ORDINANCE NO. 2015-12-12

An ordinance amending Clark County Code (CCC) Sections 40.460.170, Relationship to other plans and regulations, 40.460.230, Exemptions from a Shoreline Substantial Development Permit, 40.460.250, Nonconforming Uses and Developments, 40.460.520, Archaeological, Cultural, and Historic Resources, 40.460.530, Critical Areas Protection, 40.460.560, Site Planning and Development, 40.460.590, Water Quality and Quantity, 40.460.630, Use-Specific Development Regulations, 40.460.630, Use-Specific Development Regulations, 40.460.800, Definitions.

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

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

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

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

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

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

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

WHEREAS, the Board held duly advertised public hearings on October 13, 2015, October 27, 2015, and December 15, 2015 to review the recommendation of the Planning Commission that the limited amendment to the 2012 SMP should be adopted as proposed; and

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

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

Section 1. Amendatory. Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section 40.460.170, are amended to read as follows:

40.460.170 Relationship to other plans and regulations

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

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

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

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

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

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

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

40.460.230 Exemptions from a Shoreline Substantial Development Permit

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B. List of Exemptions

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

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

2. Subject to the provisions of CCC 40.460.250, ~~N~~normal maintenance or repair of existing legally-established structures or developments, including those that have been damaged by accident, fire, or elements. ~~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~~ T~~t~~he features of the repaired ~~replacement~~ structure or development, including but not limited to its size, shape, configuration, location, and external appearance, must be ~~is~~ comparable to the original structure or development, ~~including but not limited to its size, shape, configuration, location, and external appearance~~ and the repair must ~~replacement does~~ not cause substantial adverse effects to shoreline resources or environment. The replacement of demolished existing single-family residences and their appurtenances is not considered normal maintenance and repair.

3. Construction of a normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one (1) cubic yard of fill per one (1) foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Department of Fish and Wildlife (WDFW).

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

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

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

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

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

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

10. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.

11. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, that were created, developed or utilized primarily as a part of an agricultural drainage or diking system.

12. Any project with a certification from the governor pursuant to Chapter 80.50 RCW (certification from the State Energy Facility Site Evaluation Council).

13. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

a. The activity does not interfere with the normal public use of surface waters;

b. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

c. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity; and

d. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to assure that the site is restored to pre-existing conditions.

14. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control published by the Departments of Agriculture or Ecology jointly with other state agencies under Chapter 43.21C RCW.

15. Watershed restoration projects as defined in RCW 89.08.460.

16. a. A public or private project that is designed to improve fish or wildlife habitat or fish passage when all of the following apply:

1 ~~a~~. The project has been approved by DFW;

2 ~~b~~. The project has received hydraulic project approval (HPA) by WDFW pursuant to Chapter 77.55 RCW; and

3 ~~c~~. Clark County has determined that the project is substantially consistent with the local Shoreline Master Program. Clark County shall make such determination in a timely manner and provide it by letter to the applicant.

b. Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs and do not require a statement of exemption.

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

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

C. Statements of Exemption.

1. Any person claiming exemption from the substantial development permit requirements shall make an application to the Shoreline Administrator for such an exemption in the manner prescribed by the Shoreline Administrator, except that no written statement of exemption is required either for a project designed to improve fish or wildlife habitat or fish passage pursuant to WAC 173-27-040(2)(p)(iii)(A), or for emergency development pursuant to WAC 173-27-040(2)(d).

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Section 3. Amendatory. Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section 40.460.250, are amended to read as follows:

40.460.250 Nonconforming Uses and Development

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B. Nonconforming Uses.

1. Additional development of any property on which a nonconforming use exists shall require that all new uses conform to this Program and the Act.

2. Change of ownership, tenancy, or management of a nonconforming use shall not affect its nonconforming status; provided, that the use does not change or intensify.

3. If a nonconforming use is converted to a conforming use, a nonconforming use may not be resumed.

4. When the operation of a nonconforming use is vacated or abandoned for a period of twelve (12) consecutive months, the nonconforming use rights shall be deemed extinguished and the future use of such property shall be in accordance with the permitted and conditional use regulations of this Program.

