

1 **ORDINANCE NO. 2015-**

2 An ordinance amending Clark County Code (CCC) Sections 40.460.170,
3 Relationship to other plans and regulations, 40.460.230, Exemptions from
4 a Shoreline Substantial Development Permit, 40.460.520, Archaeological,
5 Cultural, and Historic Resources, 40.460.530, Critical Areas Protection,
6 40.460.560, Site Planning and Development, 40.460.590, Water Quality
7 and Quantity, 40.460.630, Use-Specific Development Regulations,
8 40.460.630, Use-Specific Development Regulations, 40.460.800,
9 Definitions.

10
11 WHEREAS, Shoreline Management is the 14th goal of the Growth
12 Management Act (GMA); and

13 WHEREAS, the Board of County Councilors adopted Clark County’s Shoreline
14 Master Program (SMP) on July 24, 2012, Ordinance No. 2012-07-16; and

15 WHEREAS, the Washington Department of Ecology approved Clark County’s
16 SMP, which took effect on September 12, 2012; and

17 WHEREAS, the Board of County Commissioners adopted limited amendments to
18 Clark County’s Shoreline Master Program on August 19, 2014, Ordinance No. 2014-08-
19 10; and on November 18, 2014, Ordinance No. 2014-12-10; and

20 WHEREAS, the Shoreline Master Program policies and regulations are in Chapter
21 13 of the Clark County Comprehensive Growth Management Plan and Chapter 40.460
22 CCC, respectively; and

23 WHEREAS, the Board finds that the implementation of the 2012 SMP has
24 suggested that limited amendments pursuant to WAC 173-26-201 would improve
25 consistency with the goals and policies of the Shoreline Management Act, and are
26 necessary for compliance with Clark County’s Phase I Municipal Stormwater Permit,
27 2013-2018 issued pursuant to the National Pollution Discharge Elimination System of
28 the federal Clean Water Act; and

29 WHEREAS, the Planning Commission held a duly advertised hearing on August
30 20, 2015 and voted 7-0 to forward the recommended approval of the proposed limited
31 amendment to the 2015 SMP; and

32 WHEREAS, the Board held duly advertised public hearings on October 13, 2015
33 to review the recommendation of the Planning Commission that the limited amendment
34 to the 2012 SMP should be adopted as proposed; and

35 WHEREAS, the Board finds that adoption of the proposed limited amendment to
36 the SMP would be in the best interests of the public health, safety and welfare of Clark
37 County; now, therefore,

38 BE IT ORDERED, RESOLVED AND DECREED BY THE BOARD OF COUNTY
39 COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, AS FOLLOWS:

40

41 **Section 1. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section

42 40.460.170, are amended to read as follows:

43 **40.460.170 Relationship to other plans and regulations**

44

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

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

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

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

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

63 F. The Clark County Critical Area Ordinances (CAO) are adopted into the master
64 program by reference, except that those provisions inconsistent with the Shoreline

65 Management Act and implementing Washington Administrative Code chapters shall
66 not apply in shoreline jurisdiction. The applicable CAO is the version listed in CCC
67 40.460.530. Any amendments to the CAO shall be incorporated through an
68 amendment to the master program that is approved by the Department of Ecology
69 pursuant to WAC 173-26-191(2)(b).
70

71 **Section 2. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section
72 40.460.230, are amended to read as follows:

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74 **40.460.230 Exemptions from a Shoreline Substantial Development Permit**
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77 B. List of Exemptions

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

80 1. Any development of which the total cost or fair market value does not exceed
81 five thousand seven hundred eighteen dollars (\$5,718) or as adjusted by the
82 State Office of Financial Management, if such development does not materially
83 interfere with the normal public use of the water or shorelines of the state. For
84 purposes of determining whether or not a permit is required, the total cost or
85 fair market value shall be based on the value of development that is occurring on
86 shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair
87 market value of the development shall include the fair market value of any
88 donated, contributed, or found labor, equipment or materials.

89 2. Subject to the provisions of CCC 40.460.250, normal maintenance or
90 repair of existing legally-established structures or developments, including those
91 that have been damaged by accident, fire, or elements. Replacement of a
92 structure or development may be authorized as repair where such replacement
93 is the common method of repair for the type of structure or development and
94 the features of the repaired replacement structure or development, including
95 but not limited to its size, shape, configuration, location, and external
96 appearance, must be is-comparable to the original structure or development,
97 including but not limited to its size, shape, configuration, location, and
98 external appearance and the repair must replacement does not cause
99 substantial adverse effects to shoreline resources or environment. The
100 replacement of demolished existing single-family residences and their
101 appurtenances is not considered normal maintenance and repair.
102

103 3. Construction of a normal protective bulkhead common to single-family
104 residences. A "normal protective" bulkhead includes those structural and
105 nonstructural developments installed at or near, and parallel to, the ordinary
106 high water mark for the sole purpose of protecting an existing single-family
107 residence and appurtenant structures from loss or damage by erosion. A normal
108 protective bulkhead is not exempt if constructed for the purpose of creating dry
109 land. When a vertical or near vertical wall is being constructed or reconstructed,
110 not more than one (1) cubic yard of fill per one (1) foot of wall may be used as
111 backfill. When an existing bulkhead is being repaired by construction of a vertical
112 wall fronting the existing wall, it shall be constructed no further waterward of
113 the existing bulkhead than is necessary for construction of new footings. When a
114 bulkhead has deteriorated such that an ordinary high water mark has been
115 established by the presence and action of water landward of the bulkhead then

116 the replacement bulkhead must be located at or near the actual ordinary high
117 water mark. Beach nourishment and bioengineered erosion control projects may
118 be considered a normal protective bulkhead when any structural elements are
119 consistent with the above requirements and when the project has been
120 approved by the Department of Fish and Wildlife (WDFW).

