

ORDINANCE NO. 2013 - 06 - 15

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WHEREAS, the state of Washington recently amended WAC 197-11-800 (Categorical Exemptions) to expand the threshold of certain types of minor new construction to be exempt from SEPA review;

WHEREAS, WAC 197-11-800 (1) (c) (i) allows jurisdictions to adopt the maximum optional thresholds in WAC 197-11-800 (1) (d) in their own development codes, provided documentation is provided that the requirements for environmental analysis, protection and mitigation for impacts to the environment have been adequately addressed and that a description of the public comment opportunities that are provided for in the increased exemption levels;

WHEREAS, Exhibit 1 to this ordinance documents how existing local, state and federal regulations address most environmental impacts associated with expanding the categorical exemptions;

WHEREAS, Exhibit 2 to this ordinance documents the public comment opportunities that are provided for within the increased exemption levels;

WHEREAS, the required sixty day notification of intent to adopt these amendments was received by the State Department of Commerce on April 1, 2013;

WHEREAS, a SEPA determination of non-significance was published on April 8, 2013, with an extended public comment period ending on May 2, 2013;

WHEREAS, the county's provisions to reduce the chance of impacts to archaeological resources are only applicable when SEPA review is required, and raising the categorical exemptions levels allows more land disturbing activities to occur without preliminary archaeological investigations;

Whereas SEPA comment letters from the state Department of Archaeology and Historic Preservation (DAHP), the Yakama Nation, the Clark County Historic Preservation Commission, and the Washington Trust for Historic Preservation all expressed concern that fewer SEPA reviews would allow more land disturbing activities to occur without preliminary archaeological investigations;

WHEREAS, legal notice of the Clark County Planning Commission public hearing was published on April 3, 2013;

WHEREAS, the Planning Commission took public testimony on April 18, 2013, and developed their recommendation to the Board of County Commissioners which included requiring archaeological assessments prior to development in certain areas, independent of SEPA requirements;

WHEREAS, the Development and Engineering Advisory Board supports the proposed categorical exemptions and maintaining the County's policy on archaeological pre-determination requirements;



1 WHEREAS, a legal notice of the Board of County Commissioner's public hearing was  
2 published on June 3, 2013,  
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4 WHEREAS, the Board of County Commissioners took public testimony on June 18, 2013,  
5 on the planning commission recommendation;  
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7 WHEREAS, the Board of County Commissioners finds these amendments in the public  
8 interest;  
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10 BE IT HEREBY ORDERED, RESOLVED AND DECREED BY THE BOARD OF COUNTY  
11 COMMISSIONERS, CLARK COUNTY, STATE OF WASHINGTON AS FOLLOWS:  
12

13 **Section 1. Amendatory.**

14 Sec.1 of Res. 1984-09-85 as most recently amended by Sec.1 (Att. A) of Ord. 2009-07-01  
15 and codified as CCC Section 40.570.090 are hereby amended as follows:

16 40.570.090 Categorical Exemptions

17 \*\*\*\*\*

18 C. Exempt Levels for Minor New Construction.

19 Clark County establishes the following exempt levels for the minor new construction  
20 activities under WAC 197-11-800(1)(b) based on local conditions except when  
21 undertaken wholly or partly on lands covered by water as authorized under RCW  
22 43.21C.135:

23 1. For residential structures in WAC 197-11-800(1)(b)(i), ~~up to twenty (20)~~ thirty (30) or  
24 fewer single family residential dwelling units shall be exempt within unincorporated  
25 urban areas designated by the comprehensive plan; within designated urban  
26 reserve and rural areas, ~~four (4)~~ twenty (20) or less fewer dwelling units shall be  
27 exempt.

28 2. For residential structures in WAC 197-11-800(1)(b)(ii), sixty (60) or fewer multifamily  
29 residential dwelling units shall be exempt within unincorporated urban areas  
30 designated by the comprehensive plan.

31 ~~23.~~ For agricultural structures in WAC 197-11-800(1)(b)(~~iii~~), (iii), the exempt threshold  
32 shall be ~~ten thousand (10,000)~~ forty thousand (40,000) square feet.

