

40.410 CRITICAL AQUIFER RECHARGE AREAS (CARAs)

40.410.010 Introduction

A. Purpose.

This chapter is intended to protect public health, safety, and welfare by preventing degradation, and where possible, enhance the quality and quantity of groundwater which will be, or might likely be, used in the future for drinking water or business purposes. This will be accomplished by limiting potential contaminants within designated critical aquifer recharge areas (CARAs). The requirements of this chapter are intended to fulfill obligations of state law under the Growth Management Act, Chapter [36.70A](#) RCW; the Public Water Systems Penalties and Compliance, Chapter [70.119A](#) RCW; the Washington State Wellhead Protection Program and the Public Water Supplies, Chapter [246-290](#) WAC; the Dangerous Waste Regulations, Chapter [173-303](#) WAC; the Water Quality Standards for Groundwater of the State of Washington, Chapter [173-200](#) WAC; and the Regulation of Public Ground Waters, Chapter [90.48](#) RCW.

(Amended: Ord. 2005-04-15)

B. Applicability and Exemptions.

1. Applicability. This chapter applies to all critical aquifer recharge areas as defined in Section [40.410.010\(C\)](#). Parcels that are partly within Category I and Category II shall be subject to the Category I provisions in this chapter. Parcels that are partly inside Category II, but outside Category I, shall be subject to the Category II provisions in this chapter.
2. Exempt Activities. The following activities do not require a CARA permit:
 - a. Existing activities that currently and legally existed on July 31, 1997;
 - b. All residential uses other than those having activities covered by Section [40.410.020\(A\)](#);
 - c. Group A public water system source development and associated infrastructure;
 - d. Public water supply aquifer storage and recovery (ASR) facilities;
 - e. Public water pipelines;
 - f. Public water supply storage structures;
 - g. Other uses not listed in Sections [40.410.020\(A\)](#), (B) or (C); and
 - h. Activities already permitted and regulated by the state and the Clark County Health Department to incorporate best management practices.
3. The following underground storage tank (UST) systems, including any piping connected thereto, are exempt from the requirements of this chapter:

- a. Any UST system holding hazardous wastes subject to Subtitle C of the Federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;
- b. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act;
- c. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
- d. Any UST system whose capacity is one hundred ten (110) gallons or less;
- e. Any UST system that contains a de minimis concentration of regulated substances;
- f. Any emergency spill or overflow containment UST system that is expeditiously emptied after use;
- g. Farm or residential UST systems of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes (i.e., not for resale);
- h. UST systems used for storing heating oil for consumptive use on the premises where stored; except that such systems which store in excess of one thousand one hundred (1,100) gallons are subject to the release reporting requirements of WAC [173-360-372](#);
- i. Septic tanks;
- j. Any pipeline facility (including gathering lines) regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or
 - (3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in Section [40.410.010\(B\)\(3\)\(j\)\(1\)](#) or (2) of this definition;
- k. Surface impoundments, pits, ponds, or lagoons;
- l. Stormwater or wastewater collection systems;
- m. Flow-through process tanks;
- n. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or
- o. Storage tanks situated in an underground area (such as a basement, cellar, vault, mineworking drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(Amended: Ord. 2005-04-15)

C. Definitions.

For the purposes of this chapter, the following definitions shall apply:

1. "Category I CARA" means the highest priority critical aquifer recharge area, represented by the one-year time-of-travel for Group A water wells.
2. "Category II CARA" means the primary critical aquifer recharge area, represented by the ten (10) year time-of-travel for Group A water wells. This area also consists of the unconsolidated sedimentary aquifer and the Troutdale gravel aquifer.

(Amended: Ord. 2005-04-15)

D. Map.

The map entitled Clark County, Washington Critical Aquifer Recharge Areas as signed by the board is adopted and is on file with the County Auditor. If a conflict exists between the map and on-site conditions, the on-site conditions shall supersede the map. The county will update the CARA map as warranted by new information.

(Amended: Ord. 2005-04-15; Ord. 2009-03-02)

40.410.020 Standards

A. Permitted Activities in Categories I and II.

The following activities require a CARA permit in both Categories I and II:

1. Above- and below-ground storage tanks (tanks and pipes used to contain an accumulation of regulated substances (see Section [40.100.070](#));
2. Facilities that conduct biological research;
3. Boat repair shops;
4. Chemical research facilities;
5. Dry cleaners;
6. Gasoline service stations;
7. Pipelines;
8. Printing and publishing shops (that use printing liquids);
9. Below-ground transformers and capacitors;
10. Sawmills (producing over ten thousand (10,000) board feet per day);

11. Solid waste handling and processing;
12. Vehicle repair, recycling, and recyclable materials – automotive;
13. Funeral services;
14. Furniture stripping;
15. Motor vehicle service garages (both private and government);
16. Photographic processing;
17. Chemical manufactures and reprocessing;
18. Creosote and asphalt manufacture and treatment;
19. Petroleum and petroleum products refining, including reprocessing;
20. Wood products preserving;
21. Golf course;
22. Regulated waste treatment, storage, disposal facilities that handle hazardous material;
23. Medium quantity generators (dangerous, acutely hazardous, and toxic extremely hazardous waste); and
24. Large quantity generators (dangerous, acutely hazardous, and toxic extremely hazardous waste).

(Amended: Ord. 2005-04-15)

B. Prohibited Activities in Category I.

The following activities are considered high-impact uses due to the probability and/or potential magnitude of their adverse effects on groundwater. These activities are prohibited in Category I, and require a permit for Category II:

1. Landfills;
2. Class V injection wells;
3. Agricultural drainage wells;
4. Untreated sewage waste disposal wells;
5. Cesspools;
6. Industrial process water and disposal wells;
7. Radioactive waste disposal;

8. Radioactive disposal sites;
9. Surface mining operations; and
10. Electroplating activities.

(Amended: Ord. 2005-04-15)

C. Additional Standards.

The following additional standards apply in all CARAs:

1. Pesticides, herbicides and fertilizers shall be applied in accordance with federal law.
2. Vehicle repair and servicing.
 - a. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment if leaks occur.
 - b. No dry wells shall be allowed in CARAs on sites for vehicle repair and servicing. Dry wells on the site prior to the facility establishment must be abandoned using techniques approved by the Department of Ecology prior to commencement of the proposed facility.

(Amended: Ord. 2004-06-11; Ord. 2005-04-15)

40.410.030 Administration

A. CARA Permit Requirements.

1. To receive a CARA permit, the applicant must demonstrate, through a Level 1 site evaluation report, how they will integrate necessary and appropriate best management practices to prevent degradation of groundwater. The applicant must also meet existing local, state, and federal laws and regulations.
2. If an applicant wants to avoid implementation of best management practices (BMPs), they must submit a Level 2 site evaluation report and develop and implement a monitoring program that:
 - a. Demonstrates how the applicant will prevent degradation to groundwater. The applicant must also meet existing local, state and federal laws and regulation; and
 - b. Includes quarterly reporting to the department. The department will evaluate the monitoring program and may require periodic changes based on the monitoring results, new technology, and/or BMPs.
3. Applicants that agree to implement all relevant BMPs are exempt from preparing a site evaluation report. Applicants will demonstrate how the implementation of BMPs will

be used to prevent degradation to groundwater and will submit quarterly monitoring reports to the department.

(Amended: Ord. 2005-04-15)

B. Level 1 Site Evaluation Report/Approval Criteria.

1. For all proposed activities to be located in a critical aquifer recharge area, the site evaluation report shall include a Level 1 hydrogeological assessment. The site evaluation report and assessment shall be done by, or under the direction of, and signed by a qualified groundwater professional who is a hydrogeologist, geologist or engineer, who is licensed in the state of Washington and who has experience in preparing hydrogeologic assessments. The report will identify appropriate BMPs and show how they will prevent degradation of groundwater. Examples of BMPs are described in the guidance documents in Section [40.410.040\(A\)](#)(4).
2. The report will identify how the applicant will follow the requirements of the Model Toxics Control Act, Chapter [173-340](#) WAC, and the Dangerous Waste Regulations, Chapter [173-303](#) WAC, in the event hazardous material is released onto the ground or into groundwater.
3. The report will include site specific hydrogeologic information to support a conclusion of no degradation to groundwater. Hydrogeologic information is available from existing U.S. Geological Survey reports (*A Description of Hydrogeologic Units in the Portland Basin, Oregon and Washington, Water-Resources Investigation Report 90-4196*); U.S. Department of Agriculture, Natural Resources Conservation Service (Soil Survey of Clark County, Washington, 1972); Clark County; the Clark County Health Department; and from local purveyors.
4. The report will be reviewed by the department, in consultation with the Clark County Health Department and the local water purveyor, in conjunction with the same process as the primary development permit. If approved, the applicant will receive a CARA permit allowing the activity on the subject property.

(Amended: Ord. 2005-04-15)

C. Level 2 Site Evaluation Report/Approval Criteria.

1. A qualified groundwater professional as defined in Section [40.420.030\(B\)](#)(1) will determine whether the proposed activity will have any adverse impacts on groundwater in CARAs. This determination must be based upon the requirements of the Safe Drinking Water Act and the Wellhead Protection Area Program, Public Water Supplies, Chapter [246-290](#) WAC; Groundwater Quality Standards for the State of Washington, Chapter [173-200](#) WAC; and Dangerous Waste Regulations, Chapter [173-303](#) WAC. By this reference, Chapters [173-200](#), [173-303](#), and [246-290](#) WAC, as written and hereafter updated, will be part of this chapter. Chapters [173-303](#), [173-200](#), and [246-290](#) WAC shall be available for review at the Community Development department, Public Works department, and Health department; and at local water purveyors. Copies shall be available for a fee at Community Development department and the Public Works department. Copies will also be provided to local public libraries.

2. The Level 2 site evaluation report will include the following:
- a. Identification of the proposed development plan, along with potential impacts (e.g., on-site septic systems and other on-site activities) that may adversely impact groundwater quality underlying or down gradient of the project or project area;
 - b. Site plans or diagrams at an appropriate scale (1:2,400 or one (1) inch to two hundred (200) feet) showing the location of abandoned and active wells, springs, and surface water bodies within one thousand (1,000) feet of the project or project area; and
 - c. A description of the geologic and hydrologic characteristics of the subject property including the following:
 - (1) Lithologic characteristics and stratigraphic relationships;
 - (2) Aquifer characteristics including recharge and discharge areas, depth to and static water-flow patterns, and an estimate of groundwater-flow velocity;
 - (3) Contaminant fate and transport including probable migration pathways and travel time of a potential contaminant release from the site through the unsaturated zone to the aquifer(s) and through the aquifer(s), and how the contaminant(s) may be attenuated within the unsaturated zone and the aquifer(s);
 - (4) Appropriate hydrogeologic cross-sections which depict lithology, stratigraphy, aquifer, units, potential or probable contaminant pathways from a chemical release, and rate of groundwater flow;
 - (5) Existing groundwater quality; and
 - (6) A proposal for quarterly monitoring of groundwater quality to detect changes and a description of corrective actions that will be taken if monitoring results indicate contaminants from the site have entered the underlying aquifer(s).
3. The report will be reviewed by the department, in consultation with the Clark County Health Department and the local water purveyor, in conjunction with the same process as the primary development permit. If approved, the applicant will receive a CARA permit allowing the activity on the subject property.

(Amended: Ord. 2005-04-15)

D. Appeals.

Appeals of county decisions under this chapter may be filed under the provisions of Chapter [40.510](#).

(Amended: Ord. 2005-04-15)

E. Penalties.

Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of this chapter shall be subject to penalties as defined in Chapter [70.119A](#) RCW; Chapters [173-200](#) and [246-290](#) WAC; Title [32](#) of this code; and other local, state, and federal laws.

(Amended: Ord. 2005-04-15)

40.410.040 Incentives, Education, and Technical Assistance

A. Incentives.

1. Best Management Practices (BMPs). Individuals who implement BMPs to safeguard groundwater may not be required to provide additional geologic and hydrologic characteristics of the subject property, pursuant to Sections [40.410.030](#)(B) and (C). Individuals shall implement the Washington Department of Ecology's Stormwater, Water Quality, Hazardous Waste, Wetland, and Solid Waste Programs BMPs; Chapter [13.26A](#); and BMPs from the Washington Departments of Health, Agriculture, Transportation, and State Conservation District Office.
2. Maintain Open Spaces. An individual may receive a tax reduction for not creating impervious surface within Category I. Open space may allow recharge to replenish the groundwater supply.
3. Land Exchange. The purpose of land exchange is to locate high-use impacts outside Category I. State agencies and local government may convey, sell, lease, or trade existing public lands in order to obtain public ownership over all or part of a CARA. Such exchanges may occur only upon agreement between the recorded landowner and state and local agencies authorized to exchange the subject land.

(Amended: Ord. 2005-04-15; Ord. 2009-03-02)

B. Education.

1. Participation in the County's Business Partners for Clean Water Program. This program provides public recognition to businesses that implement BMPs, such as safely handling and disposing of chemicals in a CARA.
2. Provide Free Information (Pamphlets, Fast Facts) to Building Permit Applicants About How to Protect Groundwater Inside a CARA. Applicants seeking additional information about water quality and resource management issues will be placed on the department's mailing list. In addition, owners will be notified if they are in Category I and will be placed on the department's mailing list to receive groundwater protection newsletters, fact sheets, and pamphlets.

(Amended: Ord. 2005-04-15)

C. Technical Assistance.

To assist applicants in locating existing Group A and Group B public water supply wells in CARAs, the Clark County Health Department will provide a list of the physical location of all Group A and Group B public water supply wells in CARAs. A record of these wells will be

available for review at the Clark County Health Department. Copies of the current Group A and Group B public water supply wells records may be purchased from the Clark County Health Department or Community Development department.

(Amended: Ord. 2005-04-15)

40.420 FLOOD HAZARD AREAS

40.420.010 Introduction

A. Purpose.

The purpose of this chapter is to safeguard public health, safety and welfare by placing limitations on development in areas susceptible to flood waters consistent with the requirements of the Growth Management Act and WAC [365-190-080](#).

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

B. Applicability.

1. This chapter applies to all development in identified special flood hazard areas within the jurisdiction of Clark County. After the adoption of this chapter, no structure shall hereafter be constructed, substantially improved, located, extended, converted, or replaced, nor any land altered without full compliance with the terms of this chapter and other applicable regulations.
2. This chapter is not intended to repeal or impair any existing easements, covenants or deed restrictions.
3. Where this chapter and another code or ordinance conflict or overlap, that which imposes the more stringent restrictions shall prevail.
4. In the interpretation and application of this chapter, all provisions shall be:
 - a. Considered as minimum requirements;
 - b. Liberally construed to achieve the purposes of this chapter; and
 - c. Deemed neither to limit nor repeal any other powers granted under state statutes.
5. Federal Flood Insurance Program. The Board assures the Federal Insurance Administration that it will take legislative action needed to meet the requirements of the National Flood Insurance Regulations and will take such other appropriate official actions as may be reasonably necessary to carry out the requirements of the program.

