

BI-ANNUAL CODE CHANGE ITEMS – FALL 2012			
No.	Page	Title/Chapter/Section	Description
Scrivener's Errors			
1	1	40.350.030.B.3.b.(2) (b) (iii)	Add arterial streets to the list of street classifications that prohibit curb extensions
2	1	Section 1.2 of the Highway 99 code, Appendix F of Title 40	Correct references to certain Highway 99 standards
Reference Updates			
3	2	40.210.0020.D.6, 40.240.840, 40.460.560 and 40.320.010	Change/correct the reference to a native plants list in three code sections and clarify other references to plant lists in the Standard Details Manual.
4	2	Table 40.220.010-1.	Update references to special use standards that apply to townhouse developments
5	4	Table 40.220.010-3	Remove outdated footnote allowing 10 foot front setbacks when alleys are used in the single family residential zone
6	5	Table 40.350.010-1	Update Table 40.350.010-1 to allow 5' wide detached sidewalks along arterials and collectors, consistent with the revised road cross section requirements in Table 40.350.030-2
7	5	40.500.010.B.2	Update the reference to approval timelines for the extension of phased developments
Clarifications			
8	7	Tables 40.210.010-1, 40.210.020-1, and 40.230.070-1	Clarify which zones allow tasting rooms and event facilities associated with a winery
9	8	40.510.025	Clarify that Type II-A neighborhood meetings must be held within the 90 day period prior to submittal of an application, not after submittal
10	9	40.530.010.F.6	Clarify the review process for changes of nonconforming uses
Minor Policy Changes			
11	11	2.37.010	Item pulled
12	12	40.350.030.B.5.c.(1)	Extend the option to pay a proportionate share of road frontage improvements to six years, instead of three

13	12	40.350.030.B.10 40.350.040.D	and	<i>Item removed pending further work</i>
14	13	40.520.030.I.2 40.520.040.B.4.g	and	Remove the Type I review requirements for school modulars in the conditional use section to be consistent with the site plan review exemption for modulars; but set limits to the modular gross floor area allowed under the site plan review exemption
15	14	40.520.060.E		Simplify and add flexibility to the post decision review criteria to allow more Type I post decision reviews of Type II and Type III applications
16	18	40.570.090.D.1		Eliminate the need for SEPA review for "Shoreline Exemptions" (a review process to determine whether a project located in Shorelines is exempt from obtaining a Shoreline Substantial Development permit), provided the project is not undertaken wholly or partly on lands covered by water

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**Fall 2012
Proposed
Bi-Annual Code Amendments
BCC Hearing Draft Attachment "A"**

The proposed text changes are followed by a **Rationale** section to provide background to the proposed changes.

Items which generated significant Planning Commission discussion have a shaded PC discussion box section following the Rationale section.

SCRIVENER'S ERRORS

1. Add arterial streets to the list of street classifications that prohibit curb extensions

40.350.030.B.3.b.(2) (b)

- (b) Curb extensions containing bioretention facilities are allowed in parking lanes subject to the following:
 - (i) Curb extensions shall not extend more than seven (7) feet into the parking lane, and shall not interrupt required bike lanes.
 - (ii) On commercial/industrial roads, the length of mid-block curb extensions is limited to twenty percent (20%) of the curb length of a block, or in the case of a partial block development, the road frontage of the site.
 - (iii) Mid-block curb extensions are prohibited on arterials, collectors and storefront roads.

Rationale: Batch 6 of the Retooling Our Code project made provisions to allow rain garden facilities (i.e., curb extensions) to protrude into lower classification streets (those with lower traffic volumes and speeds). Arterials are the highest classification of county road and as such, curb extensions should be prohibited.

1 **2. Correct references to certain Highway 99 standards in Section 1.2 of**
2 **the Highway 99 code, Appendix F of Title 40**

3
4 Section 1.2

5
6 Limited fee reductions and exemptions may be available per CCC
7 40.630.060. Pick at least one of the following options for all Level II Remodels
8 and additions:

- 9 *Section 8.3.34 (2)(a) - Parking Lot Perimeter Landscaping Standards:*
10 *Upgrading any existing non-conformities consistent with the provisions of*
11 *this section.*
12 *Section 8.3.34 (2)(b) - Internal Parking Lot Landscaping Standards:*
13 *Upgrading existing parking lot interiors to comply with this section.*
14

15 **REFERENCE UPDATES**

16
17 **3. Change/correct the reference to a native plants list in three code**
18 **sections and clarify other references to plant lists in the Standard Details**
19 **Manual.**

20
21 **40.210.0020.D. (Rural Cluster Standards)**

22 6. Landscaping Standards. Cluster developments shall be landscaped
23 within the developed portion of cluster lots, so as to reduce views of
24 the development from the public right(s)-of-way so that a filtered view
25 is provided of the cluster and the cluster does not dominate the
26 landscape.

- 27 a. At a minimum, proposed or existing landscaping and vegetation shall
28 be of sufficient size and type to provide a buffer of vegetation six (6)
29 feet in height and fifty percent (50%) opaque year round within three
30 (3) years of planting. New landscaping materials shall consist of
31 native vegetation as ~~provided on the Clark County plant list (see the~~
32 ~~Standard Details Manual)~~ identified by the Clark Conservation
33 District. A combination of trees and shrubs must be used.