5. If a conforming building housing a nonconforming use is damaged by fire, flood, explosion, or other natural disaster and the damage is less than seventy five ~~ixty~~ percent (75~~60~~%) of the replacement cost of the structure or development, such use may be resumed at the time the building is repaired; provided, such restoration shall be undertaken within twelve (12) months following said damage.

6. Normal maintenance and repair of a structure housing a nonconforming use may be permitted provided all work is consistent with the provisions of Section 40.530.010 and this Program.

7. Legally established floating homes and residences are considered conforming uses, subject to the requirements in Section 40.460.630(K)(13).

C. Nonconforming Structures.

1. A nonconforming building or structure may be maintained or repaired, provided such improvements do not extend or expand the nonconformity of such building or structure and are consistent with the provisions of this Program, unless required by other law or ordinance.

2. If a nonconforming structure or development is damaged by fire, flood, explosion, or other natural disaster and the damage is less than seventy five ~~ixty~~ percent (75~~60~~%) of the replacement cost of the structure or development, it may be restored or reconstructed to those configurations existing at the time of such damage, provided:

a. The reconstructed or restored structure will not cause additional adverse effects to adjacent properties or to the shoreline environment;

b. The rebuilt structure or portion of structure shall not expand the original footprint or height of the damaged structure;

c. No degree of relocation shall occur, except to increase conformity or to increase ecological function, in which case the structure shall be located in the least environmentally damaging location possible;

d. The submittal of applications for permits necessary to restore the development is initiated within twelve (12) months of the damage. The Shoreline Administrator may waive this requirement in situations with extenuating circumstances;

e. The reconstruction is commenced within one (1) year of the issuance of permit;

f. The Shoreline Administrator may allow a one (1) year extension provided consistent and substantial progress is being made; and

g. Any residential structures, including multifamily structures, may be reconstructed up to the size, placement and density that existed prior to the damage, so long as other provisions of this Program are met.

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Section 4. Amendatory. Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section 40.460.520, are amended to read as follows:

40.460.520 Archaeological, Cultural, and Historic Resources

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

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

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Section 5. Amendatory. Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section 40.460.530, are amended to read as follows:

40.460.530 Critical Areas Protection

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B. Applicable Critical Areas.

For purposes of this Program, the following critical areas will be protected under this Program. An amendment to these regulations will apply in shoreline jurisdiction only if it is adopted as an SMP limited amendment or update.

1. Critical aquifer recharge areas, defined in Chapter 40.410 as adopted by Ordinance 2005-04-15, dated April 26, 2005,; Ordinance 2009-03-02;

2. Flood hazard areas, defined in Chapter 40.420 as adopted by Ordinance 2012-07-15, dated July 24, 2012;

3. Geologic hazard areas, defined in Chapter 40.430 as adopted by Ordinance 2005-04- 15, dated April 26, 2005; Ordinance 2006-09-13; Ordinance 2009-01-01; Ordinance 2012-02-03; and Ordinance 2012-07-16;

4. Habitat conservation areas, defined in Chapter 40.440 as adopted by Ordinance 2006-08-03, dated August 1, 2006; Ordinance 2012-07-16; and Ordinance 2014-12-05; and

5. Wetlands, defined in Chapter 40.450 as adopted by Ordinance 2006-05-27, dated May 26, 2006; Ordinance 2012-07-03; Ordinance 2012-07-16; and Ordinance 2014-12-05.

C. Critical Aquifer Recharge Areas.

1. General Provisions. Chapter 40.410, Critical Aquifer Recharge Areas, Ordinance 2005- 04-15, dated April 26, 2005; and Ordinance 2009-03-02, is hereby adopted in whole as part of this Program.

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F. Habitat Conservation Areas.