(Amended: Ord. 2005-04-15; Ord. 2009-03-02; Ord. 2012-07-15)

C. Definitions.

For purposes of this chapter, the following definitions shall apply:

Base flood	“Base flood” means the flood having a one percent (1%) chance of being equaled or exceeded in any given year and is also referred to as the one-hundred-year (100-year) flood.
Base flood elevation	“Base flood elevation” means the height in relation to the North American Vertical Datum (NAVD) 1988 expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.
Basement	“Basement” means any area of the building having its floor subgrade below ground level on all sides.
Critical facility	<p>“Critical facility” means the following:</p> <ul style="list-style-type: none"> • Structures or facilities that produce, use or store highly volatile, flammable, explosive, toxic and/or water-reactive materials; • Hospitals, nursing homes, and housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a flood; • Police stations, fire stations, vehicle and equipment storage facilities, and emergency operations centers that are needed for flood response activities before, during and after a flood; and • Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood.
Development	<p>“Development” means, in addition to the definition in Section 40.100.070:</p> <ul style="list-style-type: none"> • Storage of equipment and materials.
Elevation certificate	“Elevation certificate” means the official form (FEMA 81-31) used to record the elevation of a structure on a given property relative to the NAVD 1988.
Encroachment	“Encroachment” means the intrusion of any building, structure, vegetation, fill, excavation, or other development or use into a special flood hazard area which may impede or alter the flow through or storage capacity of a special flood hazard area.
FEMA	“FEMA” means the Federal Emergency Management Agency.
Flood or flooding	“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

	<ul style="list-style-type: none"> • The overflow of inland waters, and/or • The unusual and rapid accumulation of runoff of surface waters from any source.
Flood Insurance Rate Maps	“Flood Insurance Rate Maps” (FIRMs) mean the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the county.
Flood Insurance Study	“Flood Insurance Study” means an official report published by FEMA in conjunction with the community’s Flood Insurance Rate Maps (FIRMs). The study contains such background data as the base flood discharges and water surface elevations that were used to prepare the FIRMs.
Floodproofing	“Floodproofing” means any combination of structural and nonstructural additions, changes or adjustments to properties and structures which reduce or eliminate flood damages to lands, water and sanitary facilities, and structures and their contents.
Floodway	“Floodway” means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.
Lowest floor	“Lowest floor” means the lowest floor of the lowest enclosed area (including the basement). An unfinished or flood-resistant enclosure usable solely for parking of vehicles or for building access or storage in an area other than a basement area is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of Section 40.420.020(E)(1)(b) .
Special flood hazard area, or floodplain	“Special flood hazard area” or “floodplain” means any land area subject to a one percent (1%) or greater chance of flooding in any given year.
Start of construction	“Start of construction” means, in addition to the definition in Section 40.100.070 , for a substantial improvement, the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
Structure	<p>“Structure” means, in addition to the definition in Section 40.100.070:</p> <ul style="list-style-type: none"> • A gas or liquid storage tank that is principally above ground; • A manufactured home.
Substantial	“Substantial damage” means damage of any origin sustained by a

damage	structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.
Substantial improvement	<p>“Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which is equal to or greater than fifty percent (50%) of the market value of the structure either:</p> <ul style="list-style-type: none"> • Before the improvement or repair is started; or • If the structure has been damaged and is being restored, before the damage occurred. <p>Substantial improvement can exclude:</p> <ul style="list-style-type: none"> • Any project for improvement of a structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been identified by a code enforcement official and which are the minimum necessary to assure safe living conditions; or • Any alteration of a structure listed on the National Register of Historic Places or the Clark County Heritage Register.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

D. Flood Insurance Study and Maps.

1. The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a report entitled “Flood Insurance Study, Clark County, Washington and Incorporated Areas” (FIS), effective September 5, 2012, and accompanying Flood Insurance Rate Maps (FIRMs) and any revisions thereto are hereby adopted by reference. The FIS and the FIRMs are on file with the Public Works Department.
2. For the FIS and the FIRMs, the vertical datum was converted from the National Geodetic Vertical Datum of 1929 (NGVD29) to the North American Vertical Datum of 1988 (NAVD88). In addition, the Transverse Mercator, State Plane coordinates, previously referenced to the North American Datum of 1927 (NAD27), are now referenced to the North American Datum of 1983 (NAD83).
3. The best available information for flood hazard area identification as outlined in Section [40.420.030\(D\)\(6\)\(c\)](#) shall be the basis for regulation until new information is incorporated into the FIRMs.

(Added: Ord. 2012-07-15)

E. Warning and Disclaimer of Liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes, and is based upon scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural

causes. This chapter does not imply that land outside special flood hazard areas, or uses permitted within such areas, will be free from flooding or flood damages. This chapter shall not create liability on the part of Clark County, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision made thereunder.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

40.420.020 Standards

A. Uses.

1. Allowed Uses in Special Flood Hazard Areas.

- a. Outside of shoreline jurisdiction, development may be allowed for those uses in the underlying zoning district with a flood hazard permit pursuant to Section [40.420.030\(D\)](#).
- b. Within shoreline jurisdiction, development may be allowed for those uses allowed in the shoreline master program, with a flood hazard permit pursuant to Section [40.420.030\(D\)](#) as part of the shoreline permit process.
- c. Park, recreational, agricultural and other similar open space uses allowed in the underlying zoning district, which do not involve development as defined in this chapter, are permitted outright in special flood hazard areas.

2. Prohibited Uses in Special Flood Hazard Areas.

- a. Construction or reconstruction of residential structures is prohibited in the floodway except, in accordance with Chapter [86.16](#) RCW, for repairs, reconstruction, or improvements to a lawfully established structure:
 - (1) Which do not increase the ground floor area; and
 - (2) That are not a substantial improvement.
- b. Floodway encroachments are prohibited unless certification by a licensed professional engineer registered in the state of Washington is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. If it has been adequately demonstrated through calculations that the encroachment will not result in increased flood levels, all new nonresidential construction and nonresidential substantial improvements shall comply with all applicable flood hazard reduction provisions of this chapter.

3. Special Flood Hazard Area with Base Flood Elevation but No Floodways. In areas with base flood elevation but where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill)

shall be permitted within Zone AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point in the county.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

B. Land Divisions.

All land divisions shall:

1. Identify lots and portions of lots in special flood hazard areas as part of preliminary plat submittal;
2. Be designed to minimize flood damage;
3. Have any public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
4. Have roadways designed such that, in the event of a one-hundred- (100-) year flood, one (1) travel lane in either direction shall not be covered by more than six (6) inches of water; and
5. Have adequate drainage provided to reduce exposure to flood damage.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

C. Building Permits.

Permits for buildings and structures in special flood hazard areas are subject to the requirements of this chapter.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

D. General Construction Standards.

In all special flood hazard areas, the following standards shall be met:

1. Anchoring, in Accordance with FEMA Requirements.
 - a. All new construction and any substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
 - b. All manufactured homes shall be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors, and additional techniques referenced in the current FEMA guidebook FEMA P-85, "Protecting Manufactured Homes From Floods and Other Hazards."
2. Construction Materials and Methods, in Accordance with FEMA Technical Bulletin 2.

- a. All new construction and any substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- b. All new construction and any substantial improvements shall be constructed using methods and practices that minimize flood damage.
- c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed, elevated and located so as to prevent water from entering or accumulating within the components during flooding.

3. Utilities.

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- b. Water wells shall not be located in the floodway or in areas subject to ponding.
- c. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
- d. On-site waste disposal systems shall be located or designed to avoid impairment to them or contamination from them during flooding.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

E. Specific Construction Standards.

In all special flood hazard areas, once base flood elevation data has been provided as required in Section [40.420.010\(D\)\(1\)](#), or as established in Section [40.420.010\(D\)\(2\)](#), the following standards shall be met:

1. Residential Construction.

- a. New residential construction and substantial improvement of any residential structure shall have the lowest floor (including the basement) elevated at least one (1) foot above base flood elevation.
- b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, unless designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a licensed professional engineer registered in the state of Washington or must meet or exceed the following minimum criteria:
 - (1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided;

- (2) The bottom of all openings shall be no higher than one (1) foot above grade; and
- (3) Openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic entry and exit of floodwaters.

c. Below-Grade Crawl Spaces.

- (1) Below-grade crawl spaces will not be considered basements if constructed to the following criteria:
 - (a) The interior grade of the crawl space is not more than two (2) feet below the lowest adjacent exterior grade.
 - (b) The height of the below-grade crawl space, measured from the interior grade of the crawl space to the top of the crawl space foundation wall, must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.
 - (c) There must be an adequate drainage system that removes floodwaters from the interior area of the crawl space.
 - (d) The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawl space. For velocities in excess of five (5) feet per second, other foundation types should be used.
 - (e) Utility systems within the crawl space, particularly ductwork, must be elevated above the base flood elevation, or designed so that floodwaters cannot enter or accumulate within system components, or be damaged during flood conditions.
 - (f) All insulation must be located above the base flood elevation.
- (2) Buildings that have below-grade crawl spaces may have higher flood insurance premiums than buildings that have the preferred crawl space construction with the interior elevation at or above the lowest adjacent grade.
- (3) For additional information and diagrams see FEMA Technical Bulletin 11.

2. Nonresidential Construction.

- a. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including the basement, elevated to at least one (1) foot above base flood elevation; or, together with attendant utility facilities, shall:
 - (1) Be floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water up to an elevation one (1) foot above the base flood elevation;

- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - (3) Be certified by a licensed professional engineer registered in the state of Washington that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be on FEMA Form 81-65 and provided to the responsible official as set forth in Section [40.420.030\(D\)](#).
 - b. Nonresidential structures that are elevated, but not floodproofed, must meet the same standards for space below the lowest floor as described in Section [40.420.020\(E\)\(1\)\(b\)](#).
 - c. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates for floodproofing to one (1) foot below the floodproofed level.
3. **Manufactured Homes.** All manufactured homes to be placed or substantially improved within a special flood hazard area shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at least one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement in accordance with the provisions of Section [40.420.020\(D\)\(1\)\(b\)](#).
4. **Travel Trailers and Recreational Vehicles.** Travel trailers and recreational vehicles are allowed as follows:
- a. In a floodway between May 1st and September 30th of the same year.
 - b. In a special flood hazard area outside of a floodway on a temporary basis for fewer than one hundred eighty (180) consecutive days unless:
 - (1) The vehicle remains fully licensed or has a valid trip permit from the Washington State Department of Licensing and is ready for highway use, on wheels or a jacking system, attached to the site only by quick disconnect type utilities and security devices, and with no permanently attached additions; or
 - (2) The requirements of Section [40.420.020\(E\)\(3\)](#) are met.
5. **Critical Facilities.**
- a. New critical facilities shall be constructed outside of special flood hazard areas unless no feasible alternative sites are available.
 - b. Critical facilities constructed within special flood hazard areas shall have:
 - (1) The lowest floor elevated three (3) feet above the base flood elevation or to the height of the five-hundred- (500-) year flood, whichever is higher;

(2) Access to and from the critical facility as required in Section [40.420.020\(B\)\(4\)](#); and

(3) Floodproofing and sealing measures to ensure that toxic substances will not be displaced by or released into floodwaters.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

40.420.030 Administration

A. The Public Works Director or his/her designee is the responsible official for purposes of administering this chapter.

(Added: Ord. 2012-07-15)

B. Shoreline Master Program.

For developments on parcels within both shoreline jurisdiction and a special flood hazard area, a flood hazard permit pursuant to Section [40.420.030\(D\)](#) is required, whether the development is exempt from a shoreline permit or not.

(Added: Ord. 2012-07-15)

C. Flood Hazard Inquiry.

1. For development proposed on parcels outside of shoreline jurisdiction, the applicant may submit an inquiry on a form furnished by the responsible official requesting the department to determine if the proposed development is in a special flood hazard area.
2. The responsible official shall review the application and other pertinent information, and make a determination as to whether the proposed development is in a special flood hazard area and a flood hazard permit is required. The responsible official shall inform the applicant in writing whether or not a permit is required.

(Added: Ord. 2012-07-15)

D. Flood Hazard Permit.

1. A flood hazard permit must be obtained before construction or development begins within any special flood hazard area. The review shall be for all structures and development as defined in Section [40.100.070](#) and this chapter.
2. For land divisions, a flood hazard permit will be issued as part of the land division review process. The following information is required:
 - a. Floodplain and floodway limits;
 - b. Finished grading;
 - c. Building envelopes; and

- d. Hydrologic and hydraulic calculations used to determine the impact of the proposed development on base flood elevation. Where base flood elevation data is not available from the Flood Insurance Study, FIRMs, or from another authoritative source, it shall be provided by the applicant for subdivisions and other proposed development which contain at least fifty (50) lots or five (5) acres, whichever is less. This documentation shall be prepared by a licensed professional engineer registered in the state of Washington.
3. For building permits, a flood hazard review will be done as part of the building permit review process. The following information is required:
 - a. Floodplain and floodway limits;
 - b. Finished grading; and
 - c. Hydrologic and hydraulic calculations used to determine the impact of the proposed development on base flood elevation. Where base flood elevation data is not available from the Flood Insurance Study, FIRMs, or from another authoritative source, the applicant shall assure that proposed construction will be reasonably safe from flooding. The test of reasonableness shall be a judgment of the responsible official who shall consider historical data, high water marks, and photographs of past flooding, where available. This documentation shall be prepared by a licensed professional engineer registered in the state of Washington. Failure to elevate the lowest floor at least two (2) feet above the highest adjacent grade in these zones may result in higher insurance rates.
4. Application for a flood hazard permit shall be made to the responsible official on a form furnished by the responsible official.
5. The application shall include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question, and existing and proposed structures, fill, excavation, storage of materials, and drainage facilities. Specifically, the following information is required:
 - a. Elevation, in relation to mean sea level as determined by the North American Vertical Datum (NAVD) of 1988, of the lowest floor (including the basement) of all structures;
 - b. Elevation, in relation to the NAVD of 1988, to which any structure has been floodproofed;
 - c. Certification by a licensed professional engineer registered in the state of Washington that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section [40.420.020\(E\)\(2\)](#);
 - d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
 - e. Hydrologic and hydraulic calculations used to determine the impact of the proposed development on base flood elevation. If hydraulic modeling software is utilized for

these calculations, all electronic files shall be submitted prior to flood hazard permit or shoreline substantial development permit approval.

6. The responsible official will:

- a. Review all proposed developments with respect to the Flood Insurance Study and accompanying maps and zoning district boundaries;
- b. Make interpretations, where needed, as to the exact location of special flood hazard area boundaries;
- c. When base flood elevation data has not been provided in accordance with Section [40.420.010\(D\)](#), obtain, review and reasonably utilize any base flood elevation and floodway data available from an agency of federal or state government, or other sources, in order to enforce the provisions of this chapter;
- d. Review all proposals to determine that the requirements of this chapter have been satisfied;
- e. Review all proposals to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required; and
- f. Issue a flood hazard permit with any conditions necessary to insure that the development meets the requirements of this chapter.

7. Elevation Certificates Required. Elevation certificates are required to verify elevations of structures and above-ground equipment, and shall be submitted prior to receiving an inspection for footing, framing and certificate of occupancy. Elevation certificates shall be prepared by a licensed professional surveyor registered in the state of Washington.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

E. Variances.

1. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from flood elevations should be quite rare.
2. A Type I administrative variance may be granted pursuant to Section [40.510.010](#), the National Flood Insurance Program and applicable state law, and shall only be issued if all of the following are met:
 - a. The proposal has been designed to minimize the impact on the floodplain and its functions;
 - b. No increase in flood levels during the base flood discharge would result;

- c. The variance is the minimum necessary, considering the flood hazard, to afford relief;
 - d. Failure to grant the variance would result in exceptional hardship to the applicant;
 - e. The hardship is not created by the property owner or his or her immediate predecessor in the title; and
 - f. The granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense; create nuisances; cause fraud on or victimization of the public as identified in Section [40.420.030\(F\)](#); nor conflict with existing local laws or ordinances.
3. Variances may be issued for new construction and substantial improvements on lots of one-half (1/2) acre or less in size and abutting and surrounded by lots with existing structures constructed below the base flood level; provided, that the items in Section [40.420.030\(E\)\(2\)](#) have been fully considered.
 4. Variances may be issued for commercial, industrial, and accessory buildings to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria, and otherwise complies with Section [40.420.020\(E\)](#).
 5. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 6. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the significantly increased risk resulting from the reduced lowest floor elevation.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

F. Appeals.

1. Administrative decisions rendered by the responsible official are subject to appeal pursuant to Section [40.510.020\(H\)](#).
2. In acting on appeals, the Hearing Examiner shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this chapter; and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner;

- d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters, and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
3. Upon consideration of the factors of Section [40.420.030\(E\)\(2\)](#) and the purposes of this chapter, the Hearing Examiner may attach such conditions to actions on appeals as it deems necessary to further the purposes of this chapter.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

G. The responsible official shall obtain and/or maintain the following:

1. Where base flood elevation data is provided through the Flood Insurance Study, FIRMs, or as required as in Section [40.420.030\(D\)\(6\)\(c\)](#), obtain and record the actual elevation (in relation to mean sea level based on the NAVD 1988) of the lowest floor (including the basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
2. For all new or substantially improved floodproofed nonresidential structures, verify and record the actual elevation (in relation to mean sea level based on the NAVD 1988) to which the structure was floodproofed, and maintain the floodproofing certifications required in Section [40.420.030\(D\)\(5\)\(c\)](#).
3. All records for public inspection pertaining to the provisions of this chapter.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

H. For alteration of any watercourses, the responsible official will:

1. Notify adjacent communities and the Washington Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA; and

2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(Amended: Ord. 2005-04-15; Ord. 2012-07-15)

40.430 GEOLOGIC HAZARD AREAS

40.430.010 Introduction

A. Purpose.

The purpose of this chapter is to safeguard public health, safety and welfare by placing limitations on development in geologically hazardous areas consistent with the requirements of the Growth Management Act and WAC [365-190-080](#).