34 **40.240.840 General Management Area Wetland Review Criteria**

35 G. Wetlands Buffer Zones.

- 36 4. Except as otherwise allowed, wetlands buffer zones shall be retained in
37 their natural condition. When a buffer zone is disturbed by a new use, it
38 shall be replanted with native plant species as identified ~~in the Clark~~
39 ~~County plant list (see the Standard Details Manual).~~ by the Clark
40 Conservation District.

41 **40.460.560 Site Planning and Development (From the Shoreline Master**
42 **Program)**

- 1 B. Grading, Fill, and Excavation.
 2 12. Upon completion of construction, remaining cleared areas shall be
 3 replanted with native species from the Clark County plant list (Standard
 4 ~~Details Manual, Appendix G~~ as identified by the Clark Conservation
 5 District. Replanted areas shall be maintained such that within three (3)
 6 years' time the vegetation is fully re-established.
 7

8 **40.320.010. (Landscaping and Screening on private property)**

- 9 G. Timing, Selection, Installation, and Maintenance Standards.
 10 4. Selection Generally. Landscape materials should be selected and sited
 11 to produce a hardy and drought-resistant landscape area. Selection
 12 should include consideration of soil type and depth, the amount of
 13 maintenance required, spacing, exposure to sun and wind, the slope
 14 and contours of the site, compatibility with existing native vegetation
 15 preserved on the site, water conservation where needed, and the
 16 impact of landscaping on visibility of the site for purposes of public
 17 safety and surveillance. Landscaping materials shall be selected in
 18 accordance with a list of plant materials ~~adopted by reference as the~~
 19 ~~Clark County Plant List (see found in the Standard Details Manual).~~
 20

21 **Rationale:** There is no document entitled the “Clark County plant list” per se in
 22 the Standard Details Manual; there are only lists of various native and non-native
 23 plants approved for certain locations. The Clark Conservation District does have
 24 a list of exclusively native plants, and is therefore an appropriate reference
 25 document.

26 **4. Update references to special use standards that apply to townhouse**
 27 **developments**

Table 40.220.010-1. Uses						
	R1- 20	R1- 10	R1- 7.5	R1- 6	R1- 5	Special Standards
1. Residential.						
n. Residential P.U.D.	R/A	R/A	R/A	R/A	R/A	40.520.080
o. Single-family attached dwelling units (townhouses)	R/A ²	R/A ²	R/A ²	R/A ²	R/A ²	40.260.230 <u>40.260.155</u> <u>40.520.080</u>
p. Zero lot-line developments	X	X	R/A	R/A	R/A	40.260.260

28 **Rationale:** Townhouse standards used to be found in Section 40.260.230; these
 29 were replaced with a new special use section (Narrow Lot Standards,
 30 40.260.155) during Batch 2B of the ROC project.

1 In the single family districts, townhouses are allowed only as planned unit
 2 developments, hence the additional reference to the PUD code section
 3 40.520.080.

4 **5. Remove outdated footnote allowing 10 foot front setbacks when**
 5 **alleys are used in the single family residential zone**

Table 40.220.010-3. Setbacks, Lot Coverage and Building Height						
Zoning District	Minimum Setbacks				Maximum Lot Coverage	Maximum Building Height (feet)
	Front ^{3,6} (feet)	Side ^{4,5,10,11}		Rear ^{4,5,10,11} (feet)		
		Street (feet)	Interior (feet)			
R1-20	10 ⁸	10	10 ⁹	20	50% ¹	35 ⁷
R1-10	10 ⁸	10	7 ⁹	15	50% ¹	35 ⁷
R1-7.5	10 ⁸	10	5	10	50% ¹	35 ⁷
R1-6	10 ⁸	10	5	10	50% ²	35 ⁷
R1-5	10 ⁸	10	5	10	50% ²	35 ⁷

6 ¹ Carports and solar energy systems are excluded from this provision; provided,
 7 that the total lot coverage limitation is not exceeded by more than ten percent
 8 (10%) as a result of these exceptions.

9 ² Solar energy systems are excluded from this provision; provided, that the total
 10 lot coverage limitation is not exceeded by more than ten percent (10%) as a
 11 result of this exception.

12 ³ Front setbacks shall be measured from the edge of any street right-of-way,
 13 street tract, street easement, or driveway easement that provides access to the
 14 lot, including any separate pedestrian easement that may exist between a street
 15 and the front setback line.

16 ⁴ Setbacks to driveway and pedestrian easements that do not provide access to
 17 a subject lot shall be a minimum of five (5) feet.

18 ⁵ Setbacks from alleys to all structures including entrances to garages shall be a
 19 minimum of five (5) feet.

20 ~~⁶ For those lots that receive vehicle access only by an alley, the front setback~~
 21 ~~may be reduced to ten (10) feet. Reserved~~

22 ⁷ Accessory buildings shall meet the height requirements of Section
 23 40.260.010(D).

1 ⁸ Front setbacks for garages in these zones shall be a minimum of eighteen (18)
2 feet.

3 ⁹ The minimum setbacks for interior side yards on pie-shaped lots shall be five
4 (5) feet.

5 ¹⁰ Side and rear setbacks from abutting property zoned for natural resource or
6 surface mining uses shall be a minimum of fifty (50) feet for all structures.

7 **Rationale:** This footnote dates back to when the front setback requirement was
8 18 feet. Recent updates now allow a 10 foot front setback to all living spaces,
9 regardless of whether alleys are provided or not, making this footnote irrelevant.