33 ~~34.~~ For office, school, commercial, recreational, service or storage buildings (but not  
34 including manufacturing buildings) in WAC 197-11-800(1)(b)(~~iii~~), (iv), up to ~~twelve~~  
35 ~~thousand (12,000)~~ thirty thousand (30,000) square feet of gross floor area and up  
36 to ~~forty (40)~~ ninety (90) associated or stand-alone parking spaces shall be exempt  
37 within unincorporated urban areas designated by the comprehensive plan; within  
38 designated urban reserve and rural areas, the exempt levels for these facilities  
39 shall be ~~four thousand (4,000)~~ twelve thousand (12,000) square feet or less, and  
40 up to ~~twenty (20)~~ forty (40) associated or stand-alone parking spaces.

41 ~~4.~~ ~~For parking lots in WAC 197-11-800(1)(b)(iv), up to forty (40) parking spaces shall~~  
42 ~~be exempt within unincorporated urban areas designated by the comprehensive~~

1 plan; within designated urban reserve and rural areas, the exempt level shall be  
2 twenty (20) parking spaces.

- 3 5. For landfills and excavations in WAC 197-11-800(1)(b)(v), not associated with an  
4 exempt project in subsections 40.570.090.C.1 through 4 above, up to five hundred  
5 (500) one thousand (1,000) cubic yards shall be exempt.  
6 6. Whenever the county establishes new exempt levels under this section, it shall  
7 send them to the Washington Department of Ecology, Headquarters Office,  
8 Olympia, Washington 98504, under WAC 197-11-800(1)(c).

9 D. Critical Areas.

- 10 1. Clark County designates the following as critical areas, in which the exemptions as  
11 specified in subsection (E) of this section do not apply:  
12 a. Shoreline Management Areas. Land and water areas under jurisdiction of the  
13 Shoreline Management Act are critical areas. These shorelines of the county are  
14 mapped in the Clark County Shoreline Master Program, which maps are  
15 incorporated in this chapter by reference. All development subject to shorelines  
16 substantial development permits, shorelines conditional use permits, and  
17 shorelines variance permits are subject to SEPA, except that SEPA review shall  
18 not be required for the exempt shoreline developments listed in Section  
19 40.460.230(B), provided that no part of the exempt shoreline development is  
20 undertaken on lands covered by water as defined in WAC 197-11-756. In addition,  
21 the minor repair or replacement of structures such as pilings, ramps, floats, or  
22 mooring buoys, or minor repair, alteration, or maintenance of docks that are  
23 specifically exempted within WAC 197-11-800(3) shall also be exempt from SEPA  
24 review.  
25  
26 ~~(1) SEPA shall not be required for the exempt shoreline developments listed in~~  
27 ~~Section 40.460.230(B), except when undertaken wholly or partly on lands~~  
28 ~~covered by water. Exempt shoreline developments undertaken wholly or~~  
29 ~~partly on lands covered by water that are specifically exempted by WAC~~  
30 ~~197-11-800 shall also be exempted from the requirements of this chapter.~~  
31 b. Floodplains. All areas within the one hundred (100) year floodplain boundary  
32 delineated by the Federal Emergency Management Agency (FEMA) under the  
33 Flood Insurance Study for Clark County are critical areas. These one hundred  
34 (100) year floodplains are designated on FEMA's Flood Insurance Rate Maps  
35 (FIRM), which are incorporated in this chapter by reference.  
36 c. Wetlands subject to the provisions of Chapter 40.450 are critical areas.  
37 (1) Exemptions listed in Section 40.450.010(C) shall be exempt from SEPA.  
38 (2) Other exemptions as specified in Section 40.570.090(E) do not apply  
39 unless authorized by a Type I wetland permit under Section  
40 40.450.040(G)(1)(a).  
41 d. The following critical areas regulation ordinances but only for personal wireless  
42 service facilities:  
43 (1) Chapter 40.440, Habitat Conservation;  
44 (2) Chapter 40.430, Geologic Hazard Areas;  
45 (3) Chapter 40.410, Critical Aquifer Recharge Areas (CARAs).  
46 2. The scope of environmental review of actions within these areas shall be limited  
47 to:

- 1 a. Documenting whether the proposal is consistent with the requirements of the  
2 applicable critical areas ordinance; and
- 3 b. Evaluating potentially significant impacts on the critical area resources not  
4 adequately addressed by the comprehensive plan and implementing  
5 ordinances, including any additional mitigation measures needed to protect the  
6 critical areas in order to achieve consistency with SEPA and other applicable  
7 environmental review laws.
- 8 3. The county shall treat proposals located wholly or partially within a critical area no  
9 differently than other proposals under this chapter, making a threshold  
10 determination for all such proposals. The county shall not automatically require an  
11 EIS for a proposal merely because it is proposed for location in a critical area.

12 E. Non-Applicable Exemptions to Critical Areas.

13 Clark County selects the following categorical exemptions to be inapplicable within  
14 certain critical areas as specified below:

- 15 1. The minor new construction exemptions under Section 40.570.090(C) do not apply  
16 within any critical area, except that agricultural structures in Section  
17 40.570.090(C)(2) (3) are exempt in shoreline and unstable slope areas, and on  
18 slopes of forty percent (40%) or greater.
- 19 2. Other minor new construction exemptions under WAC 197-11-800(2) do not apply  
20 as follows:
  - 21 a. Bus shelters and other transit facilities in WAC 197-11-800(2)(a) are not exempt  
22 in any critical area;
  - 23 b. Commercial and public signs in WAC 197-11-800(2)(b) are not exempt in  
24 shoreline management areas;
  - 25 c. Minor road and street improvements in WAC 197-11-800(2)(c) are not exempt  
26 in any critical area;
  - 27 d. Grading, septic tank installation, and other activities in WAC 197-11-800(2)(d)  
28 are not exempt in any critical area;
  - 29 e. Building additions and modifications in WAC 197-11-800(2)(e) are not exempt in  
30 any critical area;
  - 31 f. Demolition of structures in WAC 197-11-800(2)(f) is not exempt in shoreline  
32 management areas;
  - 33 g. Underground storage tanks in WAC 197-11-800(2)(g) are not exempt in any  
34 critical area; and
  - 35 h. Street or road vacations in WAC 197-11-800(2)(h) are not exempt in shoreline  
36 management areas.
- 37 3. The approval of short plats under WAC 197-11-800(6)(a) is not exempt in any  
38 critical area.
- 39 4. Licenses for amusement and entertainment activities in WAC 197-11-800(13)(c)  
40 are not exempt in any critical area.
- 41 5. Utility-related exemptions under WAC 197-11-800(23) do not apply as follows:
  - 42 a. Communication lines in WAC 197-11-800(23)(a) are not exempt in shoreline  
43 management areas;

- 1           b. Eight (8) inch or less diameter water, sewer and stormwater facilities in WAC  
2           197-11-800(23)(b) are not exempt in any critical area;
- 3           c. Electric facilities in WAC 197-11-800(23)(c) are not exempt in shoreline  
4           management areas;
- 5           d. Natural gas distribution facilities in WAC 197-11-800(23)(d) are not exempt in  
6           shoreline areas; and
- 7           e. Right-of-way clearing in WAC 197-11-800(23)(f) is not exempt in shoreline  
8           areas.
- 9           6. The natural resources management exemptions under WAC 197-11-800(24) do  
10           not apply as follows:
  - 11           a. Issuance of leases for school sites in WAC 197-11-800(24)(e) is not exempt in  
12           any critical area; and
  - 13           b. Development of recreational sites in WAC 197-11-800(24)(g) is not exempt in  
14           any critical area.
- 15           7. Personal wireless service facilities in WAC 197-11-800(25) are not exempt in any  
16           critical area

17 **Section 2. Amendatory.**

18 Sec. 1 of Ord. 2003-11-01 as most recently amended by Sec.18 of Ord. 2010-08-06 and  
19 codified as CCC Section 40.520.040.D is hereby amended as follows:

20  
21 **40.520.040 (Site Plan Review)**

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24 **D. Approval Process.**

- 25           1. A site plan subject to a Type I review is not subject to pre-application review  
26           unless requested by the applicant.
- 27           2. A site plan subject to a Type II review is subject to pre-application review pursuant  
28           to Section 40.510.020, unless waived.
- 29           3. An application for a pre-application review of a site plan shall comply with the  
30           submittal requirements in Section 40.510.050 regarding pre-application review.
- 31           4. An application for a review of a site plan shall comply with the submittal  
32           requirements in Section 40.510.050.
- 33           5. Developments that are subject to site plan review and require grading an area of  
34           more than 15,000 square feet are subject to the requirements in Section  
35           40.570.080.C.3.k even if the development is exempt from SEPA.