(Amended: Ord. 2005-04-15; Ord. 2012-03-02)

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. Exempt Activities and Uses. The following activities and uses are exempt from the provisions of this chapter:
 - a. Emergency activities which require immediate action to prevent an imminent threat to health, safety or property. As soon as practical, the responsible party shall provide written notification to the responsible official and obtain all applicable permits;
 - b. The expansion, remodel, reconstruction or replacement of any structures which will be set back from the geologic hazard area a distance which is greater than or equal to the setback of the original structure and which will not increase the building footprint by more than one thousand (1,000) square feet inside a steep slope hazard area, landslide hazard area or their buffers;
 - c. Any replacement, operation, repair, modification, installation or construction by a state or locally franchised utility company in an improved right-of-way or utility corridor;

- d. Normal and routine maintenance and repair of existing utility facilities, equipment and appurtenances;
- e. Any development activity on or within one hundred (100) feet of steep slopes that have been created through previous, legal grading activities is exempt from steep slope hazard regulations; and
- f. Applications for short plats in the rural area that are certified by a registered geologist or professional engineer licensed in the state of Washington to be exempt from the requirements of this chapter even though a mapped geohazard exists on the plat or within one hundred (100) feet of the boundaries of the plat. Certification shall be provided with the preliminary plat application by means of one of the following:
 - (1) A development envelope is designated on the plat which is certified to be over one hundred (100) feet from any regulated geologic hazard area. A stamped letter which documents how the designated envelope is exempt from the requirements of this chapter shall accompany the development envelope diagram; or
 - (2) A stamped letter which documents there are no areas within the boundaries of the plat that are within one hundred (100) feet of any regulated geologic hazard area.
- g. All forest practices other than Class IV G (conversions).

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

(Amended: Ord. 2005-04-15; Ord. 2012-02-03; Ord. 2012-07-16)

C. Definitions.

For purposes of this chapter, the following definitions shall apply:

1. "Steep slope hazard area" means an area where there is not a mapped or designated landslide hazard, but where there are steep slopes equal to or greater than forty percent (40%) slope. Steep slopes which are less than ten (10) feet in vertical height and not part of a larger steep slope system, and steep slopes created through previous legal grading activity are not regulated steep slope hazard areas. The presence of steep slope suggests that slope stability problems are possible.
2. "Landslide hazard area" means an area that, due to a combination of slope inclination, soil type and presence of water is susceptible to landsliding in accordance with the following criteria:
 - a. Areas of previous slope failures including areas of unstable old or recent landslides;
 - b. Areas with all three (3) of the following characteristics:
 - (1) Slopes steeper than fifteen percent (15%),

- (2) Hillsides intersecting geologic contacts with permeable sediment overlying a low permeability sediment or bedrock, and
 - (3) Any springs or groundwater seepage;
 - c. Slopes that are parallel or sub-parallel to planes of weakness, such as bedding planes, joint systems and fault planes in subsurface materials;
 - d. Areas mapped by:
 - (1) Washington Department of Natural Resources Open File Report: Slope Stability of Clark County, 1975, as having potential instability, historical or active landslides, or as older landslide debris, and
 - (2) The Washington Department of Natural Resources Open File Report Geologic Map of the Vancouver Quadrangle, Washington and Oregon, 1987, as landslides;
 - e. Slopes greater than eighty percent (80%), subject to rock fall during earthquake shaking;
 - f. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and stream undercutting the toe of a slope;
 - g. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows, debris torrents or catastrophic flooding;
 - h. Areas within one hundred (100) feet of an open-pit mine sites subject to steep slope hazard or landslide hazard.
3. "Seismic hazard area" means an area subject to severe risk of damage as a result of earthquake-induced soil liquefaction, ground shaking amplification, slope failure, settlement, or surface faulting. Relative seismic hazard is mapped on the NEHRP Site Class Map of Clark County, published by the Washington Department of Natural Resources.
4. "Volcanic hazard area" means an area subject to possible low and high density pyroclastic flows as shown on the Volcanic Hazard Map of Clark County.

(Amended: Ord. 2005-04-15)

D. Maps.

1. Adopted Maps. The following geologic hazard maps signed by the board are adopted by reference and are on file with the County Auditor:
 - a. Clark County, Washington Severe Erosion Hazard Areas;
 - b. Clark County, Washington NEHRP Site Classes;
 - c. Clark County, Washington Steep Slopes and Landslide Hazards;

- d. Clark County, Washington Liquefaction Susceptibility; and
 - e. Clark County, Washington Volcanic Hazard.
2. Identification. Geologic hazards are usually localized individual occurrences that may affect only small, separate areas. In addition, activities such as grading and clearing can create or increase slope instability where none was previously identified. Because of this, geologic hazard areas have not been identified on a site-specific basis. Where the geologic hazard area maps and definitions conflict, the definitions shall prevail.
3. Source Data. The approximate location and extent of geologic hazard areas are shown on the geologic hazard area maps adopted herein. The maps are intended to meet the designation criteria listed in WAC [365-190-080](#) and are based on the best available information, including:
- a. Slope Areas Mapping for Clark County, Clark County Department of Assessment and GIS;
 - b. Slope Stability of Clark County, Washington Department of Natural Resources, 1975 and landslides mapped in Geologic Map of the Vancouver Quadrangle, Washington and Oregon, Washington Department of Natural Resources, 1987;
 - c. Construction of Liquefaction Susceptibility and NEHRP Soil-type Maps for Clark County, Washington, Washington Department of Natural Resources, 2004;
 - d. Volcanic hazard zonation for Mount St. Helens, Washington, U.S. Geological Survey, 1995; and
 - e. Natural Resources Conservation Service, Soil Survey Geographic Database (SSURGO), 2004.
4. Map Updates. Results of binding pre-determinations and other site investigations required under this chapter and the building code will be compiled by the department and incorporated into future geologic hazard area map revisions. The county will adopt updated maps as more detailed information becomes available. The review of such new information shall include local geologists and engineers familiar with the requirements of this chapter and how it is applied to new development.

(Amended: Ord. 2005-04-15)

E. Relationship to Chapter 40.570 Environmental Impacts.

Geologic hazard area protective measures required by this section shall constitute adequate mitigation of significant adverse environmental impacts related to geologic hazards for purposes of Chapter 40.570.

(Amended: Ord. 2005-04-15)

F. Reasonable Use Assurance.

Nothing in this section shall preclude the issuance of a single-family building permit on a lawfully created lot.

(Amended: Ord. 2005-04-15)

G. Density Transfer.

Land divisions regulated by this section may be eligible for density transfers under Section [40.220.010\(C\)\(5\)](#).

(Amended: Ord. 2005-04-15)

H. Open Space Tax Incentives.

Tax incentives may be available for owners of land set aside in landslide protection hazard areas through the open space taxation program.

(Amended: Ord. 2005-04-15)

40.430.020 Standards

A. General.

The following requirements for development activities in geologic hazard areas list prohibited activities, buffer requirements, and setback requirements. The following section describes required buffers and setbacks, and general requirements for development activities in geologic hazard areas.

1. Development on steep slope hazard areas is regulated to prevent potential landslide damage by placing improvements away from steep slopes and leaving steep slopes in natural vegetation.
2. Development in landslide hazard areas is generally not allowed, and requires buffers that keep vegetation in a natural state on and around the landslide hazard area.
3. Seismic hazards due to liquefaction, ground shaking amplification and landslides exist for large areas of the county. Only detailed site analysis can determine how soils and structures will respond at a particular site. Site investigation requirements of the International Building Code are used to ensure that structures are built to minimum safety standards based on existing knowledge of earthquake hazard. Section [40.430.020\(F\)](#) provides additional guidelines describing where site investigations should be required for seismic design.
4. If an applicant wishes to perform development activities not allowed by Sections [40.430.020\(D\)](#) and (E), a geologic hazard area study meeting the requirements of Section [40.430.030\(C\)\(5\)](#) must be completed. The development proposal may be approved, approved with conditions, or denied based on the responsible official's

evaluation of the suitability of the mitigation measures proposed by the geologic hazard area study to protect life, safety, and slope stability on abutting properties.

(Amended: Ord. 2005-04-15)

B. Erosion Requirements.

All activities on hillsides subject to severe erosion hazard must minimize erosion by following management practices prescribed by the erosion control standards of Chapter 40.385.

(Amended: Ord. 2005-04-15; Ord. 2009-01-01)

C. Stormwater Requirements.

For projects within one hundred (100) feet of steep slope hazard areas or landslide hazard areas, runoff shall not be infiltrated into the ground. Runoff should be directed through a water-tight pipe beyond the base of the slope or landslide area and discharged to a suitable drainage way. An energy dissipating device shall be placed at the discharge point.

(Amended: Ord. 2005-04-15)

D. Steep Slope Hazard Areas.

1. Except for mineral extraction practices, development activity on or within one hundred (100) feet of slopes steeper than forty percent (40%) that do not have a mapped or designated landslide hazard shall comply with the requirements of this section.

2. Buffer and Setback Distances.

a. Activities at the base of ascending slopes (building at the bottom of a steep slope):

(1) For slopes greater than or equal to forty percent (40%) and less than one hundred percent (100%), buffers shall extend a distance away from the toe of the slope that is equal to the vertical height of the slope divided by two, but not to exceed fifteen (15) feet (Figure 40.430.020-1). For slopes less than one hundred percent (100%), the toe of the slope is defined as a distinct break in slope at the base of a steep slope.

(2) For slopes greater than one hundred percent (100%), the buffer shall extend a distance back from the toe of the slope equal to the height of the slope divided by two, not to exceed fifteen (15) feet. The buffer shall be measured horizontally from a plane, drawn tangent to the top of the slope at an angle of forty-five (45) degrees to the proposed structure (Figure 40.430.020-3).

(3) The setback shall be eight (8) feet beyond the buffer.

b. Activities at the tops of descending slopes (building at the top of a steep slope):

(1) For slopes greater than or equal to forty percent (40%) and less than one hundred percent (100%), buffers shall extend a distance back from the top of the slope equal to the vertical height of the slope divided by three (3), but not

to exceed forty (40) feet. The top of the slope is defined as a distinct break in slope at the top of a steep slope (Figure 40.430.020-1).

(2) For slopes greater than one hundred percent (100%), the buffer shall extend a distance back from the top of the slope equal to the height of the slope divided by three (3), but not to exceed forty (40) feet. The buffer shall be measured horizontally from a plain drawn at forty-five (45) degrees (one hundred percent (100%) slope) from the toe of the slope to the proposed structure (Figure 40.430.020-2).

(3) The setback shall be eight (8) feet beyond the buffer.

- c. For projects not required to have a landslide protection area under Section [40.430.030\(B\)](#), the setback from the steep slope shall be equal to the buffer distance set in this subsection.
3. The responsible official may approve buffers and setbacks which differ from those required by Section [40.430.020\(D\)\(1\)](#) if the applicant submits a geologic hazard area study described in Section [40.430.030\(C\)](#), which technically demonstrates and illustrates that the alternative buffer provides protection which is greater than or equal to that provided by the buffer required in Section [40.430.020\(D\)\(1\)](#).
 4. The responsible official may increase buffers or setbacks where necessary to meet requirements of the International Building Code.
 5. All portions of steep slope hazard areas and steep slope buffers on the site which are planned to be undisturbed by permitted development activities shall be designated as landslide protection areas in accordance with Section [40.430.030\(B\)](#).
 6. Other than for exemptions listed in Sections [40.430.010\(B\)\(3\)](#) and [40.430.030\(B\)](#), vegetation removal is not allowed on slopes over forty percent (40%) without an approved geologic hazard area study described in Section [40.430.030\(C\)\(5\)](#).
 7. Buffers, landslide protection areas and setbacks for steep slopes on projects having approved grading shall be based on regulated steep slopes that remain after that grading.

(Amended: Ord. 2005-04-15)

E. Landslide Hazard Areas.

1. A development proposal on a site containing a landslide hazard area shall meet the following requirements:
 - a. A minimum buffer of fifty (50) feet shall be established from all edges of the landslide hazard area. The buffer shall be extended as required to mitigate a steep slope or erosion hazard or as otherwise necessary to protect the public health, safety and welfare. In cases where the diameter of the landslide area is smaller than fifty (50) feet, the buffer width may be reduced to less than fifty (50) feet at the discretion of the department;

- b. All portions of landslide hazard areas and buffers shall be designated as landslide protection areas in accordance with Section [40.430.030\(B\)](#).
2. Other than exempt activities, clearing or alteration of a landslide is allowed only if the following are met:
 - a. A development proposal does not decrease slope stability on contiguous properties;
 - b. Mitigation is based on best available engineering and geological practice and is described in an approved geologic hazard area study as specified in Section [40.430.030\(C\)\(5\)](#);
 - c. Such clearing or alteration of a landslide is certified safe as designed and under anticipated conditions by a registered geotechnical engineer or geologist licensed in the state of Washington.
3. Neither buffers nor a landslide protection area will be required if the activity meets the requirements of Section [40.430.020\(E\)\(2\)](#).

(Amended: Ord. 2005-04-15)

F. Seismic Hazard Areas.

1. Development activity in a seismic hazard area shall meet all applicable provisions of the most recently adopted version of the International Building Code, as adopted by the county.
2. Buffers are not required for seismic hazard areas, except for fault rupture hazard areas where the buffer will be a minimum of fifty (50) feet and shall be one hundred (100) feet for critical facilities.

