ORDINANCE No. 2014-12-05

An ordinance relating to wetland protection and habitat conservation; amending Chapters 40.440, 40.450, and 6.110A of the Clark County Code; and providing for an effective date.

WHEREAS, the Washington Department of Ecology recently revised the Washington State Wetland Rating System, and as required by the Growth Management Act, Clark County shall keep its critical areas ordinances consistent with best available science; and

WHEREAS, the Department of Environmental Services is committed to providing excellent customer service and has identified opportunities to improve the flexibility of providing that service by offering expedited permitting, improved habitat mapping, and revised exemption criteria, and

WHEREAS, the required sixty day notification of intent to adopt this set of code amendments was received by the Department of Commerce on October 7, 2014; and

WHEREAS, a SEPA Determination of Non-significance was published on November 5, 2014, and no comments were received; and

WHEREAS, legal notice of the Clark County Planning Commission public hearing was published on November 5, 2014; and

WHEREAS, the Planning Commission took public testimony on November 20, 2014, and developed their recommendation of approval to the Board of Commissioners; and

WHEREAS, legal notice of the Board of County Commissioner's public hearing was published on November 19, 2014; and

WHEREAS, on December 9, 2014, the Board of County Commissioners took public testimony on the Planning Commission recommendation; and

WHEREAS, the Board of County Commissioners finds these amendments in the public interest; now, therefore,

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

Section 1. Amendatory. Those portions of Section 30 of Ordinance 1997-12-46, as most recently amended by Section 1, Exhibit 1 of Ordinance 2012-02-03, and codified as CCC 6.110.040, are each hereby amended as follows:

6.110A.040 Environmental services review fees

Fees for review activities included in Table 6.110A.040 shall be collected prior to processing the application.

Table 6.110A.040 Preliminary/Final Environmental Review Fees

Section	Activity	Fee	Issuance Fee
1	**Environmental Services Fees** [1, 9, 10, 12]		
A	**AG Management Plan**		
	Habitat agriculture plan	Free	N/A
B	**Applicant Initiated Hold/Open Record for Hearing** [2]		
	Any critical area case type	$174	N/A
C	**Appeals to Hearing Examiner**		
I	Appeals of an environmental permit decision[4] or appeals of community development or public works cases where the appeal could affect critical area permits or have environmental impacts	$200	$94
II	Reconsideration by hearings examiner	Reimburse county at hourly rate of examiner	$94
D	**Building Permit ~~Applicability~~ Review (not including site visit)**		
	Office review for forest/habitat/wetland ordinance applicability and expedited habitat permits.[3]	$135	N/A

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Section 2. Amendatory. Those portions of Section 1 of Ordinance 1997-05-30 most recently amended by Section 1, Exhibit A of Ordinance 2006-08-03 and codified as CCC 40.440.010, are each hereby amended as follows:

40.440.010 Introduction

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C. Habitat Areas Covered by This Chapter.

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

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

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

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

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

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

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

b. Other Priority Habitats and Species (PHS). Areas identified by and consistent with WDFW priority habitats and species criteria, including areas within one thousand (1,000) feet of individual species point sites. The county shall defer to WDFW in regards to classification, mapping and interpretation of priority habitat species.

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

~~2. Mapping.~~

~~a. The above habitat areas are mapped on a countywide basis in the adopted "Priority Habitats and Species Map." Maps are on file in the department and are available for public viewing and circulation. Further distribution of mapped information and notification to potentially impacted property owners will be completed as indicated in Sections 40.440.020(D)(1) and (E)(1).~~

~~b. Maps of individual locations of sensitive, threatened, or endangered wildlife species are maintained separately. Under law, this information is not available for widespread public distribution unless authorized by WDFW. However, property owners may obtain all existing information for their properties upon request.~~

~~c. Official maps shall be updated by the county as warranted by new information using the annual review process.~~

2~~3~~. Best Available Science. Definitions and maps of habitat areas are based on best available science, as defined in WAC 365-195-905 (Criteria for determining which information is the "best available science") and described in the following documents:

a. 1999 Washington Department of Fish and Wildlife Priority Habitats and Species List;

b. 1997 Management Recommendations for Washington's Priority Habitats;

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

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

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

3~~4~~. Determining Site-Specific Applicability. In the event of inconsistencies, official habitat area definitions shall prevail over countywide maps in determining applicability of this chapter. The county shall follow the recommendations of WDFW in the interpretation of site-specific conditions as they relate to the definition of priority habitat and species.