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

135 5. Construction and practices normal or necessary for farming, irrigation, and
136 ranching activities, including agricultural service roads and utilities on
137 shorelands, and the construction and maintenance of irrigation structures
138 including but not limited to head gates, pumping facilities, and irrigation
139 channels. A feedlot of any size, all processing plants, other activities of a
140 commercial nature, alteration of the contour of the shorelands by leveling or
141 filling other than that which results from normal cultivation shall not be
142 considered normal or necessary farming or ranching activities.

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

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

151 8. Construction of a dock, including a community dock, designed for pleasure craft
152 only, for the private noncommercial use of the owner, lessee, or contract
153 purchaser of a single-family or multiple-family residence. This exception applies
154 in fresh waters when the fair market value of the dock does not exceed ten
155 thousand dollars (\$10,000), but if subsequent construction having a fair market
156 value exceeding two thousand five hundred dollars (\$2,500) occurs within five
157 (5) years of completion of the prior construction, the subsequent construction
158 shall be considered a substantial development for the purpose of this chapter.

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

- 164 10. The marking of property lines or corners on state-owned lands, when such
165 marking does not significantly interfere with normal public use of the surface of
166 the water.
- 167 11. Operation and maintenance of any system of dikes, ditches, drains, or other
168 facilities existing on September 8, 1975, that were created, developed or utilized
169 primarily as a part of an agricultural drainage or diking system.
- 170 12. Any project with a certification from the governor pursuant to Chapter [80.50](#)
171 RCW (certification from the State Energy Facility Site Evaluation Council).
- 172 13. Site exploration and investigation activities that are prerequisite to preparation
173 of an application for development authorization under this chapter, if:
- 174 a. The activity does not interfere with the normal public use of surface waters;
- 175 b. The activity will have no significant adverse impact on the environment including
176 but not limited to fish, wildlife, fish or wildlife habitat, water quality, and
177 aesthetic values;
- 178 c. The activity does not involve the installation of any structure, and upon
179 completion of the activity the vegetation and land configuration of the site are
180 restored to conditions existing before the activity; and
- 181 d. A private entity seeking development authorization under this section first posts
182 a performance bond or provides other evidence of financial responsibility to the
183 local jurisdiction to assure that the site is restored to pre-existing conditions.
- 184 14. The process of removing or controlling aquatic noxious weeds, as defined in
185 RCW [17.26.020](#), through the use of an herbicide or other treatment methods
186 applicable to weed control published by the Departments of Agriculture or
187 Ecology jointly with other state agencies under Chapter [43.21C](#) RCW.
- 188 15. Watershed restoration projects as defined in RCW [89.08.460](#).
- 189 16. a. A public or private project that is designed to improve fish or wildlife
190 habitat or fish passage when all of the following apply:
191
- 192 1 a. The project has been approved by DFW;
193
- 194 2 b. The project has received hydraulic project approval (HPA) by WDFW
195 pursuant to Chapter [77.55](#) RCW; and
196
- 197 3 c. Clark County has determined that the project is substantially
198 consistent with the local Shoreline Master Program. Clark County
199 shall make such determination in a timely manner and provide it by
200 letter to the applicant.
201
- 202 b. Fish habitat enhancement projects that conform to the provisions of RCW
203 [77.55.181](#) are determined to be consistent with local shoreline master
204 programs as required by 16(a) (3) above.
205

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

209 18. Other than conversions to nonforest land use, forest practices regulated under
210 Chapter 76.09 RCW are not subject to additional regulations under the Act or
211 this Program (RCW 90.58.030(2)(d)(ii)).

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214 **Section 3. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section
215 40.460.520, are amended to read as follows:

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217 **40.460.520 Archaeological, Cultural, and Historic Resources**

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219 A. When a shoreline use or development is in an area known or likely to
220 contain archaeological artifacts and data based on the state's Clark County's
221 predictive model, the applicant shall provide for a site inspection and evaluation by a
222 professional archaeologist prior to issuance of any shoreline permit or approval. Work
223 may not begin until the inspection and evaluation have been completed and the
224 county has issued its permit or approval.

225
226 B. If any item of possible archaeological interest (including human skeletal
227 remains) is discovered on site, all work shall immediately stop, and the county, State
228 Department of Archaeology and Historic Preservation (DAHP), and affected Native
229 American tribe(s) shall be notified of the discovery. A stop-work order will be issued.
230 The shoreline permit will be temporarily suspended. All applicable state and federal
231 permits shall be secured/obtained as a condition of resumption of development
232 activities. Development activities may resume only upon the applicant's receipt of
233 county approval.

234
235 C. If the discovery includes human skeletal remains, the find must be secured and
236 protected from further disturbance; the Clark County Medical Examiner and local law
237 enforcement shall be notified in the most expeditious manner possible. The County
238 Medical Examiner will assume jurisdiction over the site and the human skeletal remains,
239 and will make a determination of whether they are crime-related. If they are not, DAHP
240 will take jurisdiction over the remains and report them to the appropriate parties. The
241 State Physical Anthropologist will make a determination of whether the remains are
242 Native American and report that finding to the affected parties. DAHP will handle all
243 consultation with the affected parties as to the preservation, excavation, and disposition
244 of the remains.