Figures

40.430.020-1

through

Figure

40.430.020-3

Slope Setback Diagrams

Figure 40.430.020-1

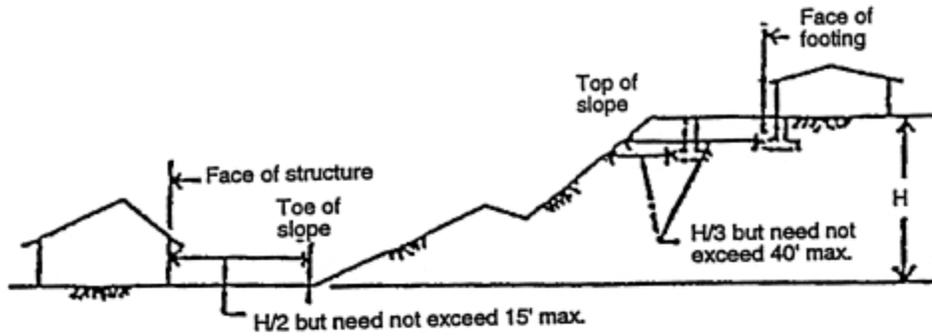


Figure 40.430.020-2

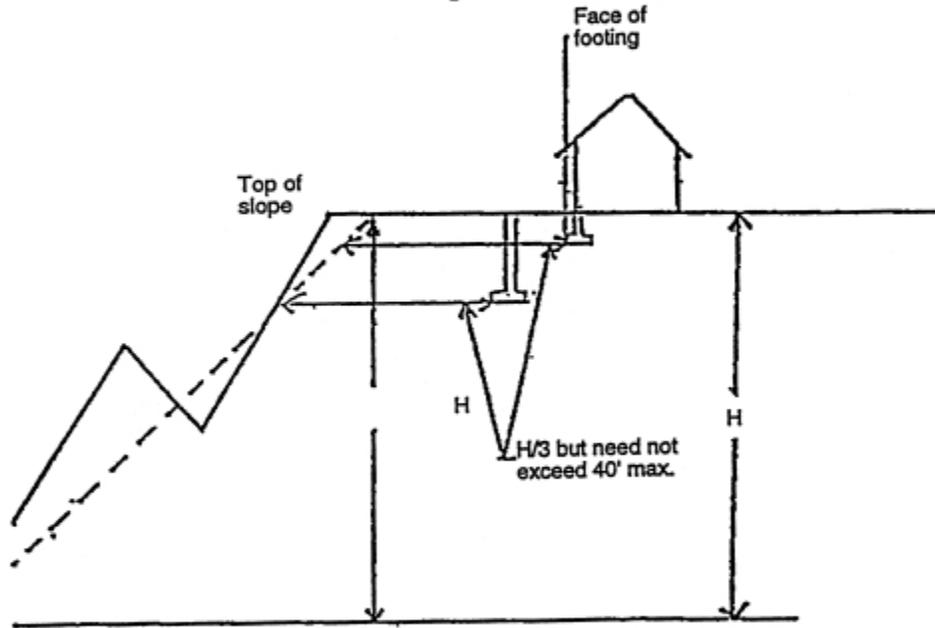
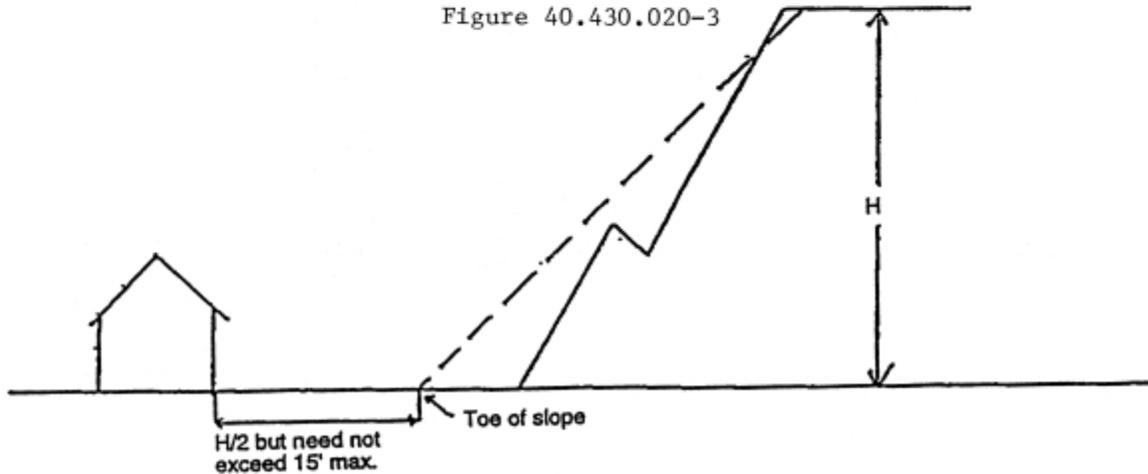


Figure 40.430.020-3



(Amended: Ord. 2005-04-15)

40.430.030 Administration

A. Binding Pre-Determination.

Prior to submittal of a triggering application, a person may request from the responsible official, through a Type II application process described in Section [40.510.020](#), a written binding pre-determination of whether a probable regulated geologic hazard area exists on or within one hundred (100) feet of any parcel less than forty (40) acres. The pre-determination shall be binding on the responsible official for a period of three (3) years; provided, that such pre-determination shall be subject to administrative appeal upon its application in conjunction with a triggering application. The fee for a pre-determination is set forth in Chapter 6.110A. A complete pre-determination shall include a list of the submittal requirements for a site description under Section [40.430.030\(C\)\(4\)](#). Additional submittal requirements may later be required as a part of a geologic hazard area study under Section [40.430.030\(C\)\(5\)](#) if the proposal intends to develop within a steep slope or landslide hazard area, or their buffers.

(Amended: Ord. 2005-04-15; Ord. 2006-09-13)

B. Establishment of Landslide Protection Areas.

1. Steep slope hazard areas and landslide hazard areas and buffers for which permanent protection is required pursuant to Sections [40.430.020\(D\)](#) and (E) shall be designated landslide protection areas.
2. Landslide protection area requirements apply only to site plans and land divisions.
3. For all development activities subject to this section, landslide protection areas shall be delineated on binding site plans and plots which shall be recorded with the County Auditor.
4. A conservation covenant applicable to the designated landslide protection area shall be recorded in a form approved by the Prosecuting Attorney as adequate to incorporate the restrictions of this chapter.
5. Prior to any site development activity, the applicant shall mark with temporary markers in the field the boundary of all landslide protection areas required by this chapter, or the limits of the proposed site disturbance outside of the landslide protection areas, using methods and materials acceptable to the county.
6. Landslide protection area boundaries shall be permanently marked on the site prior to final inspection by the county using methods and materials acceptable to the county.
7. Vegetation clearing requirements for development in landslide protection areas, steep slope hazard areas and landslide hazard areas.
 - a. Clearing or vegetation removal in landslide protection areas, steep slope hazard areas or landslide hazard areas or their buffers is prohibited except for:

- (1) Activities included in an approved geologic hazard area study as defined in Section [40.430.030\(C\)\(5\)](#);
- (2) Limited vegetation removal for surveying and testing necessary for development approvals;
- (3) Emergency or fire hazard removal authorized by the fire marshal;
- (4) Removal of nuisance vegetation using methods which minimize disruption of soil and non-nuisance vegetation;
- (5) Clearing necessary for placement or maintenance of fencing;
- (6) Clearing necessary for hillside vegetation restoration;
- (7) Clearing necessary for vegetation or resource conservation projects authorized by a public agency; and
- (8) Clearing for three (3) foot wide or narrower foot paths surfaced with wood, soil or gravel.

b. Proposals for clearing may also be subject to other critical areas regulations. Wildlife habitat near streams, which have clearing requirements under the habitat conservation regulations, often overlap with steep slopes included in geologic hazard areas.

(Amended: Ord. 2005-04-15)

C. Submittal Requirements.

1. For development activity regulated by this chapter, submittal requirements will vary depending on the type of project and the type of hazard mitigations that are proposed. Pursuant to Section [40.500.010](#), a review of a geologic hazard area will be conducted in conjunction with the primary development application. Projects are required to submit a basic site description sufficient to verify that the location of proposed building and access road improvements comply with buffers, setbacks, and vegetation preservation required by Sections [40.430.020\(D\)](#) and (E). If a regulated activity is proposed within a geologic hazard area, additional information in the form of a geologic hazard area study must be provided to assure the project is feasible and will not cause an increased geologic hazard. The information required for a site description is included in Section [40.430.030\(C\)\(4\)](#). The requirements for a geologic hazard area study for projects wishing to build in a geologic hazard area are included in Section [40.430.030\(C\)\(5\)](#). To avoid duplication, the information required by this section shall be coordinated by the county with the assessments 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. The responsible official shall waive parts of the submittal requirements if it is determined that they are not applicable to the proposed activity.
4. Site Description. As part of the development permit application, the following information describing the subject property and areas within twenty-five (25) feet of the property lines or smaller area of concern as deemed appropriate by the responsible official, drawn to an engineering scale no larger than one (1) inch equals twenty (20) feet (1" = 20') and no smaller than one (1) inch equals one hundred (100) feet (1" = 100') as deemed appropriate by the responsible official:
 - a. The site boundary lines;
 - b. The topography at contour interval of no greater than five (5) feet;
 - c. The location and size of all existing and proposed site improvements including structures, wells, drainfields, drainfield reserve areas, public and private right-of-way easements, and utilities;
 - d. The location of all drainage-flow characteristics, streams, groundwater seeps, springs, and evidence of seasonal surface water runoff or groundwater;
 - e. The location and extent of all existing and proposed grading activities and existing natural or artificial drainage control facilities and systems;
 - f. The location and description of all geologic hazards located on the site and observed on properties within one hundred (100) feet of site boundaries;
 - g. The general location of all vegetation and the general location, number and description of all trees over six (6) inch diameter measured three (3) feet above the ground; and
 - h. The location of all proposed buffers and setbacks.
5. Geologic Hazard Area Study. A geologic hazard area study is required if the proposed development does not comply with requirements of Sections [40.430.020\(D\)](#) and (E). Geologic investigation may also be required in some cases to meet International Building Code requirements for foundations and for seismic design. Geologic hazard area studies shall be prepared, stamped and signed by a registered geotechnical engineer or geologist who meets the requirements defined in Section [40.100.070](#). Based on the site characteristics and the information submitted by the applicant, the responsible official may require all or part of the following information to be included in a geotechnical report:
 - a. The requirements for the site description listed above in Section [40.430.030\(C\)\(4\)](#);
 - b. Site geology information:

- (1) Topographic contours at two (2) foot intervals or as specified by the responsible official;
- (2) Subsurface data that includes the exploration method, location of soil borings, borings, logs, soil and rock stratigraphy and groundwater levels including seasonal changes;
- (3) The location of landslides, or down-slope soil movement, faults, and geologic contacts on the subject property and adjacent properties;
- (4) A site history that describes any prior grading, soil instability or slope failure; and
- (5) A description of the site vulnerability to seismic events;

c. Geotechnical Information and Plan Requirements.

- (1) A slope stability study and opinion of slope stability on the subject property and adjacent properties;
- (2) Grading plan;
- (3) Structural foundation requirements and estimated foundation settlements;
- (4) Soil compaction criteria;
- (5) Allowable soil-bearing pressure for foundations, minimum footing widths, piling recommendations for foundations, and design pressure for retaining walls;
- (6) Laboratory data and soil index properties for soil samples;
- (7) Suitability for fill;
- (8) Lateral earth pressures;
- (9) Description of erosion vulnerability and an erosion control plan as required in Chapter 40.385;
- (10) An evaluation of proposed surface and subsurface drainage in a stormwater control plan as required in Chapter 40.385;
- (11) Building limitations; and
- (12) A vegetation management and restoration plan or other means for maintaining long-term stability of slopes;

d. A site evaluation that describes the suitability of the site to accommodate the proposed activity;

e. Such additional information describing existing physical features for the site and surrounding area as required by the responsible official to complete review of the project under standards of the International Building Code.

(Amended: Ord. 2005-04-15; Ord. 2009-01-01; Ord. 2012-07-16)

40.440 HABITAT CONSERVATION

40.440.010 Introduction

A. Purpose.

The purpose of this chapter is to further the goal of no net loss of habitat functions and values within designated habitat areas by protecting environmentally distinct, fragile and valuable fish and wildlife habitat areas, as defined in Section [40.440.010\(C\)](#), for present and future generations, while also allowing for reasonable use of private property. This chapter intends to conserve the functional integrity of the habitats needed to perpetually support fish and wildlife populations.

1. These purposes are to be carried out by reviewing impacts of proposed activities within designated habitat areas, and through the development of education, outreach and incentive programs. Review under this chapter shall be based on best available science and the mandates of the Washington Growth Management Act, and shall include consultation with the Washington Department of Fish and Wildlife (WDFW). The county shall emphasize education and voluntary conservation options prior to regulatory enforcement.
2. Within areas designated by this chapter, development or clearing activities which degrade habitat should generally be avoided where possible. However, activities listed as exempt in this chapter can be undertaken in habitat areas without additional review. Activities not listed as exempt can be undertaken following county review if they do not substantially diminish the habitat functions and values present.
3. It is the intent of the board that this chapter be administered with flexibility and attention to site-specific characteristics.
4. The provisions of this chapter dealing with existing agricultural activities are designed to balance conflicting Growth Management Act goals to preserve both agricultural uses and habitat areas, and recognize:
 - a. That the maintenance and enhancement of natural resource-based industries, including agriculture, is a goal of the state Growth Management Act;
 - b. That any regulation should be consistent with the “right to farm” provisions in Chapter 9.26 of this code;
 - c. That agricultural lands can provide habitat;
 - d. That habitat protection must relate to the baseline of existing functions and values given historic agricultural practices, rather than seeking to restore pre-agricultural conditions;

- e. That since agricultural activities are dynamic, habitat functions and values can be expected to fluctuate during the course of an agricultural cycle, which fluctuation must be considered in identifying existing functions and values; and
- f. That it is expected that continuation of existing agriculture will not degrade existing functions and values unless sediment, nutrients, or chemicals are allowed to enter streams, or existing beneficial canopy in close proximity to streams is significantly degraded.

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. Proposed new single-family residential development occurring immediately outside but within three hundred (300) feet of designated priority species polygons or within one hundred (100) feet of designated non-riparian priority habitat polygons shall require consultation with WDFW prior to issuance of a development permit. In such cases, further review under this chapter is not required unless WDFW finds that there are potential adverse impacts. Agricultural activities adjacent to designated agricultural riparian areas are subject to Section [40.440.040\(B\)](#). Other proposed land divisions and nonresidential development adjacent to designated wildlife sites shall be subject to SEPA as normally required by Chapter 40.570 (State Environmental Policy Act), and mitigative measures established if there are adverse impacts to the adjacent designated habitat areas.
4. Exempt Activities.
 - a. All proposed activities outside designated habitat areas are exempt from review under this chapter, except where noted in Sections [40.440.010\(B\)\(3\)](#) and [40.440.040\(B\)](#).
 - b. Within designated habitat areas exempt activities are listed in Section [40.440.010\(D\)](#). These do not require review.

- c. All other proposed activities within habitat areas which are not consistent with an approved stewardship plan or subject to Section [40.440.040](#) shall be subject to the provisions of Section [40.440.020](#)(D).

(Amended: Ord. 2012-07-16)

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.
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.

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 outside of habitat	Fees pursuant to Chapter 6.110A. Adjustment to allow smaller lots necessary for 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, not to exceed the 1997 footprint, of existing homes or buildings 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	Exempt	None

the hazard. Cut wood should be left in the habitat area		
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 manner	Exempt	None
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	Exempt	None

habitat areas		
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 three (3) or more lots	Exempt	None
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

(Amended: Ord. 2005-04-15; Ord. 2006-06-09; Ord. 2006-07-09; Ord. 2006-08-03)

40.440.020 Standards and Non-regulatory Measures

A. Approval Criteria.

Approval shall be granted for all proposals demonstrating compliance with the following criteria. Approval shall be required prior to clearing or development.