10 **6. Update Table 40.350.010-1 to allow 5' wide detached sidewalks along**
11 **arterials and collectors, consistent with the revised road cross section**
12 **requirements in Table 40.350.030-2**

Table 40.350.010-1. Sidewalk and Streetscaping Requirements		
	STREET	
LAND USE	Arterials/Collectors	Local Access
Commercial, multifamily residential, public facilities, and institutional uses	6 ft. wide sidewalks (<u>5 ft. if detached</u>). Hardscaping vs. landscaping allowed with approval.	5 ft. wide sidewalks. Hardscaping vs. landscaping permitted.
Single-family residential (including townhomes) and industrial ¹ uses.	6 ft. wide sidewalks (<u>5 ft. if detached</u>). Hardscaping vs. landscaping allowed with approval.	5 ft. wide sidewalks. Hardscaping vs. landscaping permitted for industrial uses.

13 ¹ Industrial uses containing over five thousand (5,000) square feet of office space
14 shall comply with the requirements for commercial, multifamily residential, public
15 facilities, and institutional uses.

16 **Rationale:** A recent revision to the road standards allowed 5 foot wide detached
17 sidewalks, but the reference in this table was not updated.

18
19 **7. Update the reference to approval timelines for the extension of**
20 **phased developments**

21 **40.500.010 Summary of Procedures and Processes**

22 B. Development Approvals Timeline – General.

23 1. Basic Rule. Preliminary approval of land divisions (Chapter 40.540), site
24 plan approval (Section 40.520.040), uses subject to review and

1 approval (R/A) (Section 40.520.020), approval of conditional use
2 permits (Section 40.520.030), approval of planned unit developments
3 (Section 40.520.080), approval of mixed use developments (Section
4 40.230.020), approval of master plans (Section 40.520.070), and
5 approval of variances (Section 40.550.020), shall be valid for a period
6 of seven (7) years after approval. The right to develop an approved
7 land division, site plan, use permitted subject to review and approval
8 (R/A), conditional use permit, planned unit development or variance or
9 part thereof expires seven (7) years after the effective date of the
10 decision approving such development, unless:

- 11 a. For land divisions – A fully complete application for a final plat has
12 been submitted.
- 13 b. For use approvals that do not require a building permit – The
14 permitted use has legally commenced on the premises.
- 15 c. For all other approvals – A building permit for the approved
16 development has been issued and remains in effect, or a final
17 occupancy permit has been issued.

18 2. Extensions – Phased Developments.

- 19 a. Those applications specifically approved for phased development
20 may receive an unlimited number of subsequent two (2) year
21 extensions in accordance with the following:

- 22 (1) At least one (1) phase has met the general development
23 approvals timeline basic rule described in Section
24 40.500.010(B)(1), ~~within the five (5) year time limit;~~

25 **Rationale:** Recently, the “shelf life” of preliminary approval for most development
26 permits was extended to 7 years as noted in 40.500.010(B)(1); however, text
27 referring to that preliminary approval timeline in the phased development section
28 was not updated to reflect the change. It’s not necessary to replace the struck
29 text, as the 7 year requirement is already explicitly stated in 40.500.010(B)(1).

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CLARIFICATIONS

8. Clarify which zones allow tasting rooms and event facilities associated with a winery

Table 40.210.010-1. Uses					
	FR-80	FR-40	AG-20	AG-WL	Special Standards
4. Services – General.					
a. Event facilities < 5,000 sq. ft.	X	C	C	X	
b. <u>Tasting Room and Event</u> facilities in conjunction with a winery	P	P	P	X	40.260.245
5. Services, Membership Organization.					
a. Churches	X	C	C	X	

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8

Table 40.210.020-1. Uses					
	R-20	R-10	R-5	Special Standards	
3. Services, Amusement.					
a. Publicly owned recreational facilities, services, parks and playgrounds	P	P	P		
b. Private recreation facilities, such as country clubs and golf courses, including such intensive commercial recreational uses as golf driving range, race track, amusement park, paintball facilities, or gun club	C	C	C		
c. Golf courses	C	C	C		
d. Equestrian facility on parcels less than 5 acres	C	C	C	40.260.040	
e. Equestrian facility on parcels 5 acres or greater	P	P	P	40.260.040	
f. Equestrian events center	C	C	C	40.260.040	
g. Outdoor public entertainments, amusements and assemblies	R/A	R/A	R/A	Chapter 5.32	
<u>h. Tasting room and event facilities in conjunction with a winery</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>40.260.245</u>	

4. Services, Membership Organization.				
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Table 40.230.070-1. Uses				
	UH-10	UH-20	UH-40	Special Standards
3. Services, Amusement.				
f. Outdoor public entertainments, amusements and assemblies	R/A	R/A	R/A	Chapter 5.32
<u>g. Tasting rooms and event facilities in conjunction with a winery</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>40.260.245</u>
4. Services, Membership Organization.				

2

3 **Rationale:** Wineries are considered as agricultural uses, and as such are
 4 allowed in all zones; however, winery tasting rooms and events are only allowed
 5 in the rural and urban holding zones. Other than one incomplete listing in the
 6 Resource zones' use table, and the definition of winery in Section 40.100.070
 7 which states: "In rural zoning and urban holding districts a winery may include a
 8 *tasting room and/or events*", it is not evident where they are allowed. This is a
 9 clarification only; no change is proposed in where such facilities are allowed.