245
246 **Section 4. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section
247 40.460.530, are amended to read as follows:

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249 **40.460.530 Critical Areas Protection**

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- 256 B. Applicable Critical Areas.
257 For purposes of this Program, the following critical areas will be protected
258 under this Program. An amendment to these regulations will apply in shoreline
259 jurisdiction only if it is adopted as an SMP limited amendment.
260 1. Critical aquifer recharge areas, defined in Chapter 40.410 as adopted by
261 Ordinance 2005-04-15, dated April 26, 2005,; Ordinance 2009-03-02;
262
263 2. Flood hazard areas, defined in Chapter 40.420 as adopted by Ordinance 2012-
264 07-15, dated July 24, 2012;
265
266 3. Geologic hazard areas, defined in Chapter 40.430 as adopted by Ordinance
267 2005-04- 15, dated April 26, 2005; Ordinance 2006-09-13; Ordinance 2009-01-01;
268 Ordinance 2012-02-03; and Ordinance 2012-07-16;
269
270 4. Habitat conservation areas, defined in Chapter 40.440 as adopted by Ordinance
271 2006-08-03, dated August 1, 2006; Ordinance 2012-07-16; and Ordinance
272 2014-12-05; and
273
274 5. Wetlands, defined in Chapter 40.450 as adopted by Ordinance 2006-05-27, dated
275 May 26, 2006; Ordinance 2012-07-03; Ordinance 2012-07-16; and Ordinance
276 2014-12-05.
277

- 278 C. Critical Aquifer Recharge Areas.
279 1. General Provisions. Chapter 40.410, Critical Aquifer Recharge Areas, Ordinance
280 2005- 04-15, dated April 26, 2005; and Ordinance 2009-03-02, is hereby adopted
281 in whole as part of this Program.
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- 284 F. Habitat Conservation Areas.
285 1. General Provisions.
286 a. Designated habitat areas are those defined in Section 40.100.070 and those
287 described below:
288 (1) Water bodies defined as waters of the state (RCW 90.48.020), including
289 waters, bed, and bank;
290 (2) DNR Classification System Type S, F, Np, and Ns water bodies as defined and
291 mapped based on WAC 222-16-030 (Forest Practices Rules);
292 (3) Riparian Priority Habitat Areas. Areas extending landward on each side of the
293 stream or water body from the ordinary high water mark to the edge of the
294 one hundred (100) year floodplain, or the following distances, if greater:
295 (a) DNR Type S waters, two hundred fifty (250) feet;
296 (b) DNR Type F waters, two hundred (200) feet;
297 (c) DNR Type Np waters, one hundred (100) feet; and

- 298 (d) DNR Type Ns waters, seventy-five (75) feet;
- 299 (4) Other Priority Habitats and Species (PHS) Areas. Areas identified by and
300 consistent with WDFW priority habitats and species criteria, including areas
301 within one thousand (1,000) feet of individual species point sites. The
302 county shall defer to WDFW in regards to classification, mapping and
303 interpretation of priority habitat species.
- 304 ~~b. The above habitat areas are mapped on a countywide basis in the adopted~~
305 ~~“Priority Habitats and Species Map.” Maps are on file with Clark County~~
306 ~~Environmental Services, except that maps of individual locations of sensitive,~~
307 ~~threatened, or endangered wildlife species are maintained separately to protect~~
308 ~~sensitive species.~~
- 309 c. In the event of inconsistencies, official habitat area definitions shall prevail over
310 county-wide maps in determining applicability of this section. The county shall
311 follow the recommendations of WDFW in the interpretation of site-specific
312 conditions as they relate to the definition of priority habitat and species.
- 313 d. The portion of the riparian priority habitat area nearest to the OHWM shall be
314 set aside for vegetation conservation and protection of the water body within
315 the shoreline jurisdiction.
- 316 e. Where development proposals require a habitat review under Section
317 [40.440.030](#), the review will be part of the approvals required under this
318 Program.
- 319 f. The reasonable use provisions in Chapter [40.440](#) do not apply to habitat
320 conservation areas regulated under this Program.
- 321 2. Regulated Activities.
- 322 a. All construction, development, earth movement, clearing, or other site
323 disturbance proposals within a habitat area which require a permit, approval, or
324 other authorization from the county shall be reviewed pursuant to Chapter
325 [40.440](#) and shall comply with the requirements of this section.
- 326 b. Proposed new single-family residential development occurring immediately
327 outside but within three hundred (300) feet of designated priority species
328 habitat polygons or within one hundred (100) feet of designated nonriparian
329 priority habitat polygons shall require consultation with WDFW prior to
330 issuance of a development permit. In such cases, further review under this
331 section is not required unless WDFW finds that there are potential adverse
332 impacts.
- 333 c. Agricultural activities within designated riparian habitat areas are subject to the
334 provisions of this section and Section [40.440.040\(B\)](#).
- 335 d. Class IV G forest practices (conversions) are regulated under this Program.
- 336 3. Standards.

