forest Practices Rules (WAC Title 222), or regulated under Clark County Code Section 40.260.080, Forest Practices, except forest conversions and conversion option harvest plans.
- j. Clearing, as minimally necessary, for placement of fencing, private wells, septic systems or individual lot sewer, water, electrical, or utility connections in wetland buffers, where practical alternatives do not exist.
- k. Clearing, as minimally necessary, for stream bank restoration, for native replanting or enhancements in wetlands and wetland buffers.

- l. Clearing, as minimally necessary, for soil, water, vegetation and resource conservation projects having received an environmental permit from a public agency in wetlands and wetland buffers.
 - m. Clearing, as minimally necessary, for creating a four (4) foot or narrower path using natural, wood-based or vegetated pervious surfacing in wetlands and wetland buffers.
 - n. Land disturbance in wetlands and wetland buffers cumulatively less than five (5) cubic yards in volume and three hundred (300) square feet in area; provided, that the wetland hydroperiod is not significantly affected.
2. Exempted Wetlands. This chapter shall not apply to the following wetlands:
 - a. Small. Isolated Category III wetlands less than two thousand five hundred (2,500) square feet in area and isolated Category IV wetlands less than four thousand three hundred and fifty (4,350) square feet in area;
 - b. Artificial. Wetlands created from non-wetland 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 exempted;
 - c. Riparian. Wetlands fully within five (5) feet, measured horizontally, of bank-full width for streams and the ordinary high water mark for lakes which are regulated under the State Shorelines Management Act (Chapter 90.58 RCW) or under Chapter 40.440, Habitat Conservation, are exempt.

(Amended: Ord. 2007-06-05)

D. Interpretation.

1. This chapter shall apply in addition to zoning and other regulations adopted by the county.
2. When there is a conflict between any provisions of this chapter or any other regulations adopted by Clark County, that providing the most protection to affected critical areas shall apply.
3. Compliance with this chapter does not constitute compliance with other federal, state and local regulations and permit requirements (for example, shoreline substantial development permits, hydraulic project approval (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, National Pollutant Discharge Elimination System (NPDES) permits, or DOE Section 401 Water Quality Certification). The applicant is responsible for complying with all requirements, apart from the provisions of this chapter.

(Amended: Ord. 2006-05-27)

40.450.020 Rating Systems

A. General.

1. The wetland rating system is used in part to determine buffer widths pursuant to Section 40.450.030(E). The wetland rating and buffer systems are also used for mitigation and enhancement options under Section 40.450.040.
2. The determination of the specific category of wetland and buffer for each wetland shall be the responsibility of the department.

B. Wetland Rating System.

Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the Washington State Wetland Rating System for Western Washington. The rating system document contains the definitions and methods for determining if the criteria below are met:

1. Wetland Rating Categories.

a. Category I. Category I wetlands are:

- (1) Wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as having high conservation value;
- (2) Bogs;
- (3) Mature and old growth forested wetlands, as defined by WDFW priority habitat and species provisions, larger than one (1) acre; or
- (4) Wetlands that function at high levels, as characterized by a score of twenty-three (23) or greater on the rating form.

Category I wetlands represent a unique or rare wetland type, are more sensitive to disturbance than most wetlands, are relatively undisturbed and contain some ecological attributes that are impossible to replace within a human lifetime, or provide a very high level of functions.

b. Category II. Category II wetlands are:

- (1) Wetlands that perform functions well, as characterized by a score of twenty (20) through twenty-two (22) on the rating form.

Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but they still need a relatively high level of protection.

c. Category III. Category III wetlands are wetlands with a moderate level of functions, as characterized by a score of sixteen (16) through nineteen (19) on the rating form. Generally, wetlands in this category have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

d. Category IV. Category IV wetlands have the lowest levels of functions and are often heavily disturbed. They are characterized by a score of less than sixteen (16) on the rating form. These are wetlands that should be replaceable, and in some cases may be improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and also need to be protected.

2. Date of Wetland Rating. Wetland rating categories shall be applied as the wetland exists on the date of adoption of the rating system by the local government, as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities. Wetland rating categories shall not change due to illegal modifications.

(Amended: Ord. 2006-05-27; Ord. 2014-12-05)

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; Ord. 2020-12-01)

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 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; Ord. 2020-12-01)

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; Ord. 2020-12-01)

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;
 - 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 with Chapter 6.110A. 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; Ord. 2020-12-01)

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 Form	Low Intensity Use	Moderate Intensity Use	High Intensity Use
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 Matrix¹						
	Parks and Recreation	Streets and Roads	Stormwater Facilities	Utilities	Commercial/Industrial	Residential²
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:

(1) Preexisting roads and structures 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 interspersions 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; Ord. 2020-12-01)

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).

(Amended: Ord. 2020-12-01)

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;
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; Ord. 2020-12-01)

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; Ord. 2020-12-01)

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;
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; Ord. 2020-12-01)

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:
 - (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) 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;
- (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 Section 40.450.040(C)(1) 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; Ord. 2020-12-01)

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:
 - (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:
 - (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.

Figure 40.450.040-1
Clark County Watershed Map



(Amended: Ord. 2007-06-05; Ord. 2014-12-05; Ord. 2020-12-01)

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 Preservation 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:

- (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. 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
 - 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; Ord. 2020-12-01)

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 preapplication 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;
 - (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.
- 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 prearranged 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
- (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.

(Amended: Ord. 2020-12-01)

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; Amended: Ord. 2020-12-01)

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) Reauthorization of approved wetland permits;
 - (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.
 - (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; Amended: Ord. 2020-12-01)

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.

(Amended: Ord. 2020-12-01)

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);
- 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; Amended: Ord. 2020-12-01)

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
- (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.

(Amended: Ord. 2020-12-01)

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;
 - 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 Reauthorization.
 - a. The duration of a programmatic permit is for five (5) years, unless:
 - (1) An annual performance based reauthorization program is approved within the permit; or

- (2) A shorter duration is supported by findings.
- b. Requests for reauthorization of a programmatic permit must be received prior to the expiration of the original permit.
 - (1) Reauthorization 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 reauthorization process.
 - (3) The responsible official may temporarily extend the original permit if the review of the reauthorization request extends beyond the expiration date.

(Amended: Ord. 2020-12-01)

L. Wetland Permit – Emergency.

- 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.

(Amended: Ord. 2020-12-01)

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, 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.

(Amended: Ord. 2020-12-01)

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, 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.

(Amended: Ord. 2006-05-27; Ord. 2020-12-01)