D. Activities Reviewed Under This Chapter.

This chapter applies to activities within designated priority and locally important habitat areas as described in Table 40.440.010-1.

Table 40.440.010-1. Exempt and Reviewed Activities

Proposal	Is a clearing review required?	Are any additional fees or review timelines required?
Land division or lot reconfiguration entirely outside habitat areas, except as subject to Section 40.440.010(B)(3)	No. Exempt	Fees pursuant to Chapter 6.110A
Land division or lot reconfiguration containing habitat areas, except as subject to Section 40.440.010(B)(3)	Exempt if impacted lots establish building and clearing envelopes	Fees pursuant to Chapter 6.110A. Adjustment to allow smaller lots necessary for

	outside of habitat	critical lands protection can be provided without additional fees if consistent with overall zoning density as per Section 40.440.020(C)(1)
Any activities on lots not in habitat areas, except as subject to Section 40.440.010(B)(3)	Exempt	None
Any activities on portions of lots not containing habitat areas, except as subject to Section 40.440.010(B)(3)	Exempt	None
Remodeling, ~~or~~ replacement of, or additions to, ~~not to exceed the 1997 footprint, of~~ existing homes and associated appurtenances ~~buildings~~ that expand the original footprint by no more than 900 sq. ft. within the outer 50% of the Riparian habitat area and do not require clearing of native trees or shrubs ~~inside habitat areas~~.	Exempt	None
Maintenance of existing yards and landscaping in habitat areas	Exempt	None
Forest practices in habitat areas that are regulated by the Washington Department of Natural Resources under the Forest Practices Rules or regulated under Clark County Code Section 40.260.080, Forest Practices, except conversions or conversion option harvest plans (COHPs)	Exempt	None
Emergency clearing to abate immediate danger to persons or property. For emergency clearing of hazard trees, remove only that portion of a hazard tree as is minimally necessary to remediate the hazard. Cut wood should be left in the habitat area	Exempt	None
Clearing necessary for the emergency repair of utility or public facilities; provided, that notification of emergency work that causes substantial degradation to functions and values is reported in a timely	Exempt	None

manner		
Clearing for operation, maintenance or repair of existing utilities or public facilities that does not further increase the impact to, or encroach further within the habitat area	Exempt	None
Clearing of defined nuisance vegetation in habitat areas which utilizes methods that minimize disturbance of soils and non-nuisance vegetation. Replanting with native vegetation should be pursued to prevent re-infestation	Exempt	None
Clearing as minimally necessary for placement of fencing, private wells, septic systems or individual lot sewer, water, electrical or utility connections in habitat areas, where practical alternatives do not exist	Exempt	None
Clearing as minimally necessary for stream bank restoration, for native replanting or enhancements in habitat areas	Exempt	None
Clearing as minimally necessary for routine road maintenance activities in habitat areas consistent with Regional Road Maintenance ESA Program Guidelines	Exempt	None
Clearing as minimally necessary for soil, water, vegetation or resource conservation projects having received an environmental permit from a public agency in habitat areas	Exempt	None
Clearing as minimally necessary for creating a 4-foot or narrower path using natural, wood-based, or vegetated pervious surfacing in habitat areas	Exempt	None
Clearing as minimally necessary for surveying or testing in habitat areas	Exempt	None
Clearing or development in riparian habitat areas which is at least one hundred (100) feet from the waterline and separated by a continuous public or private roadway serving	Exempt	None

three (3) or more lots		
Non-development clearing activities in habitat areas consistent with a recorded stewardship plan for which any mitigation specified in the plan is timely completed	Exempt	None
Existing agricultural uses within non-riparian habitat areas	Exempt	None
Existing agricultural uses within riparian habitat areas	Reviewed under Section 40.440.040(B)(1)(b)	None
New home or other construction in habitat areas	Review required	No additional timelines. Applicable review (building permit, etc.) must comply with ordinance standards. Fees pursuant to Title 6
All other vegetation clearing in habitat areas	Review required	Fees pursuant to Title 6. Applicable review, if any, must comply with ordinance standards. If no other review involved, clearing request will be reviewed administratively

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Section 3. Amendatory. Those portions of Section 1 of Ordinance 1992-02-03 as most recently amended by Section 1, Exhibit A of Ordinance 2006-05-27 and codified as CCC 40.450.020, are each hereby amended as follows:

40.450.020 Rating Systems

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B. Wetland Rating System.
Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the Washington State Wetland Rating System for Western Washington ~~(Ecology Publication #04-06-025, August 2004)~~. The rating system document contains the definitions and methods for determining if the criteria below are met:

1. Wetland Rating Categories.

   a. Category I. Category I wetlands are:

(1) Wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as having high ~~high quality wetlands~~conservation value;

(2) Bogs ~~larger than one-half (1/2) acre~~;

(3) Mature and old growth forested wetlands, as defined by WDFW priority habitat and species provisions, larger than one (1) acre; or

(4) Wetlands that ~~perform many~~ function at high levels ~~well~~, as characterized by a ~~wetland~~ score of ~~seventy~~twenty three (~~70~~23) or greater on the rating form.