- 337 a. Any alterations within designated habitat areas in shoreline jurisdiction require
338 review and approval prior to clearing or development and prior to issuance of
339 any County permit or statement of exemption.
- 340 b. Alterations within the designated habitat areas shall:
- 341 (1) Avoid impacts to the habitat conservation areas during project planning and
342 development to the extent possible;
- 343 (2) Substantially maintain the level of habitat functions and values as characterized
344 and documented using best available science;
- 345 (3) Minimize habitat disruption or alteration beyond the extent required to
346 undertake the proposal; and
- 347 (4) Compensate for impacts to the habitat conservation areas to meet the standard
348 of no net loss of shoreline ecological functions. Mitigation measures and
349 proposals must demonstrate use of best available science.
- 350 c. In the event that impacts to habitat areas cannot be avoided, development and
351 approval of a mitigation plan in accordance with the provisions of Sections
352 [40.440.020\(A\)\(3\)](#) through (8) is required.

353 G. Wetlands.

354 1. General Provisions.

- 355 a. Where development proposals require a wetlands review under Section
356 [40.450.030](#), the review will be part of the approvals required under this
357 Program. Such review is required for any development activity that is within
358 wetlands and wetland buffers subject to this Program, unless specifically
359 authorized by a statement of exemption. Requirements for wetland permit
360 applications are provided in Sections [40.450.040\(B\)](#), (C), and (D).
- 361 b. This section shall not apply to wetlands created from nonwetland sites
362 including, but not limited to, irrigation and drainage ditches, grass-lined
363 swales, canals, detention facilities, wastewater treatment facilities, stormwater
364 facilities, farm ponds, landscape amenities and unintentionally created
365 wetlands created as a result of the construction of a public or private road,
366 street, or highway after July 1, 1990; provided, that wetlands created as
367 mitigation shall not be exempt.
- 368 c. A wetland determination is required in conjunction with the submittal of a
369 development permit application. The Shoreline Administrator shall determine
370 the probable existence of a wetland on the parcel involved in the development
371 permit application. If wetlands or wetland buffers are found to exist on a parcel,
372 wetland delineation is required.
- 373 d. The location of a wetland and its boundary shall be determined through the
374 performance of a field investigation utilizing the methodology contained in the
375 Wetlands Delineation Manual and as specified in Chapter [40.450](#). If a wetland is
376 located off site and is inaccessible, the best available information shall be used
377 to determine the wetland boundary and category. Methodology is specified in
378 Section [40.450.030\(D\)](#).

- 379 e. All buffers shall be measured horizontally outward from the delineated wetland
380 boundary.
- 381 f. Wetland buffer widths shall be determined by the Shoreline Administrator in
382 accordance with the standards in Section [40.450.030](#).
- 383 g. All wetland reviews require approval of a preliminary and a final
384 enhancement/mitigation plan in accordance with the provisions of Section
385 [40.450.040](#)(E) unless the preliminary enhancement/mitigation plan
386 requirement is waived under the provisions of Section [40.450.040](#)(E)(2).
- 387 h. Wetland reviews under this Program shall be according to the application,
388 processing, preliminary approval, and final approval procedures set out in
389 Section [40.450.040](#)(F) through (I) and are part of the approvals required under
390 this Program.
- 391 i. Provisions for programmatic permits are included in Section [40.450.040](#)(K).
- 392 j. Provisions for emergency wetland permits are included in Section [40.450.040](#)(L).
- 393 k. The reasonable use provisions in Chapter [40.450](#) do not apply to wetlands
394 regulated under this Program.
- 395 2. Regulated Activities.
- 396 No development or activity in wetlands or wetland buffers subject to this Program
397 shall be allowed unless it is demonstrated that:
- 398 a. The proposed development or activity will not result in a net loss of wetland
399 functions to the point of net loss of shoreline ecological function; and
- 400 b. The proposed development or activity complies with all state, local and federal
401 laws, including those related to sediment control, pollution control, floodplain
402 restrictions, stormwater management, wetlands protection, and on-site
403 wastewater disposal.
- 404 3. Standards.
- 405 a. Stormwater Facilities.
- 406 (1) Stormwater dispersion practices and facilities that comply with the
407 standards of Chapter ~~40.385~~ [40.386](#) shall be allowed in all wetland buffers
408 where no net loss of shoreline ecological functions can be demonstrated.
409 Stormwater outfalls for dispersion facilities shall comply with the standards in
410 Section [40.460.530](#)(G)(3)(b).
- 411 (2) Other stormwater facilities are only allowed in buffers of wetlands with low
412 habitat function (less than ~~twenty five (20 5)~~ points on the habitat section of the
413 rating system form) per Section [40.450.040](#)(C)(4)(b).
- 414 b. Road and utility crossings into and through wetlands and wetland buffers are
415 allowed provided all the following conditions are met:

- 416 (1) Buffer functions, as they pertain to protection of the adjacent wetland and
417 its functions, are replaced;
- 418 (2) Impacts to the buffer and wetland are first avoided and minimized; and
- 419 (3) The activity does not result in a decrease in wetland acreage or
420 classification.
- 421 c. Regulated activities not involving stormwater management, road and utility
422 crossings, or a buffer reduction via enhancement are allowed in the buffer if all
423 the following conditions are met:
- 424 (1) The activity is temporary and will cease or be completed within three (3)
425 months of the date the activity begins;
- 426 (2) The activity will not result in a permanent structure in the buffer;
- 427 (3) The activity will not result in a reduction of buffer acreage or shoreline
428 ecological function; and
- 429 (4) The activity will not result in a reduction of wetland acreage or shoreline
430 ecological function.
- 431 d. Wetland mitigation for unavoidable impacts shall be required using the
432 following prioritization:
- 433 (1) On-Site. Locate mitigation according to the following priority:
- 434 (a) Within or adjacent to the same wetland as the impact;
- 435 (b) Within or adjacent to a different wetland on the same site;
- 436 (2) Off-Site. Locate mitigation within the same watershed, as shown on Section
437 [40.450.040](#), Figure 40.450.040-1, or use an established wetland mitigation
438 bank; the service area determined by the mitigation bank review team and
439 identified in the executed mitigation bank instrument;
- 440 (3) In-Kind. Locate or create wetlands with similar landscape position and the
441 same hydro-geomorphic (HGM) classification based on a reference to a
442 naturally occurring wetland system; and
- 443 (4) Out-of-Kind. Mitigate in a different landscape position and/or HGM
444 classification based on a reference to a naturally occurring wetland system.
- 445 e. The various types of wetland mitigation allowed are listed below in the general
446 order of preference.
- 447 (1) Re-establishment, which is the manipulation of the physical, chemical or
448 biological characteristics of a site with the goal of returning natural or
449 historic functions to a former wetland. Re-establishment results in a gain in
450 wetland acres (and functions). Activities could include removing fill material,
451 plugging ditches, or breaking drain tiles.