1. General Provisions.

a. Designated habitat areas are those defined in Section 40.100.070 and those described below:

(1) Water bodies defined as waters of the state (RCW 90.48.020), including waters, bed, and bank;

(2) DNR Classification System Type S, F, Np, and Ns water bodies as defined and mapped based on WAC 222-16-030 (Forest Practices Rules);

(3) Riparian Priority Habitat Areas. Areas extending landward on each side of the stream or water body from the ordinary high water mark to the edge of the one hundred (100) year floodplain, or the following distances, if greater:

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

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

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

(d) DNR Type Ns waters, seventy-five (75) feet;

(4) Other Priority Habitats and Species (PHS) Areas. 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.

~~b. The above habitat areas are mapped on a countywide basis in the adopted "Priority Habitats and Species Map." Maps are on file with Clark County Environmental Services, except that maps of individual locations of sensitive, threatened, or endangered wildlife species are maintained separately to protect sensitive species.~~

~~c~~b. In the event of inconsistencies, official habitat area definitions shall prevail over county-wide maps in determining applicability of this section. The county shall follow the recommendations of WDFW in the interpretation of site-specific conditions as they relate to the definition of priority habitat and species.

~~d~~c. The portion of the riparian priority habitat area nearest to the OHWM shall be set aside for vegetation conservation and protection of the water body within the shoreline jurisdiction.

~~e~~d. Where development proposals require a habitat review under Section 40.440.030, the review will be part of the approvals required under this Program.

~~f~~e. The reasonable use provisions in Chapter 40.440 do not apply to habitat conservation areas regulated under this Program.

2. Regulated Activities.

a. All construction, development, earth movement, clearing, or other site disturbance proposals within a habitat area which require a permit, approval, or other authorization from the county shall be reviewed pursuant to Chapter 40.440 and shall comply with the requirements of this section.

b. Proposed new single-family residential development occurring immediately outside but within three hundred (300) feet of designated priority species habitat polygons or within one hundred (100) feet of designated nonriparian priority habitat polygons shall require consultation with WDFW prior to issuance of a development permit. In such cases, further review under this section is not required unless WDFW finds that there are potential adverse impacts.

c. Agricultural activities within designated riparian habitat areas are subject to the provisions of this section and Section 40.440.040(B).

d. Class IV G forest practices (conversions) are regulated under this Program.

3. Standards.

a. Any alterations within designated habitat areas in shoreline jurisdiction require review and approval prior to clearing or development and prior to issuance of any County permit or statement of exemption.

b. Alterations within the designated habitat areas shall:

(1) Avoid impacts to the habitat conservation areas during project planning and development to the extent possible;

(2) Substantially maintain the level of habitat functions and values as characterized and documented using best available science;

(3) Minimize habitat disruption or alteration beyond the extent required to undertake the proposal; and

(4) Compensate for impacts to the habitat conservation areas to meet the standard of no net loss of shoreline ecological functions. Mitigation measures and proposals must demonstrate use of best available science.

c. In the event that impacts to habitat areas cannot be avoided, development and approval of a mitigation plan in accordance with the provisions of Sections 40.440.020(A)(3) through (8) is required.

G. Wetlands.

1. General Provisions.

a. Where development proposals require a wetlands review under Section 40.450.030, the review will be part of the approvals required under this Program. Such review is required for any development activity that is within wetlands and wetland buffers subject to this Program, unless specifically authorized by a statement of exemption. Requirements for wetland permit applications are provided in Sections 40.450.040(B), (C), and (D).

b. This section shall not apply to wetlands created from nonwetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, stormwater facilities, farm ponds, landscape amenities and unintentionally created wetlands created as a result of the construction of a public or private road, street, or highway after July 1, 1990; provided, that wetlands created as mitigation shall not be exempt.

c. A wetland determination is required in conjunction with the submittal of a development permit application. The Shoreline Administrator shall determine the probable existence of a wetland on the parcel involved in the development permit application. If wetlands or wetland buffers are found to exist on a parcel, wetland delineation is required.

d. The location of a wetland and its boundary shall be determined through the performance of a field investigation utilizing the methodology contained in the Wetlands Delineation Manual and as specified in Chapter 40.450. If a wetland is located off site and is inaccessible, the best available information shall be used to determine the wetland boundary and category. Methodology is specified in Section 40.450.030(D).