1. Intent. Designated habitats are to be protected through avoidance or reduction of the impacts of activities. This section provides standards for the review of proposed nonexempt activities within designated habitat areas.
2. Basic Criteria. Applicants proposing activities subject to this chapter shall demonstrate that the activity:

- a. Substantially maintains the level of habitat functions and values as characterized and documented using best available science; and
 - b. Minimizes habitat disruption or alteration beyond the extent required to undertake the proposal.
3. Mitigation Measures.
- a. Mitigation measures may be established pursuant to the above basic criteria.
 - b. Disrupted functions and values shall be mitigated on-site as a first priority, and off-site thereafter.
 - c. An up-to-date science-based guide such as the “Clark County Guide to Best Management Practices for Permitted Development in Habitat Areas” should be used to guide on-site mitigation. Off-site mitigation should be guided by applicable watershed, fish recovery, sub-basin or other science-based plans. Any science used to guide mitigation actions, whether on-site or off-site, must meet the criteria and characteristics of best available science listed in WAC [365-195-905](#) (Criteria for determining which information is the “best available science”), or the state standards in effect at the time of application.
 - d. Subject to individual circumstances, potential mitigation measures may include, but are not limited to, the following:
 - (1) Avoiding the impact all together by not taking a certain action or parts of an action;
 - (2) Exploring alternative on-site locations to avoid or reduce impacts of activities;
 - (3) Preserving important vegetation and natural habitat features by establishing buffers or by limiting clearing or alteration;
 - (4) Replacing invasive exotic plants with native species (refer to the Clark County Native Plant Communities Guide or other relevant publication for guidance);
 - (5) Prohibiting introduction of invasive plant species in habitat areas;
 - (6) Enhancing, restoring or replacing vegetation or other habitat features and functions. In riparian areas, this may include riparian zone averaging as specified in Section [40.440.020\(C\)\(3\)](#);
 - (7) Using native plants where appropriate when planting within habitat areas (refer to the Clark County Native Plant Communities Guide or other relevant publication for guidance);
 - (8) Managing access to habitat areas, including exclusionary fencing for livestock if needed;
 - (9) Stream crossings:

- (a) Using existing stream crossings whenever a review of suitability, capacity, access and location, habitat impacts of alternatives, maintenance, liability and economics indicate the existing crossing is feasible;
 - (b) Constructing new stream crossings, when necessary, in conformance to the water crossing structure standards in WAC [220-110-070](#) (Hydraulic Code Rules), which are incorporated by reference;
- (10) Seasonally restricting construction activities;
 - (11) Implementing best management practices and integrated management practices;
 - (12) Monitoring or review of impacts and assurance of stabilization of the area;
 - (13) Establishing performance measures or bonding;
 - (14) Establishing conservation covenants and other mechanisms to ensure long-term preservation or maintenance of mitigation actions;
 - (15) Utilizing low impact development techniques;
 - (16) Promoting water quality by limiting the use of lawn and garden chemicals in habitat areas; and/or
 - (17) Avoiding topsoil removal and minimizing topsoil compaction;
 - (18) Providing off-site mitigation, subject to the following conditions:
 - (a) When the combination of on-site and off-site mitigation fails to substantially maintain functions and values within the stream system, the application shall be denied;
 - (b) All reasonable on-site mitigation alternatives have been exhausted;
 - (c) Off-site mitigation is functionally equivalent to the impacts;
 - (d) Off-site mitigation is appropriate in size and scale to the impacts that are not fully mitigated on the original site;
 - (e) Proposed off-site mitigation is reviewed by the county on a case-by-case basis with input from WDFW;
 - (f) Off-site mitigation may be in the form of:
 - i. The purchase of credits from a permitted habitat bank, or
 - ii. A voluntary contribution to the established Cumulative Effects Fund for the watershed within which the project is located, or
 - iii. A specific mitigation project:

- [a] Specific off-site mitigation projects for riparian habitat areas must be located within the same watershed as the original site,
 - [b] Specific off-site mitigation projects for all other habitat areas must be in an unincorporated area as close as possible to the original site,
 - [c] Public regional development activities that are reviewed and approved by federal and state agencies are exempt from these geographic restrictions;
 - (g) Adequate enforcement authority must be delegated to the county, as approved by the Prosecuting Attorney;
4. The responsible official shall approve, approve with conditions or deny proposals based on compliance with the criteria and the adequacy of proposed mitigation measures to ensure compliance, and applicable reasonable use assurances of Section [40.440.020\(B\)](#).
 5. The responsible official shall retain final authority for such determinations, which shall be issued consistent with the review timelines of Chapter 40.510 (Type I, II, III and IV Processes), and shall be based on best scientific information and analysis available within those timelines.
 6. Modifications to conservation covenants established under Section [40.440.020\(A\)\(3\)\(d\)\(14\)](#) shall be consistent with the standards of this chapter and will be processed subject to the following:
 - a. Modification to a covenant approved by a Type I decision shall be subject to a Type I review process.
 - b. Modification to a covenant approved by a Type II decision shall be subject to a Type I review process if the responsible official finds the requested change:
 - (1) Does not increase the potential adverse impact to habitat; and
 - (2) Does not involve an issue of broad public interest, based on the record of the decision; and
 - (3) Does not require further SEPA review.
 - c. Modification to a covenant approved by a Type II decision shall be subject to a Type II review process if it is not subject to Type I review.
 - d. Modification to a covenant approved by a Type III decision shall be subject to a Type I review process if the responsible official finds the modification:
 - (1) Provides an increased benefit to habitat; and
 - (2) Does not involve an issue of broad public interest, based on the record of the decision; and
 - (3) Does not require further SEPA review.

- e. Modification to a covenant approved by a Type III decision shall be subject to a Type II review process if the responsible official finds the requested change in the decision:
 - (1) Does not increase the potential adverse impact to habitat allowed by the covenant or SEPA determination; and
 - (2) Does not involve an issue of broad public interest, based on the record of the decision.
 - f. Modification to a covenant approved by a Type III decision shall be subject to a Type III review process if it is not subject to Type I or II review.
 - g. Modification requests submitted with other applications will be processed as specified in Section [40.500.010\(D\)\(2\)](#).
7. Removal of conservation covenants shall be approved by the Board of County Commissioners.
8. The responsible official shall consult with and substantially follow the resulting recommendations of WDFW, unless alternative determinations are supported by scientific analysis.

(Amended: Ord. 2008-06-02; Ord. 2009-12-01)

B. Reasonable Use Assurances.

The county assures property owners of the following, as long as impacts are mitigated to the maximum extent practicable, permit conditions limiting locations and requiring mitigations may be imposed, and erosion control measures required:

- 1. This chapter shall not be used to prohibit:
 - a. Placement of a single-family residence and residential accessory structures on an otherwise legally buildable lot of record;
 - b. Expansion of a home existing prior to 1997, not to exceed twenty-five percent (25%) of the 1997 footprint;
 - c. Replacement of a single-wide mobile home with another dwelling, not to exceed twice the footprint of the original mobile home; or
 - d. Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or fire chief guidelines.
- 2. This chapter shall not be used to deny all reasonable economic use of private property. These criteria must be met in order to verify denial of all reasonable economic use:
 - a. The application of this chapter would deny all reasonable economic use of the property;

- b. No other reasonable economic use of the property has less impact on the habitat area;
 - c. Any habitat alteration is the minimum necessary to allow for reasonable economic use of the property; and
 - d. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after May 30, 1997.
3. This chapter shall not be used to deny or reduce the number of lots of a proposed rural land division allowed under applicable zoning density.
 4. This chapter shall not be used to deny a development proposal from a public agency or public utility, if:
 - a. There is no practical alternative to the proposed project with less impact on the habitat area;
 - b. The ability of the public agency or utility to provide services to the public would be unreasonably restricted; and
 - c. The application is approved through a Type III process pursuant to Section [40.510.030](#), (Type III Processes). Fees are subject to the Type III Variance fee schedule in Section [6.110A.010](#) (Development Fees).
 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](#).

(Amended: Ord. 2012-07-16)

- C. The following regulatory alternatives or incentives shall apply in implementing the standards of this chapter:
 1. Proposed land divisions involving critical areas may transfer density as follows:
 - a. Rural area land divisions may utilize the cluster provisions of Section [40.210.020\(D\)](#) (Rural Cluster Development).
 - b. Urban area land divisions may utilize density transfer provisions of Section [40.220.010\(C\)\(5\)](#) (Density Transfer).
 2. Existing abutting nonconforming lots under common ownership may be reconfigured under the standards of Section [40.210.010\(D\)](#) (Nonconforming Lots – Lot Reconfiguration Standards).
 3. Required riparian zone widths on clearing proposals on existing lots may be varied through the use of internal riparian zone averaging. Subject to review under this chapter, for clearing proposals on existing lots, portions of the riparian zone can be reduced up to fifty percent (50%) from the normal standards of this chapter if riparian zone widths are correspondingly increased elsewhere within the applicant

parcel, such that the overall size and function and values of the riparian zone are maintained in the parcel. Riparian zone averaging proposals must clearly identify the existing riparian functions and values on the parcel and any impacts that the proposed averaging may have upon them.

4. In evaluating forest practice conversion applications under this chapter, the county may allow for modest levels of short-term degradation of habitat function if it is offset by long-term benefits provided by a conservation covenant or other permanent protective measure. Such allowances shall only be made following the recommendation of WDFW.

D. Individual Stewardship Plans.

1. To encourage educational and voluntary conservation measures, the county shall notify property owners potentially impacted by wildlife habitat area regulations, and shall assist any owners interested in developing individual stewardship plans which will establish parameters and guidelines for future on-site activities in designated habitat areas. In addition, property owners may consult with WDFW and other agencies or private groups or individuals to develop the scientific information for their stewardship plans.
2. The county shall provide information on best management practices and other educational and explanatory materials to property owners. The county shall coordinate with WDFW and other agencies or private groups with expertise in wildlife or land management in the development and distribution of these materials.
3. The county shall work cooperatively with interested property owners to establish and record a notice of stewardship plan. Stewardship plans should at a minimum include the following:
 - a. Mapping of existing structures, roads, driveways and known utilities, and property lines;
 - b. Mapping of existing designated habitat areas, water bodies, known wetlands, vegetation and wildlife types, and yards or cultivated areas;
 - c. Identification of functions and values associated with the habitat areas, water bodies, wetlands and vegetation and wildlife;
 - d. Mapping and written description of future activities on the site including time frame; and
 - e. Mapping and description of the protective and mitigative measures for the identified functions and values to be undertaken as part of plan.
4. Notice of stewardship plans shall be recorded and shall run with the land unless and until a request for revocation or modification has been submitted by the property owner and approved by the county. The county shall approve all such requests unless there are any uncompleted mitigation measures which were agreed to in the stewardship plan as necessary to compensate for clearing of habitat areas

undertaken pursuant to the plan. Revocation may trigger the tax penalties associated with withdrawal from an open space taxation program, if applicable.

5. Property owners with approved stewardship plans are exempt from regulation under this chapter for non-development proposals which are consistent with the stewardship plan and do not otherwise require county building, grading, or other review.
6. Stewardship plans shall be approved under criteria in Section [40.440.020\(A\)](#).
7. Appeals may be filed under the provisions of Chapter 40.510 (Type I, II, III and IV Processes).

E. Non-regulatory Implementation Measures.

As part of the implementation of this chapter and related efforts towards wildlife conservation, the county will undertake the following additional non-regulatory measures:

1. Education and Outreach Measures.

- a. Notify property owners within critical areas;
- b. Develop clear and understandable manuals explaining recommended best management practices for typical rural and urban land owner activities;
- c. Provide seminars and presentations for interested owners and groups;
- d. Coordinate efforts with existing conservation, stewardship or small resource user groups with expertise in wildlife or habitat area land management issues;
- e. Expand local wildlife inventory information through baseline survey of local habitats and species;
- f. Provide cooperative outreach to individual property owners in critical areas who wish to develop stewardship plans to establish parameters for future activities involving clearing on their property.

2. Incentive Measures.

- a. Create and/or expand incentives through the current use taxation program;
- b. Develop and/or expand land acquisition programs;
- c. Develop nonmonetary incentives for project proponents to exceed mitigation requirements.

F. Specific Activities.

Special procedures and standards apply to certain specific activities as provided for in Section [40.440.040](#).

G. Habitat Banking. (Reserved).

(Amended: Ord. 2005-04-15; Ord. 2005-05-20; Ord. 2006-06-09; Ord. 2006-07-09; Ord. 2006-08-03)

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\(F\)](#) and Sections [40.440.020](#) and [40.440.030](#).

(Amended: Ord. 2008-07-05; Ord. 2012-07-16)

B. Non-Development Proposals.

Non-development proposals not involving any other county application development reviews shall be reviewed as a Type I application under the timelines and procedural standards of Section [40.510.010](#) (Type I Process). Section [40.440.030\(C\)](#) indicates application information to be submitted.

C. Submittal Information.

1. Applications for nonexempt activities requiring review under this chapter shall be submitted with the following:
 - a. Development applications involving other county review shall submit application materials according to specifications of other reviews involved, and shall also include a completed proposed habitat activity form.
 - b. Non-development applications not involving other county review shall be submitted with a completed proposed habitat activity form.
2. Where required by state law, a completed environmental checklist pursuant to the State Environmental Policy Act (SEPA) shall also be submitted unless categorically exempted by the SEPA Rules.
3. The county shall develop and make available proposed habitat activity forms. These forms shall clearly and concisely provide direction to applicants on what information is needed in the following areas:
 - a. Name, address, location, and basic tracking information for the application;

- b. Existing conditions information, natural and manmade features on the site;
 - c. Description and mapping of proposed activities and how this would change existing conditions on the site.
4. Proposals under this chapter are encouraged but not required to include a report or other assistance from a biologist, botanist, ecologist, or other similarly qualified or trained professional.
 5. Persons interested in establishing an individual stewardship plan for future activities as specified in Section [40.440.020\(D\)](#) should contact the department.

D. Permit Authority and Timelines.

1. An approval granted under this chapter shall remain valid until proposed activities are undertaken and completed. An approved permit not acted upon shall be valid for two (2) years, and upon showing of good cause, may be extended for an additional twelve (12) months.
2. Approval for habitat area activities as part of other county development approvals shall be valid for a time period specified by the other permit(s) involved.
3. Approved stewardship plans shall remain valid as specified in Section [40.440.020\(D\)](#).

E. Appeals.

Appeals of county decisions under this chapter may be filed under the provisions of Chapter 40.510 (Types I, II, III and IV Processes).

F. Enforcement.

At such time as a violation of this chapter has been determined, enforcement action shall be commenced in accordance with the enforcement provisions of Title 32 of this code (Enforcement), and may also include the following:

1. Applications for county land use permits on sites that have been found to be in violation of this chapter pursuant to the process set forth in Title 32 of this code (Enforcement), shall not be processed until three (3) years after the completion of clearing. The three (3) years may be reduced upon approval and implementation of a restoration or mitigation plan, to include the following:
 - a. A plan for the replanting of trees, brush and groundcover of a type and distribution comparable to that existing prior to clearing; provided, that the responsible official may approve alternative species in order to promote expedient soil stabilization, and may require additional tree planting as mitigation for the loss of mature trees; and
 - b. A monitoring plan to assure at least a ninety percent (90%) survival rate of re-established plantings after at least three (3) but not more than eight (8) growing seasons; and

- c. Where fish and wildlife habitat areas are cleared in violation of this chapter, a plan to restore habitat functionality, as it existed prior to the violation, subject to the review and evaluation of WDFW.
 - d. Satisfaction of the terms and conditions of any judgement or order entered based upon the violation.
 - e. Financial assurances in the form of a bond or other security acceptable to the county, in an amount sufficient to re-establish the mitigation in the event of failure or subsequent disturbance may be required by the responsible official. The financial assurances shall remain in place for the length of the time specified for monitoring in the plan and shall be released after a request by the applicant and a final inspection. In the event of failure of the mitigation, failure to fully execute the mitigation plan, or subsequent disturbance, forfeiture of the financial assurances shall be required and the funds shall be used to re-establish the mitigation or to complete the execution of the plan. In the event that such re-establishment or completion is deemed impractical by the director, the funds shall accrue to the established cumulative effects fund for the watershed within which the site is located.
2. In the absence of any mitigation measures approved by the department for sites cleared in violation of this standard, the county may refuse to approve any permit for up to an additional three (3) years.

G. Specific Activities.

Special procedures and standards apply to certain specific activities as provided for in Section [40.440.040](#).

(Amended: Ord. 2005-04-15; Ord. 2006-06-09; Ord. 2006-07-09; Ord. 2006-08-03)

40.440.040 Specific Activities

The following specific activities are subject to special procedures and standards as set forth below.

A. Routine Utility and Public Facility Maintenance and Operations.

The responsible official may issue programmatic permits for routine maintenance and operations of utilities and public facilities. The programmatic permit process shall not deny or unreasonably restrict a utility's or public agency's ability to provide services to the public. Programmatic permits only authorize activities specifically identified in the permit approval.