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

b. Category II. Category II wetlands are:

(1~~) A wetland identified by the Washington State Department of Natural Resources as containing "sensitive" plant species;~~
~~(2) A bog between one-quarter (1/4) and one-half (1/2) acre in size; or~~
(~~3~~) Wetlands that perform~~with a moderately high level of~~ functions well, as characterized by a ~~wetland~~ score of ~~fifty-one~~twenty (~~51~~20) through ~~sixty-nine~~twenty two (~~69~~22) on the rating form.

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

c. Category III. Category III wetlands are wetlands with a moderate level of functions, as characterized by a score of ~~thirty~~sixteen (~~30~~16) through ~~fifty~~nineteen (~~50~~19) on the rating form. Generally, wetlands in this category have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

d. Category IV. Category IV wetlands have the lowest levels of functions and are often heavily disturbed. They are characterized by a score of less than ~~thirty~~sixteen (~~30~~16) on the rating form. These are wetlands that should be replaceable, and in some cases may be improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and ~~should be~~also need to be protected ~~to some degree~~.

2. Date of Wetland Rating. Wetland rating categories shall be applied as the wetland exists on the date of adoption of the rating system by the local government, as the wetland naturally changes thereafter, or as the wetland

changes in accordance with permitted activities. Wetland rating categories shall not change due to illegal modifications.

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Section 4. Amendatory. Those portions of Section 1 of Ordinance 1992-02-03 as most recently amended by Section 13 of Ordinance 2012-07-03 and codified as CCC 40.450.030(E), are each hereby amended as follows:

40.450.030 Standards

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

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

2. Buffer widths are established by comparing the wetland rating category and the intensity of land uses proposed on development sites per Tables 40.450.030-2, 40.450.030-3, 40.450.030-4 and 40.450.030-5. For Category IV wetlands, the required water quality buffers, per Table 40.450.030-2, are adequate to protect habitat functions.

Table 40.450.030-2. Buffers Required to Protect Water Quality Functions

Wetland Rating	Low Intensity Use	Moderate Intensity Use	High Intensity Use
Category I	50 ft.	75 ft.	100 ft.
Category II	50 ft.	75 ft.	100 ft.
Category III	40 ft.	60 ft.	80 ft.
Category IV	25 ft.	40 ft.	50 ft.

Table 40.450.030-3. Buffers Required to Protect Habitat Functions in Category I and II Wetlands			
Habitat Score in the Rating Form	**Low Intensity Use**	**Moderate Intensity Use**	**High Intensity Use**
~~19~~4 points or less	See Table 40.450.030-2	See Table 40.450.030-2	See Table 40.450.030-2
~~20 – 23~~5 points	~~6~~70 ft.	~~9~~105 ft.	1~~2~~40 ft.
~~24 – 27~~6 points	90 ft.	13~~0~~5 ft.	180 ft.
~~28 – 30~~7 points	1~~3~~10 ft.	1~~9~~65 ft.	2~~6~~20 ft.
~~31~~8 points ~~or greater~~	1~~5~~30 ft.	~~22~~195 ft.	~~30~~260 ft.
9 Points	150 ft.	225 ft.	300 ft.

Table 40.450.030-4. Buffers Required to Protect Habitat Functions in Category III Wetlands			
Habitat Score in the Rating Form	**Low Intensity Use**	**Moderate Intensity Use**	**High Intensity Use**
~~19~~4 points or less	See Table 40.450.030-2	See Table 40.450.030-2	See Table 40.450.030-2
~~20 – 23~~5 points	60 ft.	90 ft.	120 ft.
~~24~~6 points ~~or greater~~	~~7~~65 ft.	~~11~~100 ft.	1~~5~~35 ft.
7 Points	75 ft.	110 ft.	150 ft.