10

11 **9. Clarify that Type II-A neighborhood meetings must be held within the**
 12 **90 day period prior to submittal of an application, not after submittal**

13 **40.510.025 Type II-A Process – Administrative Decisions**

14 A. Purpose.

15 The purpose of this section is to provide an alternative process for reviews of
 16 conditional uses, planned unit developments, and master plans which combine
 17 features of the Type II and Type III processes.

18 B. Applicability.

19 1. Under this section, applications for conditional use permits, planned unit
 20 developments, and master plans shall be reviewed using a Type II-A
 21 process, and in conjunction with Sections 40.520.030(C), 40.520.070(D)
 22 and (E), and 40.520.080(F).

23 C. Approval Process.

24 1. Pre-application review under Section 40.510.030(A) is required for all
 25 conditional uses, planned unit developments and master plans.

26 2. Neighborhood Meeting.

27 a. The applicant must hold a neighborhood meeting within the 90 day
 28 period prior to the submittal of an application, ninety (90) days of
 29 submitting a Type II-A application for a conditional use, planned unit

1 development, or master planned development. This meeting is to
2 exchange information on the development design, and review issues
3 and alternatives prior to the application. The meeting must be held at
4 a location within a reasonable distance of the proposed development
5 site on a weekday evening. A pre-application conference does not
6 substitute for a neighborhood meeting.
7

8 **Rationale:** Conditional uses can be applied for under a Type II-A process.
9 Under that process a neighborhood meeting can be substituted for a public
10 hearing. The neighborhood meeting has to be held during the period 90 days
11 prior to submittal of an application to provide input which may help a developer
12 design a project that is palatable to the neighborhood (which could possibly avoid
13 a public hearing). The existing text can be misinterpreted to allow the
14 neighborhood meeting within 90 days after submittal.
15

16 **10. Clarify the review process for changes of nonconforming uses**

17 **40.530.010.F.6**

18 6. Change of Use.

19 The legal nonconforming use of a building, structure, or land may be
20 changed through a ~~Type II review~~, the site plan review process in Section
21 40.520.040, subject to the following:
22

23 a. Permitted Use in the Zone.

24 A conversion from a nonconforming use to a use permitted in the
25 zone shall require site plan review ~~The proposed use is identified as a~~
26 ~~permitted use in the zoning district within which said building or land~~
27 ~~is situated. Any conversion shall require site plan approval under the~~
28 ~~provisions of Section 40.520.040 to ensure compliance with~~
29 ~~applicable development standards. Whether the application is a Type~~
30 ~~I or Type II will depend on the criteria in 40.520.040.B.~~ Once
31 converted to a permitted use, the nonconforming use may not be re-
32 established.
33

34 b. Different Nonconforming Use.

35 A legal nonconforming use may be changed to another nonconforming
36 use, subject to a Type II site plan review, only if all of the following
37 conditions are met:

38 (1) The proposed new use ~~can clearly be demonstrated to involve~~
39 must have equal or lesser overall adverse impacts to the
40 surrounding area considering such factors as traffic, required on-
41 site parking, hours of operation, noise, glare, dust, odor, and
42 vibration.

43 (2) The proposed use will not introduce hazards or interfere with
44 development potential of nearby properties in accordance with
45 current zoning regulations.

- 1 (3) The change in use will not result in an increase in the amount
2 or area devoted to outdoor storage of goods or materials.
3 (4) The proposed new use will not increase the amount of space
4 occupied by a nonconforming use.
5 (5) The proposed change in use will involve minimal structural
6 alteration.
7 ~~(6) The proposed change in use shall be brought into compliance~~
8 ~~with all applicable standards of the underlying zoning district, or~~
9 ~~those of the zoning district within which the new use is normally~~
10 ~~allowed, to the greatest extent possible given the size or~~
11 ~~configuration of the site and location of existing improvements.~~
12 (6) The responsible official may impose conditions to ensure
13 compliance with subsections 40.530.010.F.6.b.(1) and (2) above.
14 ~~(7) Mere financial hardship does not alone constitute grounds for~~
15 ~~finding that compliance with site improvement requirements is not~~
16 ~~reasonably practicable.~~
17

18 **Rationale:** Legal nonconforming uses are those uses that were allowed under
19 old (or non-existent) zoning laws, but are no longer allowed under current code.
20 The establishment of zoning districts, the Growth Management Act, and legal
21 cases all support the general idea that non-conforming uses should be either
22 phased out, or at least moved toward compliance with new requirements.
23

24 The current code allows changes of legal non-conforming uses, either to a use
25 permitted in the current zone, OR to another non-conforming use, as long as the
26 new non-conforming use is found to have no more impacts than the original non-
27 conforming use.
28

29 It makes sense that changes from a non-conforming use to a permitted use
30 should be encouraged for consistency with zoning.
31

32 Changing to an allowed use

33 The existing code requires a Type II site plan review to change a non-conforming
34 use to a permitted use; however, some such conversions might not require
35 physical improvements that would normally trigger a Type II site plan (Type II
36 applications require notice to neighbors). If the physical improvements are
37 minor, and if the new use is permitted by code, there is little to be gained by
38 providing notice, and therefore a Type I review should be sufficient.
39

40 Changing to another non-permitted use

41 Under the existing code it's not clear what type of Type II review is needed in
42 order to change from one non-conforming use to a different non-conforming use.
43 Is it a Planning Director Review, or Site Plan Review? Planning Director
44 Reviews do not normally include engineering review, while Site Plan Reviews
45 normally do.
46

1 The proposal is to specifically state that a Type II site plan review is required to
2 change from one non-conforming use to another. Text is ‘softened’ somewhat
3 from requiring the site to be brought into compliance “to the greatest extent
4 possible” to allowing the responsible official some leeway in what requirements
5 are needed to ensure that the new use won’t be worse than the original non-
6 conforming use, and to ensure that the development will not introduce hazards or
7 interfere with development potential of nearby properties in accordance with
8 current zoning regulations.