- 1. Application Submittal Requirements. Unless waived by the responsible official with specific findings in the approval document, applications for programmatic habitat permits shall include a programmatic permit plan that includes the following:
 - a. A discussion of the purpose and need for the permit;
 - b. A description of the scope of activities in habitat areas;
 - c. Identification of the geographical area to be covered by the permit;

- d. The range of functions and values within designated habitat areas covered by the permit;
- e. Specific measures and performance standards to be taken to avoid, minimize and mitigate impacts on the functions and values:
 - (1) Procedures for identification of designated habitat areas;
 - (2) Maintenance practices proposed to be used;
 - (3) Restoration measures;
 - (4) Mitigation measures and assurances;
 - (5) Annual reporting to the responsible official that documents compliance with permit conditions and proposes any additional measures or adjustments to the approved programmatic permit plan;
 - (6) Reporting to the responsible official any specific habitat degradations resulting from maintenance activities when the degradation occurs or within a timely manner;
 - (7) Responding to any department requests for information about specific work or projects;
 - (8) Procedures for reporting and/or addressing activities outside the scope of the approved permit.
 - (9) Training all employees, contractors and individuals under the supervision of the applicant who are involved in permitted work.

2. Permit Review.

- a. Programmatic permit applications that are exempt from SEPA are subject to Type I review.
- b. Programmatic permit applications that are not exempt from SEPA are subject to Type II review.
- c. Programmatic permit applications under Type II review shall not be subject to the distribution requirements of Section [40.510.020\(E\)\(2\)\(a\)\(3\)](#), (Public Notice). Within fourteen (14) calendar days after the date an application is accepted as fully complete, the county shall publish in a newspaper of general circulation a summary of the notice, including the date, time and manner of making comments, the nature and location of the proposal and instructions for obtaining further information.

3. Findings and Approval.

- a. A decision approving, denying or re-authorizing a programmatic permit shall be supported by findings of fact relating to the standards and requirements of this chapter.

- b. An approved programmatic permit must, at a minimum, include:
 - (1) A programmatic permit plan; and
 - (2) A provision stating the duration of the permit.
- 4. Duration and Re-authorization.
 - a. The duration of a programmatic permit is for five (5) years unless:
 - (1) An annual performance-based re-authorization program is approved within the permit; or
 - (2) A shorter duration is supported by findings.
 - b. Requests for re-authorization of a programmatic permit must be received prior to the expiration of the original permit.
 - (1) Re-authorization is reviewed and approved through the process described in subsections (A)(1) through (3) of this section.
 - (2) Permit conditions and performance standards may be modified through the re-authorization process.
 - (3) The responsible official may temporarily extend the original permit if the review of the re-authorization request extends beyond the expiration date.

B. Agricultural Uses, Including Animal Husbandry.

- 1. Applicability.
 - a. Non-Riparian Habitat.
 - (1) Agricultural activities in existence on July 11, 2006, within designated non-riparian habitat areas are presumed not to cause substantial degradation of existing habitat functions and values and are, therefore, exempt from regulation under this chapter. Determining what agricultural activities are in existence on July 11, 2006, shall take into account agricultural cycles that involve varying intensity of agricultural use.
 - (2) The conversion of designated non-riparian habitat areas to agricultural use subsequent to July 11, 2006, shall be subject to the non-development clearing rules of this chapter. Conversion does not include changes from one agricultural use to another agricultural use or changes in crops.
 - b. Riparian Habitat.
 - (1) Agricultural activities in existence on July 11, 2006, within designated riparian habitat areas, and the expansion thereof onto adjacent lands not to exceed twenty-five percent (25%) of the footprint of the existing agricultural use (agricultural/habitat protection plan only), shall be subject to the agricultural module provided below. Determining what agricultural activities are in

existence on July 11, 2006, shall take into account agricultural cycles that involve varying intensity of agricultural use.

(2) The conversion of designated riparian habitat areas to agricultural use, other than an expansion allowed for in subsection (B)(1)(b)(1) of this section, subsequent to July 11, 2006, shall be subject to:

(a) The agricultural/habitat protection plan option (Section [40.440.040](#)(B)(2)(a)), if undertaken on lands zoned agriculture, forest, or ag-wildlife;

(b) The non-development clearing rules of this chapter if undertaken on lands not zoned agriculture, forest, of ag-wildlife;

(c) Conversion does not include changes from one agricultural use to another agricultural use or changes in crops.

2. Agricultural Module. Where applicable, the following options are available to be used for compliance with this section.

a. Agricultural/Habitat Protection Plan Option.

(1) Regulated Area. For the purposes of an agricultural/habitat protection plan, the regulated riparian area shall be one hundred (100) feet from the ordinary high water mark of Type S streams, one hundred (100) feet from the ordinary high water mark of Type F streams, seventy-five (75) feet from the ordinary high water mark of Type Np streams, and seventy-five (75) feet from the ordinary high water mark of Type Ns streams. The plan may include practices and other mitigation measures on land outside the regulated riparian area to achieve the standard set forth in subsection (B)(2)(a)(2) of this section.

(2) Standard. An agricultural/habitat protection plan shall be approved if its implementation will not substantially degrade habitat functions and values that existed within the area designated in subsection (B)(2)(a)(1) of this section on July 11, 2006, considering normal fluctuations due to the agricultural cycle. A plan may be submitted by a group of neighborhood owners whose properties are in close proximity in which case the foregoing standard shall be applied to the common plan.

(3) Plan Contents. Agricultural/habitat protection plans shall, at a minimum, include the following:

(a) An approximate mapping of existing and proposed structures, roads, driveways, utilities, property lines, and agricultural uses.

(b) A map of regulated riparian habitat areas.

(c) Identification of existing habitat functions and values within the regulated habitat area on July 11, 2006, taking into account agricultural cycles that involve varying intensity of agricultural use.

- (d) A description of best management practices and other mitigation measures to be undertaken in order to achieve the standard in subsection (B)(2)(a)(2) of this section.
 - (e) The owner's signature attesting that the information in the plan is accurate to the best of the owner's knowledge, and the mitigation measures specified in the plan will be implemented.
 - (f) The signature of an ag-habitat technician certified by the county attesting that he/she has inspected the area covered by the plan and that the plan satisfies the standard in subsection (B)(2)(a)(2) of this section.
- (4) Guidelines. The responsible official shall work with a committee appointed by the board to include interest group representatives (at least one of whom shall be a designee of the Clark-Cowlitz Farm Bureau, whose view(s) shall be given appropriate weight to ensure that the guidelines will be both practical and cost effective) and habitat professionals to develop for board adoption following a duly advertised public hearing a set of guidelines which:
- (a) Includes a checklist to identify riparian habitat functions and values; and
 - (b) Identifies potential positive and negative habitat effects of various agricultural activities; and
 - (c) Describes best management practices and other measures to enhance the positive effects and mitigate or minimize any potential negative effects; and
 - (d) Includes "off-the-shelf" agricultural/habitat protection plans which may be applied to typical agricultural properties and activities.

The guidelines shall provide that pesticide use within riparian areas must be described in the management plan and conform to label instructions.

- (5) Approval. Agricultural/habitat protection plans shall be prepared or reviewed and approved by an ag-habitat technician certified by the responsible official to have completed a training program on application of the guidelines. Ag-habitat technicians shall have received training in application of this chapter, which training program shall be made available to any interested party. Training classes may be facilitated by interest groups such as the Clark-Cowlitz Farm Bureau using trainers from the Clark Conservation District, WSU Extension, Natural Resource Conservation Service, or other groups as may be certified as qualified trainers by the responsible official. An ag-habitat technician shall approve the plan as meeting the standard and content requirements of Section [40.440.040\(B\)\(2\)\(a\)\(2\)](#) and (3). An owner dissatisfied with the review by an ag-habitat technician may seek approval of the proposed management plan by the responsible official whose Type I decision may be appealed under the provisions of Chapter [40.510](#) (Type I, II, III and IV Processes).

- (6) Filing. The ag-habitat technician shall notify the county responsible official of the adoption of an approved agricultural/habitat protection plan by a property owner indicating the property covered by the plan and, at the choice of the property owner, either providing a copy of the plan or summarizing the contents of the plan. Notice of such approval shall also be recorded with the Clark County Auditor and run with the land unless the plan is modified or rescinded.
- (7) Modification/Rescission. Agricultural/habitat protection plans may be modified by the owner at any time utilizing the same process as applicable to initial approval. Plans may be rescinded by the owner with approval of the responsible official if the owner certifies either that future agricultural activities will be undertaken utilizing the default option or agricultural activities have ceased. Notice of modification/rescission shall be recorded with the Clark County Auditor.

b. Default Option.

- (1) Regulated Area. For the purposes of the default option, the regulated riparian area is divided into two zones. Except as provided below, the inner zone, closest to the stream, extends from the ordinary high water mark outward fifty (50) feet on Types S and F streams and thirty (30) feet on Type N streams. The outer zone extends an additional fifty (50) feet on Types S and F streams and forty-five (45) feet on Type N streams. Where slopes exceed twenty-five percent (25%), the inner zone is the greater of the prescribed zone or the top of the slope break. Where wetlands are present within the inner zone, the zone is extended to the greater of the prescribed width of the inner zone or the wetland buffer as designated in Chapter [40.450](#) (Wetland Protection). However, in no case is the inner zone greater than the combined widths prescribed for in the inner and outer zones for that stream type. Where there is an existing road within the inner zone, the zone stops at the edge of the road improvement that is closest to the stream and the outer zone extends outward from that edge.
- (2) Standard. Clearing within the inner zone is allowed only to enhance habitat functions and values. Animal husbandry within the inner zone is prohibited. Clearing and animal husbandry within the outer zone shall not substantially degrade habitat functions and values as they existed on July 11, 2006, after considering normal fluctuations due to the agricultural cycle. Although it is presumed that continuation of agricultural activities within the outer zone that existed on July 11, 2006, will not substantially degrade existing habitat functions and values, evidence of substantial degradation, such as excess sediment, nutrients or chemicals moving from the outer zone into the stream resulting from agricultural activities, constitute grounds for enforcement action which may require restoration of lost functions and values. Pesticide application within the outer zone must conform to label specifications and application within the inner zone must be by a licensed applicator.
- (3) Reasonable Use. If the inner zone impacts more than fifty percent (50%) of a parcel that is ten (10) acres or less in area, or more than twenty-five percent (25%) of a parcel that is five (5) acres or less in area, the responsible official

may approve a reasonable use reduction to the width of the inner zone. In such case, clearing and animal husbandry may be allowed up to ten (10) feet from the ordinary high water mark; provided, that reasonable practices and other appropriate mitigation measures are employed to limit sediment, nutrients and chemicals from entering the stream.

3. Administration.

- a. No application fees apply to the approval of agriculture/habitat protection plans.
- b. No county review is associated with the default option unless the owner seeks approval of a reasonable use reduction of the inner zone, which application shall be processed without application fees.
- c. Evidence of violation of the standards in Section [40.440.040\(B\)\(2\)\(a\)\(2\)](#) or (B)(2)(b)(2) shall be grounds for enforcement action under the provisions of Title 32 (Enforcement) and Section [40.440.030\(F\)](#).

(Amended: Ord. 2006-06-09; Ord. 2006-07-09; Ord. 2006-08-03)

40.450 WETLAND PROTECTION

40.450.010 Introduction

A. Purpose.

It is the purpose of this chapter to provide balanced wetland protection measures pursuant to the Washington State Growth Management Act (GMA, RCW [36.70A.172](#)) that:

1. Include best available science to protect the functions and values of wetlands with special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries;
2. Further the goal of no net loss of wetland functions;
3. Encourage restoration and enhancement of degraded and low quality wetlands;
4. Provide a high level of protection for higher-quality wetlands;
5. Complement state and federal wetland protective measures; and
6. Allow reasonable use of property.

B. Applicability.

1. The provisions of this chapter apply to all lands, all land uses and development activity, and all structures and facilities in the county, whether or not a permit or permit authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or

administers land within the county. No person, company, agency, or applicant shall alter a wetland or wetland buffer except as consistent with 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. Short subdivision;
 - f. Subdivision;
 - g. Planned unit development;
 - h. Site plan; or
 - i. 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 to Section [40.460.230\(C\)](#) or an application with a wetlands review as part of the shoreline permit process.
4. Reasonable Use Exceptions. The following exceptions shall apply in implementing the standards of this chapter, although the standards shall be applied to the maximum extent practicable to avoid and minimize impacts on wetland functions and values. Mitigation for unavoidable adverse impacts shall be required. The standards of this chapter shall not be used to preclude the following activities in wetland areas:
 - a. The placement of a single-family residence and normal accessory structures on an otherwise legally buildable lot of record. Standards may be applied on established properties to limit the proposed location and size of structures, and proposed removal of vegetation.
 - (1) The expansion of a home on a lot that does not show building or development envelopes, wetlands or wetland buffers on the recorded plat, not to exceed twenty-five percent (25%) of the existing building footprint;
 - (2) The replacement of single-wide mobile home with another dwelling and normal accessory structures; and
 - (3) Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or fire chief guidelines.

- b. The standards of this chapter shall not be used to deny all reasonable economic use of private property. The following criteria must be met in order to verify that all reasonable economic use of the property has been denied:
 - (1) The application of this chapter would deny all reasonable economic use of the property;
 - (2) No other reasonable economic use of the property has less impact on the wetland and buffer area;
 - (3) Any wetland or buffer alteration is the minimum necessary to allow for reasonable economic use of the property; and
 - (4) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the date of adoption of the ordinance codified in this chapter.
 - c. The standards of this chapter shall not be used to deny or reduce the number of lots of a proposed rural land division allowed under applicable zoning density.
 - (1) Standards may be applied on established properties to limit the proposed location and size of structures and proposed removal of vegetation.
 - (2) Land divisions in rural zoning districts (R-5, R-10 and R-20) may utilize the cluster provisions of Section [40.210.020\(D\)](#).
 - d. The application of this chapter shall not be used to deny a development proposal for a linear facility from a public agency or public utility, provided the agency or utility meets the following criteria:
 - (1) There is no practical alternative to the proposed project with less impact on the wetland and buffer area; and
 - (2) The application of this chapter would unreasonably restrict the ability to provide public utility services to the public.
 - 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. 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.

(Amended: Ord. 2012-07-16)

C. Exemptions.

- 1. Exempt Activities and Impacts to Wetlands. All exempted activities shall use reasonable methods to avoid potential impacts to wetlands and buffers. Exemptions from permits are not exemptions from wetland stewardship responsibilities. The

following developments, activities, and associated uses shall be exempt from the provisions of this chapter; provided, that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

- a. Reconstruction of damaged or destroyed structures within the same building footprint. Expansion or reconstruction within a new or expanded footprint that affects a nonexempt wetland or wetland buffer is subject to the provisions of this title.
- b. The harvesting or normal maintenance of vegetation in a manner that is not injurious to the natural reproduction of such vegetation.
- c. Existing agricultural activities and structures:
 - (1) Agricultural activities and structures in operation at the time of adoption of the ordinance codified in this chapter that are affecting wetlands not associated with a riparian corridor are exempt from regulation under this chapter;
 - (2) Changes in agricultural practices within the same “footprint” as the existing agricultural activities in subsection (C)(1)(c)(1) of this section, including reconstruction of existing agricultural structures, or construction of new agricultural structures, are exempt from regulation under this chapter;
 - (3) Agricultural activities and structures in operation at the time of adoption of the ordinance codified in this chapter that are affecting wetlands associated with riparian corridors shall be regulated through Chapter 40.440, Habitat Conservation.
- d. The removal or eradication of noxious weeds so designated in Title 7 of this code or other exotic nuisance plants including non-native blackberries; provided, that ground disturbing heavy machinery (scraping, ripping, etc.,) is not used. Cutting, mowing, and ground disturbance with hand tools is allowed.
- e. Site investigative work necessary for land use application submittals such as surveys, soil logs, and percolation tests.
- f. Emergency clearing to abate immediate danger to persons or property. For emergency clearing of hazard trees, remove only that portion of the hazard tree as necessary to remediate the hazard.
- g. Clearing necessary for the emergency repair of utility or public facilities. Notification of emergency work that causes substantial degradation to functions and values must be reported in a timely manner.
- h. 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 wetland or wetland buffer.
- i. Forest practices regulated by the State of Washington Department of Natural Resources (DNR) under the Forest Practices Rules (WAC Title [222](#)), or regulated

under Clark County Code Section [40.260.080](#), Forest Practices, except forest conversions and conversion option harvest plans.