e. All buffers shall be measured horizontally outward from the delineated wetland boundary.

f. Wetland buffer widths shall be determined by the Shoreline Administrator in accordance with the standards in Section 40.450.030.

g. All wetland reviews require approval of a preliminary and a final enhancement/mitigation plan in accordance with the provisions of Section 40.450.040(E) unless the preliminary enhancement/mitigation plan requirement is waived under the provisions of Section 40.450.040(E)(2).

h. Wetland reviews under this Program shall be according to the application, processing, preliminary approval, and final approval procedures set out in Section 40.450.040(F) through (I) and are part of the approvals required under this Program.

i. Provisions for programmatic permits are included in Section 40.450.040(K).

j. Provisions for emergency wetland permits are included in Section 40.450.040(L).

k. The reasonable use provisions in Chapter 40.450 do not apply to wetlands regulated under this Program.

2. Regulated Activities.

No development or activity in wetlands or wetland buffers subject to this Program shall be allowed unless it is demonstrated that:

a. The proposed development or activity will not result in a net loss of wetland functions to the point of net loss of shoreline ecological function; and

b. The proposed development or activity complies with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, stormwater management, wetlands protection, and on-site wastewater disposal.

3. Standards.

a. Stormwater Facilities.

(1) Stormwater dispersion practices and facilities that comply with the standards of Chapter ~~40.385~~ 40.386 shall be allowed in all wetland buffers where no net loss of shoreline ecological functions can be demonstrated. Stormwater outfalls for dispersion facilities shall comply with the standards in Section 40.460.530(G)(3)(b).

(2) Other stormwater facilities are only allowed in buffers of wetlands with low habitat function (less than ~~twenty~~ five (~~20~~ 5) points on the habitat section of the rating system form) per Section 40.450.040(C)(4)(b).

b. Road and utility crossings into and through wetlands and wetland buffers are allowed provided all the following conditions are met:

(1) Buffer functions, as they pertain to protection of the adjacent wetland and its functions, are replaced;

(2) Impacts to the buffer and wetland are first avoided and minimized; and

(3) The activity does not result in a decrease in wetland acreage or classification.

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

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

(2) The activity will not result in a permanent structure in the buffer;

(3) The activity will not result in a reduction of buffer acreage or shoreline ecological function; and

(4) The activity will not result in a reduction of wetland acreage or shoreline ecological function.

d. Wetland mitigation for unavoidable impacts shall be required using the following prioritization:

(1) On-Site. Locate mitigation according to the following priority:

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

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

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

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

(4) Out-of-Kind. Mitigate in a different landscape position and/or HGM classification based on a reference to a naturally occurring wetland system.

e. The various types of wetland mitigation allowed are listed below in the general order of preference.

(1) Re-establishment, which is the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. 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, which is the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a degraded wetland. 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.

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

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

f. The mitigation ratios for each of the mitigation types described in Section 40.460.530(G)(3)(e) are specified in Section 40.450.040(D)(4).

g. The Shoreline Administrator has the authority to approve preservation of existing wetlands as wetland mitigation under the following conditions:

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

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

(3) The preservation area is protected in perpetuity by a covenant or easement that gives the county clear regulatory and enforcement authority to protect existing wetland and wetland buffer functions with standards that exceed the protection standards of this chapter; and

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

h. Wetland mitigation shall be required in accordance with the wetland mitigation standards in this section for the following indirect wetland impacts:

(1) Buffer loss resulting from wetland fills permitted under this section;

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

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

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

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

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Section 6. Amendatory. Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section 40.460.560, are amended as follows:

40.460.560 Site Planning and Development

A. General.

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

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

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Section 7. Amendatory. Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section 40.460.590, are amended as follows:

40.460.590 Water Quality and Quantity

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

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

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Section 8. Amendatory. Sec. 3, Part B, Ord. 2012-07-16, and codified as CCC Section 40.460.630, are amended as follows:

40.460.630 Use-Specific Development Regulations

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F. Industrial Uses.