9
10 PC discussion: The PC voted 4-2 to recommended approval as written. See
11 pages 6-15 of the PC minutes.

12 **MINOR POLICY CHANGES**

13 **11. Allow higher value contracts to be negotiated without advertising or** 14 **competitive bids (consistent with state law) and remove other outdated** 15 **requirements regarding such contracts**

16 **2.37.010 Contracts less than ~~\$3,500~~ \$25,000**

17
18 Contracts, leases and purchases involving less than ~~\$3,500.00~~ \$25,000 but more
19 than ~~\$1,000.00~~ \$5,000 may be made by Clark County without advertising or
20 competitive bids, as provided by Chapter 36.32.250 of the Revised Code of
21 Washington as amended by the laws of Washington, Chapter 267 First
22 Extraordinary Session, ~~1977~~ 2007, provided:

- 23
24 (1) That bids be solicited from as many suppliers as practicable;
- 25 (2) That a record be kept of all bids and made available for public inspection
26 ~~and be made available to the public by telephone, email or fax;~~
- 27 ~~(3) That a notice of intention to let contracts or enter into leases or to make~~
28 ~~purchases involving more than \$1,000.00 but less than \$3,500.00 be posted~~
29 ~~on a bulletin board in the office of the County Commissioners not less than~~
30 ~~three (3) days prior to entering into such contract, lease or purchase;~~
- 31 ~~(4) That supplies be purchased, whenever possible, in quantities for a period of~~
32 ~~at least three (3) months but not to exceed one (1) year;~~
- 33 ~~(5) That supplies used throughout the county be standardized as far as~~
34 ~~possible, and stored for general use by all departments, which shall be~~
35 ~~charged for them when withdrawn.~~

36
37 **Rationale:** This code section has not been updated since 1977. The proposed
38 new amounts are consistent with updates to state laws.

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2 **12. Extend the option to pay a proportionate share of road frontage**
3 **improvements to six years, instead of three**

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5 **40.350.030.B.5.c.(1)**

6
7 5. Frontage Roads/Improvement

8 *****

9
10 c. Deferral.

11 (1) In the event that required frontage road improvements are
12 included as a portion of a county road project on the county's six
13 (6) year transportation improvement program scheduled to be
14 undertaken within ~~three (3)~~ six (6) years, the developer, in lieu of
15 constructing or guaranteeing the construction pursuant to Section
16 40.350.030(C)(4)(i) of such frontage improvements may be
17 permitted to contribute a proportionate share towards the cost of
18 such county road project by an agreement consistent with the
19 requirements of RCW 82.02.020.

20
21 **Rationale:** When a project requires road frontage improvements to a road that is
22 already scheduled to be improved by the county as part of a Traffic Improvement
23 Project (TIP), a developer can opt to pay a proportionate share of the proposed
24 road project instead of actually building the road frontage improvements along
25 their project site. This proposed code change would extend the option of paying a
26 proportionate share for road frontage improvements if there is a TIP project
27 scheduled for construction within six years, up from the current window of three
28 years.

29
30 **13. Provide more flexibility, and clarify the approval criteria for private**
31 **roads**

32
33 **THIS ITEM HAS BEEN REMOVED PENDING FUTHER WORK**

34
35 **PC discussion:** The PC raised germane questions regarding this section that
36 resulted in staff's reconsideration of going forward at this time. See pages 20-26
37 of the PC minutes.

1
2 **14. Make the conditional use code consistent with the site plan review**
3 **code as it pertains to the installation of school modulars; also, set a limit to**
4 **the modular gross floor area allowed under the site plan review exemption**

5
6 **40.520.030.I**

7 I. Expansions.

8 1. Except as provided in Sections 40.520.030(G)(2) and 40.530.050(C),
9 an existing permitted or lawfully nonconforming conditional use may
10 be expanded or modified following site plan approval pursuant to
11 Section 40.520.040 if the expansion or modification complies with
12 other applicable regulations and is not expressly prohibited by either:

13 a. An applicable prior land use decision if the original use is lawfully
14 nonconforming because it was commenced prior to a conditional
15 use permit being required; or

16 b. The conditional use permit issued for such use.

17 c. A lawful, but nonconforming conditional use must first obtain a
18 conditional use permit and the necessary site plan review approval
19 subject to the standards in Sections 40.520.030(G)(2) and
20 40.530.050(C) prior to expanding or modifying that use on the site.

21 2. School Modulars or Portables.