36  
37 **Section 3.**

38 Sec. 9 (Ex. 18) of Ord. 1996-05-01 as most recently amended by Sec.25 of Ord. 2012-07-  
39 03 and codified as CCC Section 40.570.080.C is hereby amended as follows:

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k. Historic and Cultural Preservation.

(1) Purpose. It is the county's policy to recognize and protect important historic and cultural resources, including those listed on the national, state and local registers of historic places; cultural resources inventoried by the State Archaeologist and Clark County; and as yet unrecorded sites, objects or structures.

(2) Definitions. For the purposes of this chapter, the following definitions shall apply:

Archaeological predetermination	"Archaeological predetermination" means a preliminary archaeological investigation of a project area which includes, but is not limited to, a review of archaeological databases, walking the site in a series of transects, and the use of shovel test probes of the subsurface as necessary. When archaeological deposits are identified, sufficient shovel test probe examination shall be conducted to determine whether the discovery meets the definition of an archaeological site in RCW 27.53.030. A Washington State Archaeological Site Inventory form shall be completed and submitted for the identified site.
Archaeological survey	"Archaeological survey" means a formal archaeological study that includes background research and adheres to the State Department of Archaeology and Historic Preservation (DAHP) survey and reporting standards. Additional testing and/or data recovery, if recommended, will require an Archaeological Excavation Permit from the Department of Archaeology and Historic Preservation.
Shovel test probe	"Shovel test probe" is defined as a cylindrical hand-dug vertical hole measuring fifty (50) centimeters in diameter and excavated to a depth of at least fifty (50) centimeters below ground surface.

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(3) Applicability. The county adopts by this reference the statewide Clark County Archaeological Predictive Model and associated probability maps. The predictive model and probability maps may be periodically updated to reflect the best available information. Table 40.570.080-1 is based on the predictive model and maps, and shall be used to determine when an archaeological predetermination shall be required. The determinations within the table are further subject to the additional provisions in Section 40.570.080(C)(3)(k)(3)(a).

Table 40.570.080-1. Need for Predetermination				
Predictive Model Map Designation		Potential for Impacts		
Class	Probability Index	Low <sup>1</sup>	Moderate <sup>2</sup>	High <sup>3</sup>

1	1% – 20% } Low	No	No	No
2	21% – 40% } Low-Moderate	No	No	Yes
3	41% – 60% } Moderate	No	Yes	Yes
4	61% – 80% } Moderate-High	No	Yes	Yes
5	81% – 100% } High	No	Yes	Yes

1 <sup>1</sup> *Low potential impacts: Those activities involving no ground disturbance, normal*  
2 *maintenance and repair of existing structures and facilities, lands that have been*  
3 *substantially disturbed to a depth of more than eight (8) inches, and areas that have been*  
4 *adequately surveyed in the past with no discovery of resources.*

5 <sup>2</sup> *Moderate potential impacts: Activities involving slight ground disturbance not otherwise*  
6 *characterized as having low or high impact potential.*

7 <sup>3</sup> *High potential impacts: Activities involving disturbance of more than twelve (12) inches*  
8 *below the ground surface and more than ten thousand (10,000) square feet of area.*