1. General Requirements.

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

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

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

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

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

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

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

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

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

2. Log Storage.

a. Log booming, rafting and storage in the Aquatic shoreline designation shall comply with WAC 332-30-145 or its successor.

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

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

(2) Grounding will not occur;

(3) Associated activities will not hinder other beneficial uses of the water, such as small craft navigation; and

(4) Fish and wildlife habitat conservation areas can be avoided.

c. No log raft shall remain in the Aquatic shoreline designation for more than one (1) year, unless specifically authorized in writing.

d. Log storage facilities shall be sited to avoid and minimize the need for dredging in order to accommodate new barging and shall be located in existing developed areas to the greatest extent feasible. If a new log storage facility is proposed along an undeveloped shoreline, an alternatives analysis shall be required that demonstrates that it is not feasible to locate the facility within an existing developed area.

e. A debris management plan describing the removal and disposal of wood waste must be approved by the county. Debris monitoring reports shall be provided, where stipulated. Positive control, collection, treatment, and disposal methods for keeping leachate, bark, and wood debris (both floating and sinking particles) out of surface water and groundwater shall be employed at log storage areas, log dumps, raft building areas, and mill-side

handling zones. In the event that bark or wood debris accidentally enters the water, it shall be immediately removed. Surface runoff from log storage areas shall be collected and discharged at only one point, if possible.

f. Existing in-water log storage and log booming facilities in critical habitats utilized by threatened or endangered species classified under the Endangered Species Act (ESA) shall be re-evaluated if use is discontinued for one (1) year, or if substantial repair or reconstruction is required. The evaluation shall include an alternatives analysis in order to determine if logs can be stored upland and out of the water, or if the site should be used for other purposes that would have lesser impacts on ESA-listed species. The alternatives analysis shall include evaluation of the potential for moving all, or portions of, log storage and booming to uplands.

g. Nonaquatic log storage areas shall meet the following requirements:

(1) The ground surface of any unpaved log storage area underlain by permeable soils shall be separated from the highest seasonal water table by at least four (4) feet in order to reduce waste buildup and impacts on groundwater and surface water;

(2) Stormwater shall be managed consistent with Chapters 13.26A and ~~40.385~~ 40.386; and

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

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J. Recreational Uses.

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

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

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

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

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

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

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

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

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

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

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

a. For wildlife through appropriate plantings and measures to maintain or enhance water quality; and

b. Consistent with Chapters 13.26A and ~~40.385~~ 40.386.

12. The setback for water-related and water-enjoyment recreational development in Natural, Urban Conservancy, and Medium Intensity shoreline designations is fifty (50) feet, except trails which may meander between twenty (20) and fifty (50) feet landward of the OHWM to:

a. Respond to site characteristics such as natural topography and existing vegetation; or

b. Take advantage of opportunities for visual or physical access to the shoreline; or

c. Connect existing trail easements; or

d. Create an interesting experience for trail users.

A trail project, any portion of which encroaches closer than fifty (50) feet, shall maintain no net loss of shoreline ecological function and include shoreline restoration where feasible.

13. The following trail types as described in the Vancouver-Clark Parks and Recreation Regional Trails and Bikeway Systems Plan (2006) are preferred in the Natural shoreline designation:

a. Type A3: Primitive Trails or Paths;

b. Type C2: Walking Trails or Paths; and

c. Type D1: Equestrian Trails or Paths.

14. When regional or local shared-use or other impervious surface trails are proposed in the Natural or Urban Conservancy shoreline designations, to respond to Americans with Disabilities Act (ADA) requirements or other circumstances or conditions, the project shall maintain no net loss of shoreline ecological functions and shall include restoration where feasible.

K. Residential

1. Residential development shall include provisions to ensure preservation of native vegetation and to control erosion during construction.

2. New residential construction shall be located so as not to require shoreline stabilization measures.

3. New residential development shall be prohibited in, over, or floating on the water.

4. New residential development shall be located and designed to a density that minimizes view obstructions to and from the shoreline.