22 Installation of modular or portable buildings on public school sites is
23 ~~subject to a Type I site plan review~~ are exempt from additional
24 conditional use review, provided the project meets other provisions of
25 this section. ~~If the installation of modular or portable buildings on public~~
26 ~~school sites triggers SEPA review, then it shall be subject to a Type II~~
27 ~~site plan review.~~ Site Plan review may be required under 40.520.040.B
28 4.g. Whether or not site plan review is required under 40.520.040.B.4.g,
29 building permits may be subject to conditions required under the existing
30 conditional use permit.

31 **40.520.040 Site Plan Review**

32 B. Applicability.

33 4. The following land uses and development are exempt from site plan
34 review, provided applicable standards of this title are met:

35 g. School modulars or portables; provided,

1 (1) The total gross floor area of the modulars does not exceed 30%
2 of the gross floor area of the existing school building, not
3 including existing modulars; and,

4 (2) The project is either exempt from SEPA, or the applicant takes
5 on lead agency status for SEPA; and

6 h. Other development the responsible official finds should be exempt,
7 because it does not result in an increase in land use activity or
8 intensity or in an adverse impact perceptible to a person of average
9 sensibilities from off-site, and because the county can assure the
10 development complies with applicable standards without site plan
11 review.

12
13 **Rationale:** Section 40.520.040.B.4.g (site plan review) currently exempts school
14 modulars from site plan review unless the size of the modular(s) triggers SEPA
15 review and the applicant cannot perform their own SEPA review (public schools
16 can, private schools cannot).

17
18 However, Section 40.520.030.I (regarding the expansion of conditional uses)
19 states that Type I site plan review is required for school modulars; this is in
20 conflict with the site plan review exemption. The proposed code change
21 eliminates the Type I site plan review requirement text in the CUP section, thus
22 making both code sections consistent.

23
24 Note that there is currently no limit to the size of the expansions allowed under
25 the site plan review exemption, and it seems reasonable to place some limit on
26 expansions, beyond which site plan review will be needed to ensure a more
27 thorough review for compliance with land use regulations, especially parking.

28
29 The proposed code language has been vetted with Educational Service District
30 112. See Tab 5 for additional background.

31
32 **15. Simplify and add flexibility to the post decision review criteria to**
33 **allow more Type I post decision reviews of Type II and Type III applications**

34
35 40.520.060

36 E. Classification.

37 The responsible official shall classify the application as subject to a Type I,
38 Type II, ~~Type II-A~~, or Type III process. This classification decision may be
39 appealed to the Hearings Examiner in accordance with Section
40 40.510.010(E).

41 1. An application for post-decision review of a Type I decision shall be
42 subject to a Type I review process.

- 1 2. An application for post-decision review of a Type II, ~~or a Type II-A~~
2 ~~decision not subjected to a public hearing~~ or a Type III decision shall
3 be subject to a Type I review process, if the responsible official finds
4 that the requested change in the decision:
- 5 ~~a. Is consistent with the applicable law or variations permitted by~~
6 ~~law, including a permit to which the development is subject;~~
- 7 ~~b. Involves changes to the interior of the development that will not~~
8 ~~result in impacts, to include visual impacts, beyond the perimeter~~
9 ~~of the development site;~~
- 10 ~~c. Does not result in additional lots;~~
- 11 ~~d. Does not change the location of accessways to frontage roads~~
12 ~~where off-site traffic would be affected;~~
- 13 ~~e. Does not locate parking closer to land zoned or used for~~
14 ~~residential purposes unless more than one hundred (100) feet~~
15 ~~remain separating the parking area and the residential properties;~~
- 16 ~~f. Does not increase the height or gross floor area of a structure by~~
17 ~~more than ten percent (10%);~~
- 18 ~~g. Does not require the approval of an administrative or design road~~
19 ~~modification that has offsite impacts;~~
- 20 ~~h. Does not involve an issue of broad public interest, based on the~~
21 ~~record of the decision. An issue of public interest is one about~~
22 ~~which testimony was submitted to the record either at the public~~
23 ~~hearing or in writing;~~
- 24 ~~i. Proposes to phase a project that was not phased in the original~~
25 ~~review, or proposes changes to a phasing plan; and~~
- 26 ~~j. Does not require further SEPA review.~~
- 27 a. Will not result in an increase in land use activity or intensity; and,
- 28 b. Will not result in an adverse impact; and,
- 29 c. Does not involve an issue of broad public interest.
- 30 3. An application for post-decision review of a Type II decision or a Type
31 II-A decision not subjected to public hearing shall be subject to a Type
32 II review process if it does not qualify for Type I review under Section
33 40.520.060(E)(2).

1 4. ~~An application for post-decision review of a Type II-A decision that was~~
2 ~~subjected to public hearing or a Type III decision shall be subject to a~~
3 ~~Type I review process if the responsible official finds that the~~
4 ~~requested change in the decision:~~

5 ~~a. Reduces the potential adverse impact of the development~~
6 ~~authorized by the decision;~~

7 ~~b. Is consistent with applicable law or variations permitted by law,~~
8 ~~including a permit to which the development is subject; and~~

9 ~~c. Does not involve an issue of broad public interest, based on the~~
10 ~~record of the decision. **(this text in subsections 4a-c is**~~
11 ~~**superseded by the revised subsection 2 above)**~~

12 5.4. An application for post-decision review of a Type II-A decision that
13 was subjected to public hearing or a Type III decision shall be subject
14 to a ~~Type II-A review process omitting a neighborhood meeting~~ Type II
15 review process if the responsible official finds that the requested
16 change in the decision:

17 a. Does not increase the potential adverse impact of the
18 development authorized by the decision or SEPA determination;

19 b. ~~Does not add more than~~ Adds up to two (2) lots for a subdivision
20 that proposed up to twenty (20) lots; three (3) lots for a
21 subdivision that proposed up to forty (40) lots; or five (5) lots for a
22 subdivision that proposed more than forty (40) lots;

23 c. ~~Does not require the approval of an administrative or design road~~
24 ~~modification that has offsite impacts;~~

25 d. ~~Does not reduce any transportation safety or transportation~~
26 ~~concurrency related obligations of the applicant;~~

27 e. ~~Does not result in a change in the routing of off-site traffic;~~

28 f. ~~Does not delete dedications for public utilities/facilities on the site;~~

29 g. ~~Does not reduce proposed setbacks by more than ten percent~~
30 ~~(10%);~~

31 h. ~~Does not increase the height of a structure by more than ten~~
32 ~~percent (10%);~~

33 i. ~~Does not increase the gross floor area of a structure more than~~
34 ~~ten percent (10%); or~~

1 j. ~~Does not eliminate or change fences from sight obscuring to non-~~
2 ~~obscuring; and~~

3 c. Requires a Type I or Type II variance. *(this is more flexible*
4 *than what the old subsection “g” below allowed; Type II*
5 *variances under “g” below require a Type III review, which*
6 *seems too stringent)*

7 d. Is consistent with county, state and federal laws and regulations,
8 but may involve changes that neighboring property owners should
9 be aware of. *(This covers all the old subsections c through f*
10 *above)*

11 k.e. Does not involve an issue of broad public interest, based on the
12 record of the decision. An issue of public interest is one about
13 which testimony was submitted to the record either at the public
14 hearing or in writing. *(The PC recommended to remove this*
15 *criteria as it is already considered as being covered by the*
16 *SEPA language in “a” above)*

17 6.5. An application for post-decision review of a Type II-A decision that
18 was subjected to public hearing or a Type III decision shall be subject
19 to a Type III review process if it: ~~does not qualify for a Type I, Type II,~~
20 ~~or Type II-A process under this section.~~

21 a. Proposes reductions in effectiveness of exterior landscaping;

22 b. Proposes to reduce dedications for public facilities;

23 c. Results in a change of routing traffic or requires a road
24 modification that has off-site impacts;

25 d. Reduces transportation safety or concurrency obligations;

26 e. Exceeds the limits of 40.520.060.E.4.b;

27 f. Involves an issue of broad public interest based on the record of
28 the decision. An issue of public interest is one about which
29 testimony was submitted to the record either at the public
30 hearing or in writing.

31 g. Increases the potential adverse impact of the development
32 authorized by the decision or SEPA determination.

33 7.6. When a post-decision review application requests a change involving
34 a condition of approval that was imposed in the original decision to
35 address a specific potential impact of the proposed development, that

1 condition of approval can be changed only using the same type
2 process as the original decision.

3 **Rationale:** The post decision review process allows relatively minor changes to
4 be made to development applications that have already received preliminary
5 approval. The level (Type) of review required for a proposed change is dictated
6 by the post decision review criteria in Section 40.520.060.E. These criteria are
7 quite specific and may be unnecessarily conservative. For instance:

8 • A post decision review of a Type III decision cannot be reviewed as a
9 Type I review (which does not require public notice) unless the proposed
10 change can be found to *decrease* the potential impacts of a project. There
11 can be circumstances where an inconsequential change of no concern to
12 neighbors may not necessarily be said to decrease impacts, but common
13 sense should otherwise allow a Type I review.

14 • There is no provision to allow a Type II post decision review of a Type III
15 decision; the only options are either a Type II-A application (which *might*
16 require another public hearing), or a Type III review, which *will* require
17 another hearing.

18 • Some of the requirements are written in the negative, making it
19 unnecessarily cumbersome to understand.
20

21 **PC discussion:** The PC recommended approval, with a change to remove the
22 “broad public interest” criterion in the proposed subsection 40.520.060.E.4.e.
23 See page 30 of the PC minutes.
24

25 Staff has respectfully left this criterion in the text with the rationale that a post-
26 decision request change that staff may not consider to have an increased overall
27 adverse impact may be important to neighbors who provided testimony at a
28 hearing regarding a specific issue. If a change is proposed that once again
29 affects the specific issue, staff believes that the neighbors should have an
30 opportunity for another public hearing.
31

32 The DEAB concurs with staff to keep the “broad public interest” criterion. See
33 the DEAB recommendation letter in Tab 6.
34

35 **16. In 40.570.090.D.1.a, eliminate the need for SEPA review for “Shoreline**
36 **Exemptions” (a review process to determine whether a project located in**
37 **Shorelines is exempt from obtaining a Shoreline Substantial Development**
38 **permit), provided the project is not undertaken wholly or partly on lands**
39 **covered by water**
40

41 **40.570.090 (SEPA) Categorical Exemptions**

42
43 C. Exempt Levels for Minor New Construction.