- j. Clearing, as minimally necessary, for placement of fencing, private wells, septic systems or individual lot sewer, water, electrical, or utility connections in wetland buffers, where practical alternatives do not exist.
 - k. Clearing, as minimally necessary, for stream bank restoration, for native replanting or enhancements in wetlands and wetland buffers.
 - l. Clearing, as minimally necessary, for soil, water, vegetation and resource conservation projects having received an environmental permit from a public agency in wetlands and wetland buffers.
 - m. Clearing, as minimally necessary, for creating a four (4) foot or narrower path using natural, wood-based or vegetated pervious surfacing in wetlands and wetland buffers.
 - n. Land disturbance in wetlands and wetland buffers cumulatively less than five (5) cubic yards in volume and three hundred (300) square feet in area; provided, that the wetland hydroperiod is not significantly affected.
2. Exempted Wetlands. This chapter shall not apply to the following wetlands:
- a. Small. Isolated Category III wetlands less than two thousand five hundred (2,500) square feet in area and isolated Category IV wetlands less than four thousand three hundred and fifty (4,350) square feet in area;
 - b. Artificial. Wetlands created from non-wetland 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 exempted;
 - c. Riparian. Wetlands fully within five (5) feet, measured horizontally, of bank-full width for streams and the ordinary high water mark for lakes which are regulated under the State Shorelines Management Act (Chapter [90.58](#) RCW) or under Chapter 40.440, Habitat Conservation, are exempt.

(Amended: Ord. 2007-06-05)

D. Interpretation.

- 1. This chapter shall apply in addition to zoning and other regulations adopted by the county.
- 2. When there is a conflict between any provisions of this chapter or any other regulations adopted by Clark County, that providing the most protection to affected critical areas shall apply.

3. Compliance with this chapter does not constitute compliance with other federal, state and local regulations and permit requirements (for example, shoreline substantial development permits, hydraulic project approval (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, National Pollutant Discharge Elimination System (NPDES) permits, or DOE Section 401 Water Quality Certification). The applicant is responsible for complying with all requirements, apart from the provisions of this chapter.

(Amended: Ord. 2006-05-27)

40.450.020 Rating Systems

A. General.

1. The wetland rating system is used in part to determine buffer widths pursuant to Section [40.450.030\(E\)](#). The wetland rating and buffer systems are also used for mitigation and enhancement options under Section [40.450.040](#).
2. The determination of the specific category of wetland and buffer for each wetland shall be the responsibility of the department.

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 high quality wetlands;
- (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 functions well, as characterized by a wetland score of seventy (70) 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 with a moderately high level of functions, as characterized by a wetland score of fifty-one (51) through sixty-nine (69) 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 (30) through fifty (50) on the rating form. Generally, wetlands in this category have been disturbed in some way 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 (30) 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 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.

(Amended: Ord. 2006-05-27)

40.450.030 Standards

- A. General. The standards apply whenever a nonexempt project (see Section 40.450.010(B)) is proposed on a parcel of real property containing a nonexempt wetland or wetland buffer (see Section 40.450.010(C)). The standard provisions shall be implemented in conjunction with the processing of the development permits listed in Section [40.450.010\(B\)](#).
 1. For the purpose of computing the processing limitation period applicable to a development permit application, the application shall not be deemed fully complete until completion (if required) of the wetland determination pursuant to Section [40.450.030\(C\)](#), the wetland delineation pursuant to Section [40.450.030\(D\)](#), and the buffer designation pursuant to Section [40.450.030\(E\)\(1\)](#). This subsection shall not be construed in any way to delay vesting under Washington law.
 2. Administrative appeals of determinations made under this Section [40.450.030](#) must be filed in conjunction with, and within the limitation period applicable to, an available

administrative appeal of the development permit application; provided, that an aggrieved party may appeal preliminary decisions deciding an exemption, determining or delineating a wetland, determining a buffer, or otherwise finally applying the provisions of this chapter in the same manner, and within the limitation period applicable to, appeals from responsible official decisions under Chapter 40.510.

B. Pre-Determination.

Prior to submittal of a development permit application, a person may request from the responsible official a written pre-determination of whether wetlands exist on any parcel less than forty (40) acres. An applicant may also choose to submit a digital file of delineated wetland boundaries consistent with Section [40.450.030\(D\)\(3\)](#) or request staff to digitize the information. The pre-determination shall be binding on the responsible official for a period of three (3) years; provided, that such pre-determination shall be subject to administrative appeal upon its application in conjunction with a triggering application. The fee for a pre-determination is contained in Chapter 6.110A.

C. Wetland Determination.

In conjunction with the submittal of a development permit application, the responsible official 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. Wetland Delineation.

1. Methodology. 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. If a wetland is located off-site and is inaccessible, the best available information shall be used to determine the wetland boundary and category.
2. Information Requirements. Wetland boundaries shall be staked and flagged in the field and a delineation report shall be submitted to the department. The report shall include the following information:
 - a. USGS quadrangle map with site clearly defined;
 - b. Topographic map of area;
 - c. National wetland inventory map showing site;
 - d. Soil Conservation Service soils map showing site;
 - e. Site map, at a scale no smaller than one (1) inch equals one hundred (100) feet (1" = 100', a scaling ratio of 1:1,200), if practical, showing the following information:
 - (1) Wetland boundaries,
 - (2) Sample sites and sample transects,

- (3) Boundaries of forested areas,
 - (4) Boundaries of wetland classes if multiple classes exist;
 - f. Discussion of methods and results with special emphasis on technique used from the Wetlands Delineation Manual;
 - g. Acreage of each wetland on the site based on the survey if the acreage will impact the buffer size determination or the project design;
 - h. All completed field data sheets per the Wetlands Delineation Manual, numbered to correspond to each sample site.
3. Digital File Submittal. Upon submittal of the wetland delineation report an application shall provide a digital file containing the layers specified in Table 40.450.030-1 that conforms to all applicable requirements discussed in Section [40.540.060](#). If the applicant chooses, the county will prepare the digital file based upon the wetland boundary survey map. The applicant shall provide payment for the preparation of the digital file in accordance with Section [6.110A.020\(2\)\(B\)\(III\)](#). Additionally, the responsible official shall forward the digital file to the Department of Assessment and GIS.

Table 40.450.030-1. DXF Layers		
Layer Description	Layer Name	Feature Type
Parcel Lines	Parcels	Line
Wetland Boundary	Wetland	Line
Wetland Buffers	Wetbuff	Line
Building Envelopes	Envelope	Line
PLSS Corner	PLSS	Point
Wetland Flags and Data Plots	Wetflag	Point
Parcel Lot Numbers and Parent Parcel Number	Lotnum	Text
Wetland Category	Category	Text
Buffer Distance	Buffdist	Text

4. Responsibility. The wetland delineation is the responsibility of the applicant. The responsible official shall verify the accuracy of the boundary delineation within ten (10) working days of receiving the delineation report. This review period may be extended when excessively dry conditions prohibit the confirmation of the wetland delineation. If the delineation is found to not accurately reflect the boundary of the wetland, the responsible official shall issue a report, within twenty (20) working days of receiving the applicant's delineation report, citing evidence (for example, soil samples) that demonstrates where the delineation is in error. The applicant may then either revise the delineation and submit another report or administratively appeal.

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 points or less	See Table 40.450.030-2	See Table 40.450.030-2	See Table 40.450.030-2			
20 – 23 points	60 ft.	90 ft.	120 ft.			
24 – 27 points	90 ft.	130 ft.	180 ft.			
28 – 30 points	130 ft.	195 ft.	260 ft.			
31 points or greater	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 points or less	See Table 40.450.030-2	See Table 40.450.030-2	See Table 40.450.030-2			
20 – 23 points	60 ft.	90 ft.	120 ft.			
24 points or greater	75 ft.	110 ft.	150 ft.			
Table 40.450.030-5. Land Use Intensity Matrix¹						
	Parks	Streets	Stormwater	Utilities	Commercial/Industr	Residentia

	and Recreation	and Roads	Facilities		ial	l 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
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) 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.

F. Standard Requirements. Any action granting or approving a development permit application shall be conditioned on all the following:

1. Marking Buffer During Construction. The location of the outer extent of the wetland buffer shall be marked in the field and such markings shall be maintained throughout the duration of the permit.

2. Permanent Marking of Buffer Area. A permanent physical demarcation along the upland boundary of the wetland buffer area shall be installed and thereafter

maintained. Such demarcation may consist of logs, a tree or hedge row, fencing, or other prominent physical marking approved by the responsible official. In addition, small signs shall be posted at an interval of one (1) per lot or every one hundred (100) feet, whichever is less, and perpetually maintained at locations along the outer perimeter of the wetland buffer approved by the responsible official worded substantially as follows:

Wetland and Buffer – Please retain in a natural state

3. A conservation covenant shall be recorded in a form approved by the Prosecuting Attorney as adequate to incorporate the other restrictions of this section and to give notice of the requirement to obtain a wetland permit prior to engaging in regulated activities within a wetland or its buffer.
4. In the cases of plats, short plats, and recorded site plans, include on the face of such instrument the boundary of the wetland and its buffer and a reference to the separately recorded conservation covenant provided for in Section [40.450.030\(F\)\(3\)](#).

G. Standard Requirements – Waivers. The responsible official shall waive the requirements of Sections [40.450.030\(D\)](#) and (F) in certain cases described below if the applicant designates development envelopes which are clearly outside of any wetland or buffer. The responsible official may require partial wetland delineation to the extent necessary to ensure eligibility for this waiver:

1. Residential building permits and home businesses;
2. Land divisions in the rural area:
 - a. Development envelopes shall be required for a fully complete preliminary application;
 - b. Development envelopes shall be shown on the final plat; and
 - c. A note referencing the development envelopes shall be placed on the final plat.
3. Site plan reviews where the responsible official determines that all development is clearly separated from the wetlands and wetland buffers:
 - a. Development envelopes shall be required for a fully complete preliminary application;
 - b. Development envelopes shall be shown on the final site plan; and
 - c. A note referencing the development envelopes shall be placed on the final site plan.

(Amended: Ord. 2005-04-12; Ord. 2006-05-27; Ord. 2012-07-03)

40.450.040 Wetland 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\(L\)](#).

(Amended: Ord. 2012-07-16)

B. Standards – General.

Wetland permit applications shall be based upon a mitigation plan and shall satisfy the following general requirements:

1. The proposed activity shall not cause significant degradation of wetland functions;
2. The proposed activity shall comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, stormwater management, and on-site wastewater disposal.

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) 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) 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)

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



(Amended: Ord. 2007-06-05)

- 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:

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 points)	10:1	14:1	20:1	30:1
Moderate (20 – 30 points)	13:1	17:1	30:1	40:1
High (>30 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) 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.

(Amended: Ord. 2009-01-01)

E. Mitigation Plans.

1. General. Mitigation plans are required for activities in a buffer or wetland. Content requirements which are inappropriate and inapplicable to a project may be waived by the responsible official upon request of the applicant at or subsequent to the pre-application consultation provided for in Section [40.450.040\(F\)\(1\)](#).
2. Preliminary Mitigation Plan. The purpose of the preliminary plan is to determine the feasibility of the project before extensive resources are devoted to the project. The responsible official may waive the requirement for a preliminary mitigation plan when a wetland permit is not associated with a development permit application (listed in Section [40.450.010\(B\)](#)). The preliminary mitigation plan consists of two (2) parts: baseline information for the site and a conceptual plan. If off-site wetland mitigation is proposed, baseline information for both the project site and mitigation site is required.
 - a. Baseline information shall include:
 - (1) Wetland delineation report as described in Section [40.450.030\(D\)\(2\)](#);
 - (2) Copies of relevant wetland jurisdiction determination letters, if available, such as determinations of prior converted crop lands, correspondence from state and federal agencies regarding prior wetland delineations, etc.;
 - (3) Description and maps of vegetative conditions at the site;

- (4) Description and maps of hydrological conditions at the site;
- (5) Description of soil conditions at the site based on a preliminary on-site analysis;
- (6) A topographic map of the site; and
- (7) A functional assessment of the existing wetland and buffer.
 - (a) Application of the rating system in Section [40.450.020\(B\)](#) will generally be considered sufficient for functional assessment;
 - (b) The responsible official may accept or request an alternate functional assessment methodology when the applicant's proposal requires detailed consideration of specific wetland functions;
 - (c) Alternate functional assessment methodologies used shall be scientifically valid and reliable.

b. The contents of the conceptual mitigation plan shall include:

- (1) Goals and objectives of the proposed project;
- (2) A wetland buffer width reduction plan, if width reductions are proposed, that includes:
 - (a) The land use intensity, per Table 40.450.030-5, of the various elements of the development adjacent to the wetlands;
 - (b) The wetland buffer width(s) required by Tables 40.450.030-2, 40.450.030-3 and 40.450.030-4;
 - (c) The proposed buffer width reductions, including documentation that proposed buffer width reductions fully protect the functions of the wetland in compliance with Section [40.450.040\(C\)](#);
- (3) A wetland mitigation plan that includes:
 - (a) A sequencing analysis for all wetland impacts;
 - (b) A description of all wetland impacts that require mitigation under this chapter; and
 - (c) Proposed mitigation measures and mitigation ratios;
- (4) Map showing proposed wetland and buffer. This map should include the existing and proposed buffers and all proposed wetland impacts regulated under this chapter;
- (5) Site plan;
- (6) Discussion and map of plant material to be planted and planting densities;

- (7) Preliminary drainage plan identifying location of proposed drainage facilities including detention structures and water quality features (e.g., swales);
- (8) Discussion of water sources for all wetlands on the site;
- (9) Project schedule;
- (10) Discussion of how the completed project will be managed and monitored; and
- (11) A discussion of contingency plans in case the project does not meet the goals initially set for the project.

3. Final Mitigation Plan. The contents of the final mitigation plan shall include:

- a. The approved preliminary mitigation plan and all conditions imposed on that plan. If the preliminary mitigation plan requirement is waived, the final plan shall include the content normally required for the preliminary plan listed in Sections [40.450.040\(E\)\(2\)\(a\)](#), [\(E\)\(2\)\(b\)\(1\)](#), and [\(E\)\(2\)\(b\)\(2\)](#).
- b. Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the mitigation project are being met. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.
- c. Detailed Construction Plans. Written specifications for the mitigation project shall be provided. The specifications shall include: the proposed construction sequence, grading and excavation details, water and nutrient requirements for planting, specification of substrate stockpiling techniques, and planting instructions, as appropriate. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.
- d. Monitoring Program. The mitigation plan shall include a description of a detailed program for monitoring the success of the mitigation project.
 - (1) The mitigation project shall be monitored for a period necessary to establish that the mitigation is successful, but not for a period of less than five (5) years. Creation and forested wetland mitigation projects shall be monitored for a period of at least ten (10) years;
 - (2) Monitoring shall be designed to measure the performance standards outlined in the mitigation plan and may include but not be limited to:
 - (a) Establishing vegetation plots to track changes in plant species composition and density over time;
 - (b) Using photo stations to evaluate vegetation community response;

- (c) Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, heavy metals);
 - (d) Measuring base flow rates and stormwater runoff to model and evaluate water quality predictions, if appropriate;
 - (e) Measuring sedimentation rates, if applicable; and
 - (f) Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity;
- (3) A monitoring protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the project;
- (4) Monitoring reports shall be submitted annually, or on a pre-arranged alternate schedule, for the duration of monitoring period;
- (5) Monitoring reports shall analyze the results of monitoring, documenting milestones, successes, problems, and recommendations for corrective and/or contingency actions to ensure success of the mitigation project.
- e. Associated Plans and Other Permits. To ensure consistency with the final mitigation plan, associated plans and permits shall be submitted, including, but not limited to:
- (1) Engineering construction plans;
 - (2) Final site plan or proposed plat;
 - (3) Final landscaping plan;
 - (4) Habitat permit;
 - (5) WDFW HPA;
 - (6) USACE Section 404 permit; and
 - (7) WDOE Administrative Order or Section 401 certification.
- f. Evidence of Financial and Scientific Proficiency. A description of how the mitigation project will be managed during construction and the scientific capability of the designer to successfully implement the proposed project. In addition, a demonstration of the financial capability of the applicant to successfully complete the project and ensure it functions properly at the end of the specific monitoring period.
- g. Contingency Plan. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.