Table 40.450.030-5. Land Use Intensity Matrix[1]						
	Parks and Recreation	**Streets and Roads**	**Stormwater Facilities**	**Utilities**	**Commercial /Industrial**	**Residential[2]**
Low	Natural fields and grass areas, viewing areas, split rail fencing	NA	Outfalls, spreaders, constructed wetlands, bioswales, vegetated detention basins, overflows	Underground and overhead utility lines, manholes, power poles (without footings)	NA	Density at or lower than 1 unit per 5 acres
Moderate	Impervious trails, engineered fields, fairways	Residential driveways and access roads	Wet ponds	Maintenance access roads	NA	Density between 1 unit per acre and higher than 1 unit per 5 acres

Table 40.450.030-5. Land Use Intensity Matrix[1]						
High	Greens, tees, structures, parking, lighting, concrete or gravel pads, security fencing	Public and private streets, security fencing, retaining walls	Maintenance access roads, retaining walls, vaults, infiltration basins, sedimentation fore bays and structures, security fencing	Paved or concrete surfaces, structures, facilities, pump stations, towers, vaults, security fencing, etc.	All site development	Density higher than 1 unit per acre

[1]*The responsible official shall determine the intensity categories applicable to proposals should characteristics not be specifically listed in Table 40.450.030-5.*

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

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

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

   b. The responsible official determines a tract is impractical.

   c. Where the responsible official determines the exceptions in Section 40.450.030(E)(3)(a) or (b) apply, residential lots may extend into wetlands and wetland buffers; provided, that all the requirements of Section 40.450.030(F) are met.

4. Adjusted Buffer Width.
   a. Adjustments Authorized by Wetland Permits. Adjustments to the required buffer width are authorized by Section 40.450.040(D) upon issuance of a wetland permit.

b. Functionally Isolated Buffer Areas. Areas which are functionally separated from a wetland and do not protect the wetland from adverse impacts shall be treated as follows:

(1) Pre-existing roads, structures, or vertical separation shall be excluded from buffers otherwise required by this chapter;

(2) Distinct portions of wetlands with reduced habitat functions that are components of wetlands with an overall habitat rating score greater than ~~twenty (20)~~ four (4) points shall not be subject to the habitat function buffers designated in Tables 40.450.030-3 and 40.450.030-4 if all of the following criteria are met:

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

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

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

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

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

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

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Section 5. Amendatory. Those portions of Section 1 of Ordinance 1992-02-03 as most recently amended by Section 4, Exhibit 3 of Ordinance 2009-01-01 and codified as CCC 40.450.040, are each hereby amended as follows:

40.450.040 Wetland Permits

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

1. Reduced Width Based on Modification of Land Use Intensity. The required buffer width shall be decreased if design techniques are used that reduce the land use

intensity category delineated in Table 40.450.030-5. Eligible design measures include the following:

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

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

(2) Shielding of High Intensity Uses.

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

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

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

(3) Surface Water Management.

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

(b) Change in Water Regime. Infiltrate and/or disperse stormwater runoff from impervious surfaces and drainage from lawns and landscaping treated in accordance with Chapter 40.385 of the Clark County Code into the buffer at multiple locations.

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

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

(a) Reduction to moderate intensity buffers, by:

(i) Meeting the standards for full dispersion in Chapter 40.385 over seventy-five percent (75%) of the site; or

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

(iii) Using low impact development BMPs pursuant to Chapter 40.385 to reduce stormwater runoff volume generated from the site to at

least fifty percent (50%) the runoff volume generated by using standard collection and treatment BMPs.

(b) Reduction to low intensity buffers, by:

(i) Meeting the standards for full dispersion in Chapter 40.385 for the entire site; or

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

(iii) Using low impact development BMPs pursuant to Chapter 40.385 to match the pre-development stormwater runoff volume from the site.

(2) Enhanced Stormwater Management. Reduction of high land use intensity buffer to moderate land use intensity buffer for implementation of stormwater treatment measures that exceed the standards of Chapter 40.385. This could include measures such as pre-treatment or tertiary treatment of runoff and limiting discharge from the site to pre-development runoff flow and volume.