5. Clustering of residential units as permitted by this title shall be allowed where appropriate to minimize physical and visual impacts on shorelines.

6. In those areas where only on-site sewage systems are available, density shall be limited to that which can demonstrably accommodate protection of surface and groundwater quality.

7. New residential development, including sewage disposal systems, shall be prohibited in floodways and channel migration zones.

8. Appurtenances, accessory uses, and facilities serving a residential structure shall be located outside setbacks, critical areas, and buffers unless otherwise allowed under this Program to promote community access and recreational opportunities. Normal appurtenances are limited to garages (up to three (3) cars), shops (up to one thousand (1,000) square feet), decks, driveways, utilities, and fences.

9. Residential lots that are boundary line-adjusted or newly created through a land division shall be configured such that:

a. Structural flood hazard reduction measures are not required and will not be necessary during the life of the development or use;

b. Shoreline stabilization measures are not required; and

c. Any loss of shoreline ecological function can be avoided.

10. Where a new moorage facility is proposed within a residential waterfront development of more than four (4) units, only one (1) joint-use facility shall be allowed, but only after demonstrating that such use is appropriate for the water

body. The applicant must also demonstrate that no public moorage facility is available to residents. This condition of approval with required access easements and dedications shall be identified on the face of the plat. In addition, the joint-use dock easement shall be recorded with the County Auditor.

11. New floating homes are prohibited.

12. Floating homes legally established as of January 1, 2011, are considered conforming uses. A one (1) time expansion is allowed, as follows:

a. The expansion maintains the size of the footprint of the existing residence;

b. The expansion does not exceed the allowed height limit; and

c. The applicant demonstrates through a letter of exemption that the expansion will result in no net loss of shoreline ecological functions.

13. Existing residential structures.

a. Legally established existing residential structures and appurtenances located landward of the OHWM and outside the floodway that do not meet the standards of this Program are considered to be conforming~~.~~, except that an application to replace an existing residential structure must meet all setback, height, and other construction requirements of the Program and the Act. A one - (1) time expansion is allowed, as follows:

1~~a~~. The expansion is no more than twenty-five percent (25%) of the habitable floor area of the existing residence;

2~~b~~. The expansion does not exceed the allowed height limit;

3~~c~~. The expansion is no f~~u~~arther waterward ~~of~~ than the existing structure; and

4~~d~~. The applicant demonstrates ~~through a letter of exemption~~ that the expansion will result in no net loss of shoreline ecological functions.

b. If a structure or development is damaged by fire, flood, explosion, or other natural disaster and the damage is less than seventy five percent (75%) of the replacement cost of the structure or development, it may be restored or reconstructed to those configurations existing at the time of such damage, provided:

1. The reconstructed or restored structure will not cause additional adverse effects to adjacent properties or to the shoreline environment;
2. The rebuilt structure or portion of structure shall not expand the original footprint or height of the damaged structure;
3. No degree of relocation shall occur, except to increase conformity or to increase ecological function, in which case the structure shall be located in the least environmentally damaging location possible;
4. The submittal of applications for permits necessary to restore the development is initiated within twelve (12) months of the damage. The Shoreline Administrator may waive this requirement in situations with extenuating circumstances;

5. The reconstruction is commenced within one (1) year of the issuance of permit;
6. The Shoreline Administrator may allow a one (1) year extension provided consistent and substantial progress is being made; and
7. Any residential structures, including multifamily structures, may be reconstructed up to the size, placement and density that existed prior to the damage, so long as other provisions of this Program are met.

c. If a structure or development is either demolished, or damaged by fire, flood, explosion, or other natural disaster and the damage is more than seventy five percent (75%) of the replacement cost of the structure or development, then any replacement structure has to meet the requirements of the Program and the Act.

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

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N. Utility Uses.

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

1. Whenever feasible, all utility facilities shall be located outside shoreline jurisdiction. Where distribution and transmission lines (except electrical transmission lines) must be located in the shoreline jurisdiction they shall be located underground.