- 452 (2) Rehabilitation, which is the manipulation of the physical, chemical or
453 biological characteristics of a site with the goal of returning natural or
454 historic functions to a degraded wetland. Re-establishment results in a gain
455 in wetland function, but does not result in a gain in wetland acres. Activities
456 could involve breaching a dike to reconnect wetlands to a floodplain or
457 return tidal influence to a wetland.
- 458 (3) Creation (Establishment). The manipulation of the physical, chemical, or
459 biological characteristics of a site with the goal of developing a wetland on
460 an upland or deepwater site where a wetland did not previously exist.
461 Establishment results in a gain in wetland acres. Activities typically involve
462 excavation of upland soils to elevations that will produce a wetland hydro-
463 period, create hydric soils, and support the growth of hydrophytic plant
464 species.
- 465 (4) Enhancement. The manipulation of the physical, chemical, or biological
466 characteristics of a wetland site to heighten, intensify, or improve the
467 specific function(s) or to change the growth stage or composition of the
468 vegetation present. Enhancement is undertaken for specified purposes such
469 as water quality improvement, flood water retention, or wildlife habitat.
470 Enhancement results in a change in some wetland functions and can lead to
471 a decline in other wetland functions, but does not result in a gain in wetland
472 acres. Activities typically consist of planting vegetation, controlling non-
473 native or invasive species, modifying site elevations or the proportion of
474 open water to influence hydro-periods, or some combination of these
475 activities.
- 476 f. The mitigation ratios for each of the mitigation types described in Section
477 [40.460.530\(G\)\(3\)\(e\)](#) are specified in Section [40.450.040\(D\)\(4\)](#).
- 478 g. The Shoreline Administrator has the authority to approve preservation of
479 existing wetlands as wetland mitigation under the following conditions:
- 480 (1) The wetland area being preserved is a Category I or II wetland or is within
481 a WDFW priority habitat or species area;
- 482 (2) The preservation area is at least one (1) acre in size;
- 483 (3) The preservation area is protected in perpetuity by a covenant or
484 easement that gives the county clear regulatory and enforcement
485 authority to protect existing wetland and wetland buffer functions with
486 standards that exceed the protection standards of this chapter; and
- 487 (4) The preservation area is not an existing or proposed wetland mitigation
488 site.
- 489 h. Wetland mitigation shall be required in accordance with the wetland mitigation
490 standards in this section for the following indirect wetland impacts:
- 491 (1) Buffer loss resulting from wetland fills permitted under this section;

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

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

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

499 (3) Unavoidable loss of wetland function due to stormwater discharges that do
500 not meet the wetland protection standards in Chapter 40.385 40.386.

501 ***

502 **Section 5. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section
503 40.460.560, are amended as follows:

504
505 **40.460.560 Site Planning and Development**

506 A. General.

507 1. Land disturbing activities such as grading and cut/fill shall be conducted in such a
508 way as to minimize impacts to soils and native vegetation.

509 2. Impervious surfaces shall be minimized to the extent feasible as specified in
510 Chapter 40.385 40.386. Low impact development techniques shall be utilized
511 where feasible to minimize increases to stormwater runoff.

512 ***

513
514 **Section 6. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section
515 40.460.590, are amended as follows:

516
517 **40.460.590 Water Quality and Quantity**

518 ***

519 B. All shoreline development shall comply with the applicable requirements of Chapters
520 13.26A, Water Quality, 40.385 40.386, Stormwater and Erosion Control, and 40.410,
521 Critical Aquifer Recharge Areas.

522 C. Best management practices (BMPs) for control of erosion and sedimentation (Chapter
523 40.385 40.386) and for meeting water quality standards (Chapter 13.26A) shall be
524 implemented for all shoreline development.

525 ***

526
527 **Section 7. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section
528 40.460.630, are amended as follows:

529 **40.460.630 Use-Specific Development Regulations**

530 ***

531 F. Industrial Uses.

532 1. General Requirements.

533 a. Water-oriented industrial uses and development are preferred over non-water-
534 oriented industrial uses and development.

535 b. Water-related uses shall not displace existing water-dependent uses or occupy
536 space designated for water-dependent uses identified in a substantial
537 development permit or other approval.

538 c. Water-enjoyment uses shall not displace existing water-dependent or water-
539 related uses or occupy space designated for water-dependent or water-related
540 uses identified in a substantial development permit or other approval.

541 d. Waterward expansion of existing non-water-oriented industry is prohibited.

