ORDINANCE No. 2012-07-16

An ordinance relating to land use; adopting a new Clark County Shoreline Master Program as required by RCW 90.58; adopting amendments to the Clark County Comprehensive Growth Management Plan and Title 40 Unified Development Code; repealing the current Clark County Shoreline Master Program; and providing for an effective date.

WHEREAS, the State of Washington Shoreline Management Act of 1971 (RCW 90.58 [Act]) requires counties and cities to prepare shoreline master programs (SMPs) to prevent the uncoordinated and piecemeal development on shorelines of the state consistent with the Act; and

WHEREAS, the Board of County Commissioners adopted a draft Clark County SMP on November 22, 2011 with the passage of Ordinance 2011-11-14; and

WHEREAS, Clark County met its statutory obligation by submitting its SMP to Ecology for review by the statutory deadline of December 1, 2011; and

WHEREAS, the Department of Ecology (Ecology) held its formal 30-day review of the Clark County SMP from March 23 through April 23, 2012; and

WHEREAS, a duly-advertised public hearing was held before the Clark County Planning Commission on June 21, 2012 at which testimony was received and considered, and the Clark County Planning Commission recommended that the Board of Clark County Commissioners approve proposed changes to the draft SMP; and

WHEREAS, a duly-advertised public hearing was held before the Board of Clark County Commissioners on July 24, 2012; and

WHEREAS, pursuant to RCW 36.70A.480(1), the proposed goals and policies in the Clark County SMP, upon approval by Ecology, shall be considered a part of the Clark County Comprehensive Growth Management Plan; and

WHEREAS, pursuant to RCW 36.70A.480(1), all portions of the Clark County SMP other than the administrative and enforcement provisions, upon approval by Ecology, shall be considered part of the County's development regulations, and shall be implemented at CCC Chapter 40.460; and

WHEREAS, the administrative and enforcement provisions shall be considered part of the County's development regulations, and shall be implemented at CCC Chapter 40.460; and

WHEREAS, RCW 36.70A.130(2)(a)(ii) allows for out-of-cycle adoption of shoreline master programs;

WHEREAS, the Board of County Commissioners finds that adoption of the revisions to the Clark County SMP, as recommended by the Planning Commission, is in the best public interests of the citizens of Clark County; now, therefore,
BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:

**Section 1. Repealer.** That portion of Section 1 of Resolution 1980-06-80 that is codified as CCC Title 40 Appendix B, the current Clark County shoreline master program, is hereby repealed, to take effect two weeks after the approval of Clark County's SMP by Ecology.

**Section 2. Repealer.** That portion of Section 1 of Resolution 1980-06-80, as most recently amended by Ordinance 2009-10-19, and codified as CCC Chapter 40.460, Shoreline Overlay District, are each hereby repealed, to take effect two weeks after the approval of Clark County's SMP by Ecology.

**Section 3. New.** The Clark County SMP as approved by the Department of Ecology will take effect two weeks after the date of such approval. Consistent with RCW 36.70A.480, the Clark County SMP is adopted, as follows:

**Part A.** The Clark County Comprehensive Growth Management Plan is hereby amended as follows:

1. Chapter 13 Procedural Guidelines is re-numbered as Chapter 14.
2. New Chapter 13 contains the Shoreline Master Program Goals and Policies, as shown in Exhibit 1. The goals and policies are referred to in new CCC Section 40.460.300.
3. Chapter 4, Policy 4.7.1 is amended, as follows:
   4.7.1 Clark County's Shoreline Master Program as included in Chapter 13 of this comprehensive plan and as codified in CCC Chapter 40.460 shall be implemented to protect and enhance the shorelines of Clark County, shall be reevaluated for consistency with the Growth Management legislation and the county's 20-year plan. Any areas of inconsistency shall be reviewed and resolved with either modification of the Shoreline Master Program or Comprehensive Plan policies, whichever is more appropriate.

**Part B.** A new CCC Chapter 40.460 Shoreline Master Program is hereby adopted as shown in Exhibit 2 that includes shoreline development regulations in Sections 40.460.100, 40.460.200, 40.460.300, 40.460.400, 40.460.500, 40.460.600 and 40.460.800, which are approvable by Ecology.

**Part C.** A new Section 40.460.700 is hereby adopted as shown in Exhibit 3 that includes administrative and enforcement provisions related to the shoreline master program.