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

(1) Applies only to wetlands with habitat function scores higher than ~~twenty (20)~~ four (4) on the rating system form;

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

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

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

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

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

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

4. Stormwater Facilities.

a. Dispersion Facilities. Stormwater dispersion facilities that comply with the standards of Chapter 40.385 shall be allowed in all wetland buffers. Stormwater outfalls for dispersion facilities shall comply with the standards in subsection (b) below. Enhancement of wetland buffer vegetation to meet dispersion requirements may also be considered as buffer enhancement for the purpose of meeting the buffer averaging or buffer reduction standards in this section.

b. Other stormwater facilities are only allowed in buffers of wetlands with low habitat function (less than ~~twenty (20)~~five (5) points on the habitat section of the rating system form); provided, the facilities shall be built on the outer edge of the buffer and not degrade the existing buffer function and are designed to blend with the natural landscape. Unless determined otherwise by the responsible official, the following activities shall be considered to degrade a wetland buffer when they are associated with the construction of a stormwater facility:

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

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

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

(4) The construction of maintenance and access roads;

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

(6) The construction of pre-treatment facilities such as fore bays, sediment traps, and pollution control manholes;

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

(8) The placement of fencing; and

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

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

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

   b. Impacts to the buffer and wetland are minimized.

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

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

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

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

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

   (Amended: Ord. 2009-01-01)

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

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

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

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

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

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

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

         (c) Not feasible to construct.

   b. Minimize impacts to wetlands if complete avoidance is infeasible. The responsible official must find that the applicant has limited the degree or

magnitude of impact to wetlands by using appropriate technology and by taking affirmative steps to reduce impact through efforts such as:

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

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

(3) Site design; and

(4) Construction techniques and timing.

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

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

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

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

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

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

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

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

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

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

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

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

a. Restoration. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions

to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:

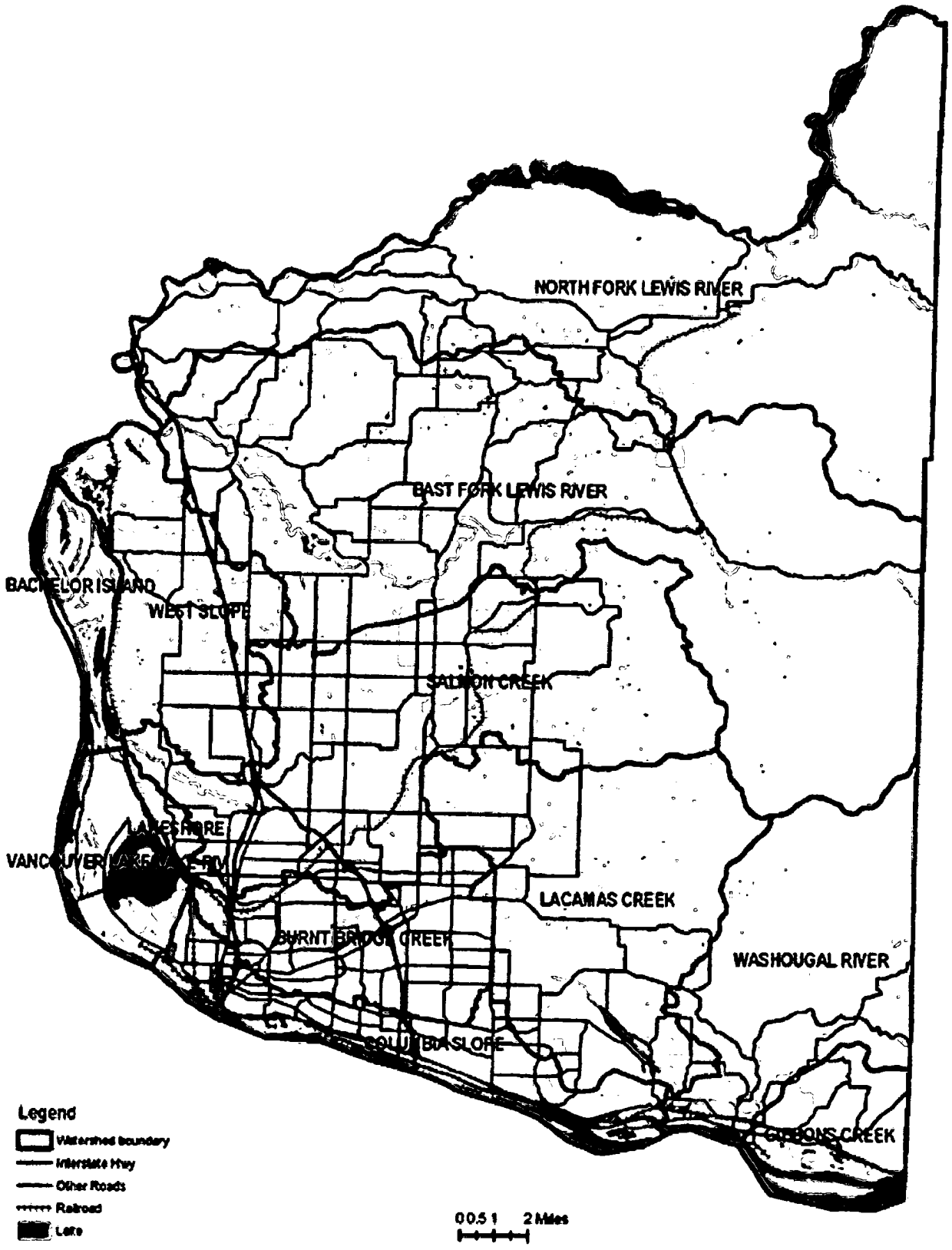
(1) Re-establishment. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material,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