542 e. Proposed developments shall maximize the use of legally established existing
543 industrial facilities and avoid duplication of dock or pier facilities before expanding
544 into undeveloped areas or building new facilities. Proposals for new industrial and
545 port developments shall demonstrate the need for expansion into an undeveloped
546 area.

547 f. Proposed large-scale industrial developments or major expansions shall be
548 consistent with an officially adopted comprehensive scheme of harbor
549 improvement and/or long-range port development plan.

550 g. New facilities for shallow-draft shipping shall not be allowed to preempt deep-
551 draft industrial sites.

552 h. Ship, boat-building, and repair yards shall employ best management practices
553 (BMPs) with regard to the various services and activities they perform and their
554 impacts on surrounding water quality.

555 i. Industrial water treatment and water reclamation facilities may be permitted
556 only as conditional uses and only upon demonstrating that they cannot be located
557 outside of shoreline jurisdiction. They shall be designed and located to be
558 compatible with recreational, residential, or other public uses of the water and
559 shorelands.

560 2. Log Storage.

561 a. Log booming, rafting and storage in the Aquatic shoreline designation shall
562 comply with WAC [332-30-145](#) or its successor.

563 b. Log storage shall be permitted in public waters only where:

564 (1) Water quality standards can be met at all times;

- 565 (2) Grounding will not occur;
- 566 (3) Associated activities will not hinder other beneficial uses of the water,
567 such as small craft navigation; and
- 568 (4) Fish and wildlife habitat conservation areas can be avoided.
- 569 c. No log raft shall remain in the Aquatic shoreline designation for more than
570 one (1) year, unless specifically authorized in writing.
- 571 d. Log storage facilities shall be sited to avoid and minimize the need for
572 dredging in order to accommodate new barging and shall be located in
573 existing developed areas to the greatest extent feasible. If a new log storage
574 facility is proposed along an undeveloped shoreline, an alternatives analysis
575 shall be required that demonstrates that it is not feasible to locate the
576 facility within an existing developed area.
- 577 e. A debris management plan describing the removal and disposal of wood
578 waste must be approved by the county. Debris monitoring reports shall be
579 provided, where stipulated. Positive control, collection, treatment, and
580 disposal methods for keeping leachate, bark, and wood debris (both floating
581 and sinking particles) out of surface water and groundwater shall be
582 employed at log storage areas, log dumps, raft building areas, and mill-side
583 handling zones. In the event that bark or wood debris accidentally enters the
584 water, it shall be immediately removed. Surface runoff from log storage
585 areas shall be collected and discharged at only one point, if possible.
- 586 f. Existing in-water log storage and log booming facilities in critical habitats
587 utilized by threatened or endangered species classified under the
588 Endangered Species Act (ESA) shall be re-evaluated if use is discontinued for
589 one (1) year, or if substantial repair or reconstruction is required. The
590 evaluation shall include an alternatives analysis in order to determine if logs
591 can be stored upland and out of the water, or if the site should be used for
592 other purposes that would have lesser impacts on ESA-listed species. The
593 alternatives analysis shall include evaluation of the potential for moving all,
594 or portions of, log storage and booming to uplands.
- 595 g. Nonaquatic log storage areas shall meet the following requirements:
- 596 (1) The ground surface of any unpaved log storage area underlain by
597 permeable soils shall be separated from the highest seasonal water table
598 by at least four (4) feet in order to reduce waste buildup and impacts on
599 groundwater and surface water;
- 600 (2) Stormwater shall be managed consistent with Chapters [13.26A](#) and [40.385](#)
601 [40.386](#); and

602 (3) A berm must be located around the outer edge of the upland sort surface
603 using rocks, or other suitable materials to prevent loss of wood debris
604 into the water.

605 ***

606 J. Recreational Uses.

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

609 2. The minimum width of public access easements for trails shall be twenty (20) feet
610 when a trail is not located within a public right-of-way, unless the Shoreline
611 Administrator determines that undue hardship would result, or that it is
612 impractical or environmentally unsound. In such cases, easement width may be
613 reduced only by the minimum extent necessary to meet public access standards.

614 3. Recreation areas or facilities on the shoreline shall provide physical or visual public
615 access to the shoreline.

616 4. Parking areas shall be located upland away from the immediate shoreline, with
617 pedestrian trails or walkways providing access to the water.

618 5. All permanent, substantial, recreational structures and facilities shall be located
619 outside officially mapped floodways. The Shoreline Administrator may grant
620 administrative exceptions for nonintensive minor accessory uses (including, but
621 not limited to, picnic tables, playground equipment).

622 6. Recreational sites with active uses shall be provided with restrooms and hand-
623 sanitizing facilities in accordance with public health standards and without
624 adversely altering the natural features attractive for recreational uses.

625 7. Recreational facilities shall include features such as buffer strips, screening, fences,
626 and signs, if needed to protect the value and enjoyment of adjacent or nearby
627 private properties and natural areas from trespass, overflow and other possible
628 adverse impacts.

629 8. Where fertilizers and pesticides are used in recreational developments, waters in
630 and adjacent to such developments shall be protected from drainage and surface
631 runoff.

632 9. Golf course structures (clubhouses and maintenance buildings) that are non-water-
633 oriented shall be located no closer than one hundred (100) feet from the OHWM
634 of any shorelines of the state.

635 10. Tees, greens, fairways, golf cart routes, and other site development features shall
636 be located no closer than one hundred (100) feet from the OHWM of any
637 shorelines of the state to the extent practicable. Where unavoidable, such
638 development shall be designed to minimize impacts to shoreline and critical areas
639 and their buffers and mitigate impacts by including ecological restoration and
640 enhancement.