**Section 4. Amendatory.** Ordinance 2003-11-01, codified by that portion of CCC Section 40.100.070 set forth below, is hereby amended as follows:

**40.100.070 DEFINITIONS**
Unless the context clearly requires otherwise, the definitions in this section shall apply to terms in this title. In addition to definitions provided below, there are chapter-specific or section-specific definitions in the following sections:

- Section 40.240.040, Columbia River Gorge National Scenic Area Districts;
- Section 40.250.010, Airport Environments Overlay Districts (AE-1, AE-2);
- Section 40.250.030, Historic Preservation;
- Section 40.260.050, Bed and Breakfast Establishments;
- Section 40.260.100, Home Businesses;
- Section 40.260.250, Wireless Communications Facilities;
- Section 40.310.010, Sign Standards;
- Section 40.410.010, Critical Aquifer Recharge Areas (CARAs);
- Section 40.420.010, Flood Hazard Areas;
- Section 40.430.010, Geologic Hazard Areas;
- Chapter 40.460, Shoreline Master Program;
- Section 40.560.030, Amendments Docket;
- Chapter 40.570, State Environmental Policy Act (SEPA); and
- Section 40.610.020, Development Impact Fees.

### Table

<table>
<thead>
<tr>
<th>Shorelands</th>
<th>“Shorelands” means those lands extending landward for two hundred (200) feet in all directions as measured on a horizontal plane from the OHWM; floodways and contiguous floodplain areas landward two hundred feet from such floodways; the full extent of floodplains; and all wetlands and river deltas associated with the streams and lakes and tidal waters that are subject to the provisions of this Program; the same to be designated as to location by Ecology.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shorelines of the county</td>
<td>“Shorelines of the county” means those streams and lakes designated for regulatory purposes under the Shoreline Management Act (Chapter 90.58 RCW), together with adjacent land areas generally situated within two hundred (200) feet of the water body, but also including portions of associated floodplain areas.</td>
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</tbody>
</table>

### Section 5. Amendatory

Section 3 of Ordinance 1997-05-34, as most recently amended by Ordinance 2012-02-03, and codified as CCC 40.430.010, are each hereby amended as follows:

**40.430.010 INTRODUCTION**

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B. Applicability and Exemptions.

1. Applicability. This chapter applies to all construction, development, earth movement, clearing, or other site disturbance which requires a permit, approval or authorization from the county in or within one hundred (100) feet of a geologic...
hazard area except for exempt activities listed in Section 40.430.010(B)(3). Regulated geologic hazards include steep slope hazard areas, landslide hazard areas, seismic hazard areas, and volcanic hazard areas.

2. Shoreline Master Program. Within shoreline jurisdiction, development may be allowed for those uses in the shoreline master program (Chapter 40.460) either through a statement of exemption or through an application with a geohazard review as part of the shoreline permit process.

3.2. Exempt Activities and Uses......

4.3. This chapter applies to Class IV G forest practices (conversions).

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Section 6. Amendatory. Section 3 of Ordinance 1997-05-34, as most recently amended by Ordinance 2005-04-15, and codified as CCC 40.430.030, are each hereby amended as follows:

40.430.030 STANDARDS

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C. Submittal Requirements.
1. For development activity regulated by this chapter, submittal requirements.... and requirements for other associated permits.

2. Shoreline Master Program. Within shoreline jurisdiction, development may be allowed for those uses in the shoreline master program either through a statement of exemption pursuant to Section 40.460.230(C) or through an application for a shoreline permit (substantial development, conditional use, or variance) to include a geohazard review pursuant to Section 40.460.530(E) and Sections 40.430.020 and 40.430.030(C).

3.2. The responsible official.....

4.3. Site description.....

5.4. Geologic Hazard Area Study...

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Section 7. Amendatory. Section 1 of Ordinance 1997-05-30, as most recently amended by Section 4 of Ordinance 2005-04-15, and codified as CCC 40.440.010, are each hereby amended, as follows:

40.440.010 INTRODUCTION

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B. Applicability.
1. General. Review under the standards of this chapter shall apply to any proposed development or non-development clearing activities within designated habitat areas, defined in Section 40.440.010(C), which are not listed as exempt, pursuant to Table 40.440.010-1.

a. Development activities are those proposals already subject to existing county land division, building, grading or other review processes.
b. Non-development clearing activities are proposals which are not otherwise subject to county review, but involve the alteration or removal of vegetation in designated habitat areas.

2. Shoreline Master Program. Within shoreline jurisdiction, development may be allowed for those uses in the shoreline master program (Chapter 40.460) either through a statement of exemption or through an application with a habitat review as part of the shoreline permit process.

3. Activities Adjacent to Certain Designated Habitat Areas.....

4. Exempt Activities.....

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Section 8. Amendatory. Section 1 of Ordinance 1997-05-30, most recently amended by Section 1 of Ordinance 2006-06-09, and codified as CCC 40.440.020, are each hereby amended as follows:

40.440.020 STANDARDS

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B. Reasonable Use Assurances.

5. The reasonable use assurances in this chapter do not apply to habitat conservation areas within shoreline jurisdiction. In such cases, reasonable use requests shall be subject to the shoreline variance process pursuant to Section 40.460.260.