1 Clark County establishes the following exempt levels for the minor new
2 construction activities under WAC 197-11-800(1)(b) based on local conditions
3 except when undertaken wholly or partly on lands covered by water as
4 authorized under RCW 43.21C.135:

- 5 1. For residential structures in WAC 197-11-800(1)(b)(i), up to twenty (20)
6 dwelling units shall be exempt within unincorporated urban areas
7 designated by the comprehensive plan; within designated urban reserve
8 and rural areas, four (4) or less dwelling units shall be exempt.
- 9 2. For agricultural structures in WAC 197-11-800(1)(b)(ii), the exempt
10 threshold shall be ten thousand (10,000) square feet.
- 11 3. For office, school, commercial, recreational, service or storage buildings
12 (but not including manufacturing buildings) in WAC 197-11-800(1)(b)(iii),
13 up to twelve thousand (12,000) square feet of gross floor area and up to
14 forty (40) associated parking spaces shall be exempt within
15 unincorporated urban areas designated by the comprehensive plan;
16 within designated urban reserve and rural areas, the exempt levels for
17 these facilities shall be four thousand (4,000) square feet or less, and up
18 to twenty (20) parking spaces.
- 19 4. For parking lots in WAC 197-11-800(1)(b)(iv), up to forty (40) parking
20 spaces shall be exempt within unincorporated urban areas designated
21 by the comprehensive plan; within designated urban reserve and rural
22 areas, the exempt level shall be twenty (20) parking spaces.
- 23 5. For landfills and excavations in WAC 197-11-800(1)(b)(v), up to five
24 hundred (500) cubic yards shall be exempt.
- 25 6. Whenever the county establishes new exempt levels under this section,
26 it shall send them to the Washington Department of Ecology,
27 Headquarters Office, Olympia, Washington 98504, under WAC 197-11-
28 800(1)(c).

29
30 D. Critical Areas.

- 31 1. Clark County designates the following as critical areas, in which the
32 exemptions as specified in Section 40.570.090(E) do not apply:
 - 33 a. Shoreline Management Areas. Land and water areas under
34 jurisdiction of the Shoreline Management Act are critical areas. These
35 shorelines of the county are mapped in the Clark County Shoreline
36 Master Program, which maps are incorporated in this chapter by
37 reference.
 - 38 (1) SEPA shall not be required for the exempt
39 shoreline developments listed in Section 40.460.230(B), except
40 when undertaken wholly or partly on lands covered by water.
41 Exempt shoreline developments undertaken wholly or partly on
42 lands covered by water that are specifically exempted by WAC
43 197-11-800 shall also be exempted from the requirements of
44 this chapter.

- 1 b. Floodplains. All areas within the one hundred (100) year floodplain
- 2 boundary delineated by the Federal Emergency Management Agency
- 3 (FEMA) under the Flood Insurance Study for Clark County are critical
- 4 areas. These one hundred (100) year floodplains are designated on
- 5 FEMA's Flood Insurance Rate Maps (FIRM), which are incorporated
- 6 in this chapter by reference.
- 7 c. Wetlands subject to the provisions of Chapter 40.450 are critical
- 8 areas.
- 9 (1) Exemptions listed in Section 40.450.010(C) shall be exempt
- 10 from SEPA.
- 11 (2) Other exemptions as specified in Section 40.570.090(E) do
- 12 not apply unless authorized by a Type I wetland permit under
- 13 Section 40.450.040(G)(1)(a).
- 14 d. The following critical areas regulation ordinances but only for
- 15 personal wireless service facilities:
- 16 (1) Chapter 40.440, Habitat Conservation;
- 17 (2) Chapter 40.430, Geologic Hazard Areas;
- 18 (3) Chapter 40.410, Critical Aquifer Recharge Areas (CARAs).

19
20 **Rationale:** A shoreline exemption is a Type I review to verify that a Shorelines
21 Substantial Development Permit is not needed for a given project. There are
22 several typical types of projects that can qualify for an exemption, such as for a
23 new single family residence.

24
25 Currently, the code requires "shoreline exemptions" to go through the SEPA
26 review process; however, there may be reasons for avoiding this SEPA review
27 under certain conditions.

28
29 1) WAC 197-11-800.1.b and CCC 40.570.090.C (SEPA exemption codes) state
30 that the exempt levels for minor new construction activities apply "except when
31 undertaken wholly or partly on lands covered by water."

32 2) There are several shoreline exemptions, such as a new single family
33 residence, that clearly meet the exempt levels for minor new construction. The
34 question is, if a new single family residence is located in the shoreline
35 environment, is the construction activity being undertaken wholly or partly on
36 lands covered by water? If the house is built outside wetlands and floodplains,
37 and meets the shoreline setback, it can be argued that the construction activity is
38 not being undertaken wholly or partly on lands covered by water.

39 3) Currently, CCC 40.570.090.D.1 states that Clark County designates the
40 following critical areas, in which the exemptions as specified in 40.570.090.E do
41 not apply. 40.570.090.1.a states that Shoreline Management Areas are
42 considered Critical Areas. Then, 40.570.090.E.1 states that the minor new
43 construction exemptions under Section 40.570.090.C do not apply within any
44 critical area.

1 To make CCC 40.570.090 consistent with WAC 197-11-800, and apply SEPA
2 exemptions to many of the shoreline exemptions, staff proposes the amendment
3 to 40.570.090.D.1.a.

4

5 This change has the potential to reduce the number of SEPA Determinations
6 required and made by the County, and reduce permit fees for applicants seeking
7 shoreline exemptions. Given that the new Shoreline Master Program went into
8 effect on September 12, 2012, it makes sense to implement the change.

9

10