641 11. Golf course water hazards and stormwater drainage basins shall be managed:

- 642 a. For wildlife through appropriate plantings and measures to maintain or enhance
643 water quality; and
- 644 b. Consistent with Chapters [13.26A](#) and ~~40.385~~ [40.386](#).
- 645 12. The setback for water-related and water-enjoyment recreational development in
646 Natural, Urban Conservancy, and Medium Intensity shoreline designations is fifty
647 (50) feet, except trails which may meander between twenty (20) and fifty (50)
648 feet landward of the OHWM to:
- 649 a. Respond to site characteristics such as natural topography and existing
650 vegetation; or
- 651 b. Take advantage of opportunities for visual or physical access to the shoreline;
652 or
- 653 c. Connect existing trail easements; or
- 654 d. Create an interesting experience for trail users.
- 655 A trail project, any portion of which encroaches closer than fifty (50) feet, shall
656 maintain no net loss of shoreline ecological function and include shoreline
657 restoration where feasible.
- 658 13. The following trail types as described in the Vancouver-Clark Parks and Recreation
659 Regional Trails and Bikeway Systems Plan (2006) are preferred in the Natural
660 shoreline designation:
- 661 a. Type A3: Primitive Trails or Paths;
- 662 b. Type C2: Walking Trails or Paths; and
- 663 c. Type D1: Equestrian Trails or Paths.
- 664 14. When regional or local shared-use or other impervious surface trails are proposed
665 in the Natural or Urban Conservancy shoreline designations, to respond to
666 Americans with Disabilities Act (ADA) requirements or other circumstances or
667 conditions, the project shall maintain no net loss of shoreline ecological functions
668 and shall include restoration where feasible.
- 669 K.
- 670 1. Residential development shall include provisions to ensure preservation of native
671 vegetation and to control erosion during construction.
- 672 2. New residential construction shall be located so as not to require shoreline
673 stabilization measures.
- 674 3. New residential development shall be prohibited in, over, or floating on the water.
- 675 4. New residential development shall be located and designed to a density that
676 minimizes view obstructions to and from the shoreline.

- 677 5. Clustering of residential units as permitted by this title shall be allowed where
678 appropriate to minimize physical and visual impacts on shorelines.
- 679 6. In those areas where only on-site sewage systems are available, density shall be
680 limited to that which can demonstrably accommodate protection of surface and
681 groundwater quality.
- 682 7. New residential development, including sewage disposal systems, shall be
683 prohibited in floodways and channel migration zones.
- 684 8. Appurtenances, accessory uses, and facilities serving a residential structure shall be
685 located outside setbacks, critical areas, and buffers unless otherwise allowed
686 under this Program to promote community access and recreational opportunities.
687 Normal appurtenances are limited to garages (up to three (3) cars), shops (up to
688 one thousand (1,000) square feet), decks, driveways, utilities, and fences.
- 689 9. Residential lots that are boundary line-adjusted or newly created through a land
690 division shall be configured such that:
- 691 a. Structural flood hazard reduction measures are not required and will not be
692 necessary during the life of the development or use;
- 693 b. Shoreline stabilization measures are not required; and
- 694 c. Any loss of shoreline ecological function can be avoided.
- 695 10. Where a new moorage facility is proposed within a residential waterfront
696 development of more than four (4) units, only one (1) joint-use facility shall be
697 allowed, but only after demonstrating that such use is appropriate for the water
698 body. The applicant must also demonstrate that no public moorage facility is
699 available to residents. This condition of approval with required access easements
700 and dedications shall be identified on the face of the plat. In addition, the joint-
701 use dock easement shall be recorded with the County Auditor.
- 702 11. New floating homes are prohibited.
- 703 12. Floating homes legally established as of January 1, 2011, are considered
704 conforming uses. A one (1) time expansion is allowed, as follows:
- 705 a. The expansion maintains the size of the footprint of the existing residence;
- 706 b. The expansion does not exceed the allowed height limit; and
- 707 c. The applicant demonstrates through a letter of exemption that the expansion will
708 result in no net loss of shoreline ecological functions.
- 709 13. Existing residential structures.
- 710 a. Legally established existing residential structures and appurtenances
711 located landward of the OHWM and outside the floodway that do not meet the
712 standards of this Program are considered to be conforming-, except that an
713 application to replace an existing residential structure must meet all setback,
714 height, and other construction requirements of the Program and the Act. A one -
715 (1) time expansion is allowed, as follows:

- 716 1a. The expansion is no more than twenty-five percent (25%) of the
717 habitable floor area of the existing residence;
- 718 2b. The expansion does not exceed the allowed height limit;
- 719 3e. The expansion is no further waterward ~~of~~ than the existing structure;
720 and
- 721 4d. The applicant demonstrates ~~through a letter of exemption~~ that the
722 expansion will result in no net loss of shoreline ecological functions.