***

Section 9. Amendatory. Section 1 of Ordinance 1997-05-30, as most recently amended by Section 1 of Ordinance 2006-06-09, and codified as CCC 40.440.030, are each hereby amended as follows:

40.440.030 ADMINISTRATION

A. Coordination with Other Permits.

1. Development proposals requiring review under this chapter which involve other county permits shall be reviewed under the timelines of the existing review; provided, that application information required under this chapter (Section 40.440.030(C)) is submitted and approval criteria (Section 40.440.020(A)) are addressed.

2. Shoreline Master Program. Within shoreline jurisdiction, development may be allowed for those uses in the shoreline master program either through a statement of exemption pursuant to Section 40.460.230(C) or through an application for a shoreline permit (substantial development, conditional use, or variance) to include a habitat review pursuant to Section 40.460.530(E) and Sections 40.440.020 and 40.440.030.

***
**Section 10. Amendatory.** Section 1 of Ordinance 1992-02-03, as most recently amended by Section 1 of Ordinance 2007-06-05, and codified as CCC 40.450.010, are each hereby amended as follows:

**40.450.010 INTRODUCTION**

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**B. Applicability.**

1. The provisions of this chapter......

2. The county will not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a wetland or wetland buffer, without first ensuring compliance with the requirements of this chapter, including, but not limited to, the following development permits:

   a. Building permit;  
   b. Grading permit; 
   c. Forest practices conversion permit regulated by Section 40.260.080; 
   d. Conditional use permit; 
   e. Shoreline conditional use permit; 
   f. Shoreline substantial development permit; 
   g. Shoreline variance; 
   h. Short subdivision; 
   i. Subdivision; 
   j. Planned unit development; 
   k. Site plan; or 
   l. Zoning variance.

3. Shoreline Master Program. Within shoreline jurisdiction, development may be allowed for those uses in the shoreline master program (Chapter 40.460) either through a statement of exemption pursuant or an application with a wetlands review as part of the shoreline permit process.

4.3. Reasonable Use Exceptions.

   e. The reasonable use provisions in this chapter do not apply to wetlands protection within shoreline jurisdiction. In such cases, reasonable use requests shall be subject to the shoreline variance process pursuant to Section 40.460.260.

5.4. Approval of a development permit application pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

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**Section 11. Amendatory.** Section 1 of Ordinance 1992-02-03, as most recently amended by Section 1 of Ordinance 2007-06-05, and codified as CCC 40.450.040, are each hereby amended as follows:

**40.450.040 WETLANDS PERMITS**

**A. General.**

1. A wetland permit is required for any development activity that is not exempt pursuant to Section 40.450.010(C) within wetlands and wetland buffers.
2. Shoreline Master Program. Within shoreline jurisdiction, development may be allowed for those uses in the shoreline master program either through a statement of exemption pursuant to Section 40.460.230(C) or through an application for a shoreline permit (substantial development, conditional use, or variance) to include a wetlands review pursuant to Section 40.460.530(G) and Sections 40.450.020, 40.450.030, and 40.450.040.

3. Standards for wetland permits are provided in Sections 40.450.040(B), (C) and (D).

4. All wetland permits require approval of a preliminary and 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).

5. Wetland permit application, processing, preliminary approval, and final approval procedures are set out in Sections 40.450.040(F) through (I).

6. Provisions for programmatic permits are provided by Section 40.450.040(K).

7. Provisions for emergency wetland permits are provided by Section 40.450.040(L).

Section 12. Severability – Construction.

1. If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

2. If the provisions of this ordinance are found to be inconsistent with other provisions of the Clark County Code, this ordinance is deemed to control.

Section 13. Effective Date. This ordinance shall take effect and be in full force no sooner than fourteen (14) days from the date of the Department of Ecology’s written notice of final action in accordance with law.

Section 14. Instructions to the Clerk. The Clerk of the Board shall:

(1) Transmit a copy of this ordinance to the state within ten days of its adoption pursuant to RCW 36.70A.106;

(2) Record a copy of this ordinance with the Clark County Auditor; and

(3) Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290.

ADOPTED this 24th day of July, 2012

Attest: BOARD OF COUNTY COMMISSIONERS
Approved as to Form Only
ANTHONY F. GOLIK
Prosecuting Attorney
By Christine Cook
Deputy Prosecuting Attorney

FOR CLARK COUNTY, WASHINGTON

By Marc Boldt, Chair
By Steve Stuart, Commissioner
By Tom Mielke, Commissioner

EXHIBITS
Exhibit 1: Clark County Comprehensive Growth Management Plan amendments
Exhibit 2: New CCC Chapter 40.460, not including Section 40.460.700
Exhibit 3: New CCC Section 40.460.700