2. Where overhead electrical transmission lines must parallel the shoreline, they shall be outside of the two hundred (200) foot shoreline environment unless topography or safety factors would make it unfeasible.

3. Utilities, including limited utility extensions, shall be designed, located and installed in such a way as to preserve the natural landscape, minimize impacts to scenic views, and minimize conflicts with present and planned land and shoreline uses.

4. Transmission, distribution, and conveyance facilities shall be located in existing rights-of-way and corridors or shall cross shoreline jurisdictional areas by the shortest, most direct route feasible, unless such route would cause significant environmental damage.

5. Utility production and processing facilities, such as power plants and wastewater treatment facilities, or parts of those facilities that are non-water-oriented shall not be allowed in the shoreline jurisdiction unless it can be demonstrated that no other feasible option is available.

6. Stormwater control facilities, limited to detention/retention/treatment ponds, media filtration facilities, and lagoons or infiltration basins, within the shoreline jurisdiction shall only be permitted when the stormwater facilities are designed to mimic and resemble natural wetlands, ponds, or closed depressions, and meet applicable water quality requirements of Chapter ~~40.385~~ 40.386.

7. Stormwater outfalls may be placed below the OHWM to reduce scouring, but new outfalls and modifications to existing outfalls shall be designed and constructed to avoid impacts to existing native aquatic vegetation attached to or rooted in substrate. In river and stream shorelines, stormwater outfall structures may require permanent bank hardening to prevent failure of the outfall structure or erosion of the shoreline. Diffusers or discharge points must be located offshore at a distance beyond the nearshore area to avoid impacts to nearshore habitats.

8. Water reclamation discharge facilities such as injection wells or activities such as land application are prohibited in the shoreline jurisdiction, unless the discharge water meets Ecology's Class A reclaimed water standards. An applicant for discharge of Class A reclaimed water in the shoreline jurisdiction shall demonstrate habitat benefits of such discharge.

9. Where allowed under this Program, construction of underwater utilities or those within the wetland perimeter shall be scheduled to avoid major fish migratory runs or use construction methods that do not cause disturbance to the habitat or migration.

10. All underwater pipelines transporting liquids intrinsically harmful to aquatic life or potentially detrimental to water quality shall be equipped with automatic shut off valves.

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

Section 9. Amendatory. Sec. 3, Part B, Ord. 2012-07-16, most recently amended by Sec. 2, Ord. 2014-08-10, and codified as CCC Section 40.460.800, are each amended as follows:

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Normal maintenance	"Normal maintenance" means those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition (WAC 173-27-040(2)(b))~~.~~, except for maintenance that would cause substantial adverse effects to shoreline resources or environment; and, provided, that the replacement of demolished existing single-family residences and their appurtenances is not considered normal maintenance; and further provided that maintenance of nonconforming structures and developments is subject to the provisions of CCC 40.420.010 and 40.460.250. 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, except ~~where~~ for repair that would cause~~s~~ 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 40.420.010 and

	40.460.250. ~~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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Section 10. Effective date. This ordinance shall take effect two weeks after Washington State DOE approval. Provisions in Chapter 40.386 shall take effect January 8, 2016.

Section 11. Instructions to the clerk.
The Clerk to the Board shall:

1. Record a copy of this ordinance with the Clark County Auditor.
2. Transmit a copy of this ordinance to the State Departments of Ecology and Commerce within ten days of its adoption.
3. Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290.
4. Transmit a copy of this ordinance to Code Publishing, Inc. to update the electronic version of the Clark County Code.

ADOPTED this 15th day of December, 2015.

BOARD OF COUNTY COUNCILORS
FOR CLARK COUNTY, WASHINGTON

Attest:

Rebecca Vito
Clerk to the Board

By _____
David Madore, Chair

Approved as to Form Only:
ANTHONY F. GOLIK
Prosecuting Attorney

By _____
Tom Mielke, Councilor

By Christine Cook
Christine Cook
Sr. Deputy Prosecuting Attorney

By _____
Jeanne E. Stewart, Councilor