F. Wetland Permit – Application.

1. Pre-Permit Consultation. Any person intending to apply for a wetland permit is encouraged, but not required, to meet with the department during the earliest possible stages of project planning in order to discuss wetland impact avoidance, minimization, compensatory mitigation, and the required contents of a mitigation plan before significant commitments have been made to a particular project design. Effort put into pre-permit consultations and planning will help applicants create projects which will be more quickly and easily processed.
2. Applications. Applications for wetland permits shall be made to the department on forms furnished by the department. Unless the responsible official waives one (1) or more of the following information requirements, applications shall include:
 - a. Wetland delineations and buffer width designations pursuant to Sections [40.450.020](#) and [40.450.030](#);
 - b. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than one (1) inch equals one hundred (100) feet (1" = 100', a scaling ratio of 1:1,200) showing the location, width, depth and length of all existing and proposed structures, roads, stormwater facilities, sewage treatment, and installations within the wetland and its buffer;
 - c. The exact sites and specifications for all development activities proposed within wetlands and wetland buffers, including the amounts and methods;
 - d. A proposed preliminary mitigation plan meeting the requirements of Section [40.450.040](#)(E). If the preliminary plan requirement has been waived, a final mitigation plan shall be required in its place.
3. Fees. At the time of application, the applicant shall pay a filing fee pursuant to Chapter 6.110A.

(Amended: Ord. 2004-06-11)

G. Wetland Permit – Processing.

1. Procedures. Wetland permit applications shall be processed using the application procedures in Chapter 40.510 unless specifically modified herein:
 - a. Type I Wetland Permit. The following wetland permits shall be reviewed under the Type I review process described in Section [40.510.010](#):
 - (1) Buffer modification only;
 - (2) Wetland impacts resulting in less than 0.10 acre of direct wetland impact;
 - (3) Wetland permits associated with residential building permits, regardless of impact;
 - (4) Wetland permits associated with home business permits, regardless of impact;

- (5) Re-authorization of approved wetland permits;
 - (6) Programmatic wetland permits that are SEPA exempt.
- b. Type II Wetland Permit. The following wetland permits shall be reviewed under the Type II review process described in Section [40.510.020](#):
- (1) Wetland impacts resulting in 0.10 acre, or more, of direct wetland impact, other than residential building and home business permits;
 - (2) Programmatic wetland permits that require SEPA review;
 - (3) Programmatic permit applications subject to Type II review shall not be subject to the distribution requirements of Section [40.510.020\(E\)\(2\)\(a\)\(3\)](#). Within fourteen (14) calendar days after the date an application is accepted as fully complete, the county shall publish in a newspaper of general circulation a summary of the notice, including the date, time and manner of making comments, the nature and location of the proposal and instructions for obtaining further information.
- c. Type III Wetland Permit. Reasonable use exceptions, other than residential and home business permits, made under Section [40.450.010\(B\)\(4\)](#), shall be reviewed under the Type III review process described in Section [40.510.030](#).
- d. Modifications to conservation covenants required under Section [40.450.030\(F\)\(3\)](#) shall be consistent with the standards of this chapter and will be processed subject to the following:
- (1) Modification to a covenant approved by a Type I decision shall be subject to a Type I review process.
 - (2) Modification to a covenant approved by a Type II decision shall be subject to a Type I review process if the responsible official finds the requested change:
 - (a) Does not increase the potential adverse impact to wetlands or buffers;
and
 - (b) Does not involve an issue of broad public interest, based on the record of the decision; and
 - (c) Does not require further SEPA review.
 - (3) Modification to a covenant approved by a Type II decision shall be subject to a Type II review process if it is not subject to Type I review.
 - (4) Modification to a covenant approved by a Type III decision shall be subject to a Type I review process if the responsible official finds the modification:
 - (a) Provides an increased benefit to wetlands or wetland buffers; and
 - (b) Does not involve an issue of broad public interest, based on the record of the decision; and

- (c) Does not require further SEPA review.
 - (5) Modification to a covenant approved by a Type III decision shall be subject to a Type II review process if the responsible official finds the requested change in the decision:
 - (a) Does not increase the potential adverse impact to wetlands or wetland buffers allowed by the covenant or SEPA determination; and
 - (b) Does not involve an issue of broad public interest, based on the record of the decision.
 - (6) Modification to a covenant approved by a Type III decision shall be subject to a Type III review process if it is not subject to Type I or II review.
 - (7) Modification requests submitted with other applications will be processed as specified in Section [40.500.010\(D\)\(2\)](#).
- e. Removal of wetland covenants shall be approved by the Board of County Commissioners.
2. Consolidation. The department shall, to the extent practicable and feasible, consolidate the processing of wetland permits with other county regulatory programs which affect activities in wetlands, such as SEPA review, subdivision, grading, and site plan approval, so as to provide a timely and coordinated permit process. Where no other county permit or approval is required for the wetland activity, the wetland permit shall be processed in accordance with Section [40.450.040\(G\)\(1\)](#).
 3. Notification. In addition to notices otherwise required pursuant to Section [40.450.040\(G\)\(1\)](#), notice of Type II and Type III wetland permit applications shall be given to federal and state agencies that have jurisdiction over, or an interest in, the affected wetlands.

(Amended: Ord. 2008-06-02; Ord. 2009-12-01)

H. Wetland Permit – Preliminary Approval.

1. Decision Maker. A wetland permit application which has been consolidated with another permit or approval request which requires a public hearing (e.g., preliminary plat) shall be heard and decided in accordance with the procedures applicable to such other request. Any other wetland permit application shall be acted on by the responsible official within the timeline specified in Chapter 40.510 for the required permit type.
2. Findings. A decision preliminarily approving or denying a wetland permit shall be supported by findings of fact relating to the standards and requirements of this chapter.
3. Conditions. A decision preliminarily approving a wetland permit shall incorporate at least the following as conditions:

- a. The approved preliminary mitigation plan;
 - b. Applicable conditions provided for in Section [40.450.030\(E\)\(4\)](#);
 - c. Posting of a performance assurance pursuant to Section [40.450.040\(J\)](#); and
 - d. Posting of a maintenance assurance pursuant to Section [40.450.040\(J\)](#).
4. Administrative Appeal. A consolidated wetland permit decision may be administratively appealed in conjunction with, and within the same limitation period, applicable to the other county permit or approval; provided, that wetland permits preliminarily issued or denied by the responsible official may be appealed in the same manner, and within the same limitation period, applicable to a Type II process under Section [40.510.020](#).
5. Duration. Wetland permit preliminary approval shall be valid for a period of three (3) years from the date of issuance or termination of administrative appeals or court challenges, whichever occurs later, unless:
- a. A longer period is specified in the permit; or
 - b. The applicant demonstrates good cause to the responsible official's satisfaction for an extension not to exceed an additional one (1) year.

I. Wetland Permit – Final Approval.

1. Issuance. The responsible official shall issue final approval of the wetland permit authorizing commencement of the activity permitted thereby upon:
 - a. Submittal and approval of a final mitigation plan pursuant to Section [40.450.040\(E\)\(3\)](#);
 - b. Installation and approval of field markings as required by Section [40.450.030\(F\)\(2\)](#);
 - c. The recording of a conservation covenant as required by Section [40.450.030\(F\)\(3\)](#);
 - d. The posting of a performance assurance as required by Section [40.450.040\(H\)\(3\)](#);
2. Duration.
 - a. Wetland or Wetland Buffer Impacts. Final approval shall be valid for the period specified in the final wetland permit, or the associated development approval. Extension of the permit shall only be granted in conjunction with extension of an associated permit;
 - b. Compensatory Mitigation. The compensatory mitigation requirements of the permit shall remain in effect for the duration of the monitoring and maintenance period specified in the approval.

(Amended: Ord. 2007-11-13)

J. Wetland Permit Financial Assurances.

1. Types of Financial Assurances. The responsible official shall accept the following forms of financial assurances:
 - a. An escrow account secured with an agreement approved by the responsible official;
 - b. A bond provided by a surety for estimates that exceed five thousand dollars (\$5,000);
 - c. A deposit account with a financial institution secured with an agreement approved by the responsible official;
 - d. A letter of commitment from a public agency; and
 - e. Other forms of financial assurance determined to be acceptable by the responsible official.
2. Financial Assurance Estimates. The applicant shall submit itemized cost estimates for the required financial assurances. The responsible official may adjust the estimates to ensure that adequate funds will be available to complete the specified compensatory mitigation upon forfeiture. In addition the cost estimates must include a contingency as follows:
 - a. Estimates for bonds shall be multiplied by one hundred fifty percent (150%);
 - b. All other estimates shall be multiplied by one hundred ten percent (110%).
3. Waiver of Financial Assurances. For Type I wetland permits, the responsible official may waive the requirement for one or both financial assurances if the applicant can demonstrate to the responsible official's satisfaction that posting the required financial assurances will constitute a significant hardship.
4. Acceptance of Work and Release of Financial Assurances.
 - a. Release of Performance Assurance. Upon request, the responsible official shall release the performance assurance when the following conditions are met:
 - (1) Completion of construction and planting specified in the approved compensatory mitigation plan;
 - (2) Submittal of an as-built report documenting changes to the compensatory mitigation plan that occurred during construction;
 - (3) Field inspection of the completed site(s); and
 - (4) Provision of the required maintenance assurance.
 - b. Release of Maintenance Assurance. Upon request, the responsible official shall release the maintenance assurance when the following conditions are met:
 - (1) Completion of the specified monitoring and maintenance program;

- (2) Submittal of a final monitoring report demonstrating that the goals and objectives of the compensatory mitigation plan have been met as demonstrated through:
 - (a) Compliance with the specific performance standards established in the wetland permit; or
 - (b) Functional assessment of the mitigation site(s); and
 - (c) Field inspection of the mitigations site(s).
 - c. Incremental Release of Financial Assurances. The responsible official may release financial assurances incrementally only if specific milestones and associated costs are specified in the compensatory mitigation plan and the document legally establishing the financial assurance.
5. Transfer of Financial Assurances. The responsible official may release financial assurances at any time if equivalent assurances are provided by the original or a new permit holder.
6. Forfeiture. If the permit holder fails to perform or maintain compensatory mitigation in accordance with the approved wetland permit, the responsible official may declare the corresponding financial assurance forfeit pursuant to the following process:
 - a. The responsible official shall, by registered mail, notify the wetland permit holder/agent that is signatory to the financial assurance and the financial assurance holder of nonperformance with the terms of the approved wetlands permit;
 - b. The written notification shall cite a reasonable time for the permit holder, or legal successor, to comply with provisions of the permit and state the county's intent to forfeit the financial assurance should the required work not be completed in a timely manner;
 - c. Should the required work not be completed timely, the county shall declare the assurance forfeit;
 - d. Upon forfeiture of a financial assurance, the proceeds thereof shall be utilized either to correct the deficiencies which resulted in forfeiture or, if such correction is deemed by the responsible official to be impractical or ineffective, to enhance other wetlands in the same watershed or contribute to an established cumulative effects fund for watershed scale habitat and wetland conservation.
- K. Programmatic Permits for Routine Maintenance and Operations of Utilities and Public Facilities. The responsible official may issue programmatic wetland permits for routine maintenance and operations of utilities and public facilities within wetlands and wetland buffers, and for wetland enhancement programs. It is not the intent of the programmatic permit process to deny or unreasonably restrict a public agency or utility's ability to provide services to the public. Programmatic permits only authorize activities specifically identified in and limited to the permit approval and conditions.

1. Application Submittal Requirements. Unless waived by the responsible official with specific findings in the approval document in accordance with Section [40.450.040\(K\)\(2\)](#), applications for programmatic wetland permits shall include a programmatic permit plan that includes the following:
 - a. A discussion of the purpose and need for the permit;
 - b. A description of the scope of activities in wetlands and wetland buffers;
 - c. Identification of the geographical area to be covered by the permit;
 - d. The range of functions and values of wetlands potentially affected by the permit;
 - e. Specific measures and performance standards to be taken to avoid, minimize and mitigate impacts on wetland functions and values including:
 - (1) Procedures for identification of wetlands and wetland buffers;
 - (2) Maintenance practices proposed to be used;
 - (3) Restoration measures;
 - (4) Mitigation measures and assurances;
 - (5) Annual reporting to the responsible official that documents compliance with permit conditions and proposes any additional measures or adjustments to the approved programmatic permit plan;
 - (6) Reporting to the responsible official any specific wetland or wetland buffer degradations resulting from maintenance activities when the degradation occurs or within a timely manner;
 - (7) Responding to any department requests for information about specific work or projects;
 - (8) Procedures for reporting and/or addressing activities outside the scope of the approved permit; and
 - (9) Training all employees, contractors and individuals under the supervision of the applicant who are involved in permitted work.
2. Findings. A decision preliminarily approving or denying a programmatic wetland permit shall be supported by findings of fact relating to the standards and requirements of this chapter.
3. Approval Conditions. Approval of a programmatic wetland permit shall incorporate at least the following as conditions:
 - a. The approved programmatic permit plan;
 - b. Annual reporting requirements; and

- c. A provision stating that duration of the permit.
4. Duration and Re-authorization.
- a. The duration of a programmatic permit is for five (5) years, unless:
 - (1) An annual performance based re-authorization program is approved within the permit; or
 - (2) A shorter duration is supported by findings.
 - b. Requests for re-authorization of a programmatic permit must be received prior to the expiration of the original permit.
 - (1) Re-authorization is reviewed and approved through the process described in Section [40.450.040\(K\)\(1\)](#).
 - (2) Permit conditions and performance standards may be modified through the re-authorization process.
 - (3) The responsible official may temporarily extend the original permit if the review of the re-authorization request extends beyond the expiration date.

L. Wetland Permit – Emergency.

- 1. Authorization. Notwithstanding the provisions of this chapter or any other laws to the contrary, the responsible official may issue prospectively or, in the case of imminent threats, retroactively a temporary emergency wetlands permit if:
 - a. The responsible official determines that an unacceptable threat to life or loss of property will occur if an emergency permit is not granted; and
 - b. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this act and other applicable laws.
- 2. Conditions. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this act and shall:
 - a. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety (90) days; and
 - b. Require, within this ninety (90) day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the ninety (90) days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.
- 3. Notice. Notice of issuance of an emergency permit shall be published in a newspaper having general circulation in Clark County not later than ten (10) days after issuance of such permit.

4. Termination. The emergency permit may be terminated at any time without process upon a determination by the responsible official that the action was not or is no longer necessary to protect human health or the environment.
- M. Revocation. In addition to other remedies provided for elsewhere in this chapter, the responsible official may suspend or revoke wetland permit(s) issued in accordance with this chapter and associated development permits, pursuant to the provisions of Title 32 of the Clark County Code, if the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the permit, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the permit.
 - N. Enforcement. At such time as a violation of this chapter has been determined, enforcement action shall be commenced in accordance with the enforcement provisions of Title 32 of this code, and may also include the following:
 1. Applications for county land use permits on sites that have been cited or issued an administrative notice and order under Title 32 of this code, or have been otherwise documented by the responsible official for activities in violation of this chapter, shall not be processed for a period of six (6) years provided:
 - a. The county has the authority to apply the permit moratorium to the property; and
 - b. The county records the permit moratorium;
 - c. The responsible official may reduce or wave the permit moratorium duration upon approval of a wetland permit under Section [40.450.040](#).
 2. Compensatory mitigation requirements under Sections [40.450.040](#)(C) and (D) may be increased by the responsible official as follows:
 - a. All or some portion of the wetland or wetland buffer impact cannot be permitted or restored in place; and
 - b. Compensatory mitigation for the impact is delayed more than one year from the time of the original citation or documentation of the violation.

(Amended: Ord. 2006-05-27)