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

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

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

Figure 40.450.040-1
Clark County Watershed
Map



d. Protection/Maintenance (Preservation). Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with the term preservation. Preservation does not result in a gain of wetland acres, but may result in improved wetland functions.

4. Wetland Mitigation Ratios.

a. Standard Wetland Mitigation Ratios. The following mitigation ratios for each of the mitigation types described in Section 40.450.040(D)(3)(a) through (c) apply:

Table 40.450.040-1. Standard Wetland Mitigation Ratios (In Area)

Wetland to Be Replaced	Reestablishment or Creation	Rehabilitation	Reestablishment or Creation and Rehabilitation	Reestablishment or Creation and Enhancement	Enhancement
Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I, Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1
Category I, Based on Score for Functions	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1
Category I, Natural Heritage Site	Not Considered Possible	6:1 Rehabilitate a Natural Heritage Site	N/A	N/A	Case-by-Case

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

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

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

(3) The preservation area is protected in perpetuity by a covenant or easement that gives the county clear regulatory and enforcement

authority to protect existing wetland and wetland buffer functions with standards that exceed the protection standards of this chapter;

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

(5) The following preservation/mitigation ratios apply:

Table 40.450.040-2. Wetland Preservation Ratios for Category I and II Wetlands (In Area)				
Habitat Function of Wetland to Be Replaced	**In Addition to Standard Mitigation**		**As the Only Means of Mitigation**	
	Full and Functioning Buffer	**Reduced and/or Degraded Buffer**	**Full and Functioning Buffer**	**Reduced and/or Degraded Buffer**
Low (<~~20~~5 points)	10:1	14:1	20:1	30:1
Moderate (~~20~~5 – ~~30~~7 points)	13:1	17:1	30:1	40:1
High (>~~30~~7 points)	16:1	20:1	40:1	50:1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

    c. Unavoidable loss of wetland function due to stormwater discharges that do not meet the wetland protections standards in Chapter 40.385.

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

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

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

7. Alternate Wetland Mitigation.

    a. Wetland Mitigation Banking.

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

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

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

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

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

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

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

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

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

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

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

(3) Small impacts affecting less than 0.10 acre of wetland where on-site enhancement and/or preservation is not adequate to meet the requirements of Section 40.450.040(D)(4); or

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

8. Stormwater Facilities. Stormwater facilities are allowed in wetlands with habitat scores less than ~~twenty (20)~~five (5) on the rating form, in compliance with the following requirements:

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

b. Stormwater runoff is treated for water quality in accordance with the requirements of Chapter 40.385 prior to discharge into the wetland.

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

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

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

   c. Impacts to the wetland are minimized.

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

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

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

***

Section 6. Effective Date. This Ordinance shall take effect on January 1, 2015.

Section 7. Instructions to Clerk. The Clerk of the Board shall:

1. Transmit a copy of this Ordinance to the Washington State Department of Commerce within 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 the adoption of this Ordinance to be published forthwith, pursuant to RCW 36.70A.290;
4. Transmit a copy of the adopted amendments to CCC 40.450.020, CCC 40.450.030, CCC 40.450.040, CCC 40.440.010, CCC Table 40.440.010-1 and CCC 6.110A.040 to Code Publishing Inc. forthwith, to update the electronic version of the Clark County Code.

ADOPTED this 9th day of Dec., 2014

Attest:

Clerk to the Board

Approved as to Form Only
ANTHONY F. GOLIK
Prosecuting Attorney

By _____
Christine Cook
Deputy Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

By _____
Tom Mielke, Chair

By _____
David Madore, Commissioner

By _____
Edward Barnes, Commissioner