- 9 (a) Regardless of the probability map designation in Table 40.570.080-1,  
10 predeterminations shall be required as specified below:  
11 (i) A predetermination shall be required for any high potential impact  
12 project located within one-quarter (1/4) mile of a recorded site.
- 13 (ii) A predetermination shall be required for any moderate through  
14 high potential impact project located within five hundred (500) feet  
15 of a known, but unregistered, site.
- 16 (4) Predeterminations. When required, a predetermination completed by a  
17 professional archaeologist shall be submitted to the DAHP for their review  
18 and approval. As part of a counter complete development application, the  
19 applicant shall submit proof via an e-mail confirmation or other conclusive  
20 method that the DAHP has received the site-specific document for review.  
21 If the DAHP required additional archaeological studies as a result of a prior  
22 predetermination, any such studies shall be completed, and proof shall be  
23 submitted that the DAHP has received the study prior to the submittal of a  
24 development application.
- 25 (5) Survey. An archaeological survey shall be required if the  
26 predetermination report calls for a survey, or is required by the DAHP, or  
27 upon discovery of an archaeological site during development of any  
28 permitted project.
- 29 (6) Mitigation Measures. An archaeological survey shall result in a report  
30 addressing the significance of cultural resources present on the site. The  
31 study shall include recommendations to mitigate impacts to the  
32 archaeological site consistent with WAC 25-48-020.

(7) If human remains are discovered, all work shall stop, and local law enforcement officials shall be notified immediately.

(8) It is further the county's policy to consult with affected Native American interests in matters of cultural resource preservation. The following code provisions and plan policies also apply to historic and cultural resources:

- (a) Chapter 14.07, Grading, and IBC Sections 106 and 3407;
- (b) Section 40.250.030, Historic Preservation, and Rules and Procedures of the Clark County Heritage Commission;
- (c) Chapter 40.240, Columbia River Gorge National Scenic Area Districts; and
- (d) Chapter 8 of the Clark County Comprehensive Plan.

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**Section 4.**

Sec. 1(Att. A) of Ord. 2007-06-05 as most recently amended by Sec.10 of Ord. 2012-05-14 and codified as CCC Section 14.07.040 is hereby amended as follows:

**14.07.040 Permits required.**

(1) General.

(a) Unless exempted by subsection (2) of this section, a grading permit is required for all land-disturbing activities on a site, as follows:

(i) In urban areas on sites less than one (1) acre when grading involves more than fifty (50) cubic yards of earth materials;

(ii) In urban areas on sites of one (1) acre or more, and in rural areas on sites less than five (5) acres, when grading involves more than one hundred (100) cubic yards of earth materials; and

(iii) In rural areas on sites of five (5) acres or more, when grading involves more than two hundred (200) cubic yards of earth materials.

(iv) Within critical areas, regardless of whether the site is in an urban or rural area, when grading involves more than fifty (50) cubic yards of earth materials. Grading in critical areas may be subject to other federal, state, and county regulations, including SEPA. Critical areas within the county include: flood hazard areas (Chapter 40.420), geologic hazard areas (Chapter 40.430), habitat conservation areas (Chapter 40.440), and wetland protection areas (Chapter 40.450), as well as areas subject to the shoreline master program (Chapter 40.460).

(v) "Stand-alone" grading projects in excess of 500 cubic yards are subject to the requirements in Section 40.570.080.C.3.k even if the grading is exempt from SEPA.

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**Section 5. Effective Date.**

This ordinance shall take effect at midnight on the date of its adoption.

**Section 6. Instructions to Clerk.**

The Clerk of the board shall:

- 1) Transmit a copy of this ordinance to the Washington State Department of Commerce within ten (10) days of its adoption, pursuant to RCW 36.70A.106;
- 2) Record a copy of this Ordinance with the Clark County Auditor;
- 3) Cause notice of adoption of this ordinance to be published forthwith, pursuant to RCW 36.70A.290; and
- 4) Transmit a copy of the adopted ordinance to Code Publishing, Inc. forthwith to update the electronic version of the Clark County Code.

ADOPTED this 18th day of June, 2013.

Attest:

BOARD OF COMMISSIONERS  
FOR CLARK COUNTY

*Jane Pedler*

*[Signature]*

Deputy \_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_  
Steve Stuart, Chair



Approved as to form only:

By: \_\_\_\_\_  
David Madore, Commissioner

*Christine M. Cook*

By: \_\_\_\_\_  
Tom Mielke, Commissioner

Chris Cook  
Deputy Prosecuting Attorney

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