723 b. If a structure or development is damaged by fire, flood, explosion, or other natural
724 disaster and the damage is less than sixty percent (60%) of the replacement cost of
725 the structure or development, it may be restored or reconstructed to those
726 configurations existing at the time of such damage, provided:

- 727 1. The reconstructed or restored structure will not cause additional adverse
728 effects to adjacent properties or to the shoreline environment;
- 729 2. The rebuilt structure or portion of structure shall not expand the original
730 footprint or height of the damaged structure;
- 731 3. No degree of relocation shall occur, except to increase conformity or to
732 increase ecological function, in which case the structure shall be located
733 in the least environmentally damaging location possible;
- 734 4. The submittal of applications for permits necessary to restore the
735 development is initiated within twelve (12) months of the damage. The
736 Shoreline Administrator may waive this requirement in situations with
737 extenuating circumstances;
- 738 5. The reconstruction is commenced within one (1) year of the issuance of
739 permit;
- 740 6. The Shoreline Administrator may allow a one (1) year extension provided
741 consistent and substantial progress is being made; and
- 742 7. Any residential structures, including multifamily structures, may be
743 reconstructed up to the size, placement and density that existed prior to
744 the damage, so long as other provisions of this Program are met.

745

746 c. If a structure or development is either demolished, or damaged by fire, flood,
747 explosion, or other natural disaster and the damage is more than sixty percent
748 (60%) of the replacement cost of the structure or development, then any
749 replacement structure has to meet the requirements of the Program and the Act.

750 14. New appurtenances shall meet the setback requirements of this Program.

751 ***

752 N. Utility Uses.

753 These provisions apply to services and facilities that produce, convey, store, or
754 process power, gas, wastewater, communications, and similar services and functions.
755 On-site utility features serving a primary use, such as a water, sewer or gas line to a
756 residence or other approved use, are “accessory utilities” and shall be considered a
757 part of the primary use.

- 758 1. Whenever feasible, all utility facilities shall be located outside shoreline
759 jurisdiction. Where distribution and transmission lines (except electrical
760 transmission lines) must be located in the shoreline jurisdiction they shall be
761 located underground.
- 762 2. Where overhead electrical transmission lines must parallel the shoreline, they
763 shall be outside of the two hundred (200) foot shoreline environment unless
764 topography or safety factors would make it unfeasible.
- 765 3. Utilities, including limited utility extensions, shall be designed, located and
766 installed in such a way as to preserve the natural landscape, minimize impacts
767 to scenic views, and minimize conflicts with present and planned land and
768 shoreline uses.
- 769 4. Transmission, distribution, and conveyance facilities shall be located in existing
770 rights-of-way and corridors or shall cross shoreline jurisdictional areas by the
771 shortest, most direct route feasible, unless such route would cause significant
772 environmental damage.
- 773 5. Utility production and processing facilities, such as power plants and wastewater
774 treatment facilities, or parts of those facilities that are non-water-oriented shall
775 not be allowed in the shoreline jurisdiction unless it can be demonstrated that
776 no other feasible option is available.
- 777 6. Stormwater control facilities, limited to detention/retention/treatment ponds,
778 media filtration facilities, and lagoons or infiltration basins, within the shoreline
779 jurisdiction shall only be permitted when the stormwater facilities are designed
780 to mimic and resemble natural wetlands, ponds, or closed depressions, and meet
781 applicable water quality requirements of Chapter ~~40.385~~ 40.386.
- 782 7. Stormwater outfalls may be placed below the OHWM to reduce scouring, but
783 new outfalls and modifications to existing outfalls shall be designed and
784 constructed to avoid impacts to existing native aquatic vegetation attached to or
785 rooted in substrate. In river and stream shorelines, stormwater outfall structures
786 may require permanent bank hardening to prevent failure of the outfall
787 structure or erosion of the shoreline. Diffusers or discharge points must be
788 located offshore at a distance beyond the nearshore area to avoid impacts to
789 nearshore habitats.
- 790 8. Water reclamation discharge facilities such as injection wells or activities such as
791 land application are prohibited in the shoreline jurisdiction, unless the discharge
792 water meets Ecology's Class A reclaimed water standards. An applicant for
793 discharge of Class A reclaimed water in the shoreline jurisdiction shall
794 demonstrate habitat benefits of such discharge.
- 795 9. Where allowed under this Program, construction of underwater utilities or those
796 within the wetland perimeter shall be scheduled to avoid major fish migratory
797 runs or use construction methods that do not cause disturbance to the habitat or
798 migration.
- 799 10. All underwater pipelines transporting liquids intrinsically harmful to aquatic life
800 or potentially detrimental to water quality shall be equipped with automatic
801 shut off valves.

802 11. Upon completion of utility installation/maintenance projects on shorelines,
 803 banks shall, at a minimum, be restored to pre-project configuration, replanted
 804 and provided with maintenance care until the newly planted vegetation is fully
 805 established. Plantings shall be native species and/or be similar to vegetation in
 806 the surrounding area.

807

808 **Section 8. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16, most recently amended by Sec.
 809 2, Ord. 2014-08-10, and codified as CCC Section 40.460.800, are each amended as
 810 follows:

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 813

Normal maintenance	“Normal maintenance” means those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition (WAC <u>173-27-040(2)(b)</u>); <u>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 CCC 40.460.250.</u> See also “normal repair.”
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, <u>except where for repair that would causes 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 CCC 40.460.250.</u> Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment (WAC 173-27-040(2)(b)) - See also “normal maintenance.”

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818 **Section 9. Effective date.** This ordinance shall take effect two weeks after Washington
 819 State DOE approval. Provisions in Chapter 40.386 shall take effect January 8, 2016.

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Section 10. Instructions to the clerk.
 The Clerk to the Board shall:

- 823 1. Record a copy of this ordinance with the Clark County Auditor.
- 824 2. Transmit a copy of this ordinance to the State Departments of Ecology
 825 and Commerce within ten days of its adoption.

