

EXHIBIT "A"
Ordinance No. 2006-05-027

1 40.450

WETLAND PROTECTION

2 40.450.010 INTRODUCTION

3 A. Purpose.

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

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

15
16 B. Applicability.

- 17 1. The provisions of this chapter apply to all lands, all land uses and development
- 18 activity, and all structures and facilities in the county, whether or not a permit or
- 19 permit authorization is required, and shall apply to every person, firm,
- 20 partnership, corporation, group, governmental agency, or other entity, that owns,
- 21 leases, or administers land within the county. No person, company, agency, or
- 22 applicant shall alter a wetland or wetland buffer except as consistent with this
- 23 chapter.
- 24 2. The county will not approve any permit or otherwise issue any authorization to
- 25 alter the condition of any land, water, or vegetation, or to construct or alter any
- 26 structure or improvement in, over, or on a wetland or wetland buffer, without first
- 27 ensuring compliance with the requirements of this chapter, including, but not
- 28 limited to, the following development permits:
- 29 a. Building permit;
- 30 b. Grading permit;
- 31 c. Forest practices conversion permit regulated by Section 40.260.080;
- 32 d. Conditional use permit;
- 33 e. Shoreline conditional use permit;
- 34 f. Shoreline substantial development permit;
- 35 g. Shoreline variance;
- 36 h. Short subdivision;
- 37 i. Subdivision;
- 38 j. Planned unit development;
- 39 k. Site plan; or
- 40 l. Zoning variance.
- 41 3. Reasonable use exceptions. The following exceptions shall apply in
- 42 implementing the standards of this chapter, although the standards shall be
- 43 applied to the maximum extent practicable to avoid and minimize impacts on
- 44 wetland functions and values. Mitigation for unavoidable adverse impacts shall
- 45 be required. The standards of this chapter shall not be used to preclude the
- 46 following activities in wetland areas:
- 47 a. The placement of a single-family residence and normal accessory structures
- 48 on an otherwise legally buildable lot of record. Standards may be applied on

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- 1 established properties to limit the proposed location and size of structures,
2 and proposed removal of vegetation.
- 3 (1) The expansion of a home on a lot that does not show building or
4 development envelopes, wetlands or wetland buffers on the recorded
5 plat, not to exceed twenty-five (25%) of the existing building footprint.
6 (2) The replacement of single-wide mobile home with another dwelling and
7 normal accessory structures; and
8 (3) Fire hazard clearing recommended by the fire marshal, or consistent with
9 written fire marshal or fire chief guidelines.
- 10 b. The standards of this chapter shall not be used to deny all reasonable
11 economic use of private property. The following criteria must be met in order
12 to verify that all reasonable economic use of the property has been denied:
13 (1) The application of this chapter would deny all reasonable economic use
14 of the property.
15 (2) No other reasonable economic use of the property has less impact on the
16 wetland and buffer area.
17 (3) Any wetland or buffer alteration is the minimum necessary to allow for
18 reasonable economic use of the property; and
19 (4) The inability of the applicant to derive reasonable economic use of the
20 property is not the result of actions by the applicant after the date of
21 adoption of this ordinance.
- 22 c. The standards of this chapter shall not be used to deny or reduce the number
23 of lots of a proposed rural land division allowed under applicable zoning
24 density.
25 (1) Standards may be applied on established properties to limit the proposed
26 location and size of structures and proposed removal of vegetation.
27 (2) Land divisions in rural zoning districts (R-5, R-10 and R-20) may utilize
28 the cluster provisions of 40.210.020(D)
- 29 d. The application of this chapter shall not be used to deny a development
30 proposal for a linear facility from a public agency or public utility, provided the
31 agency or utility meets the following criteria:
32 (1) There is no practical alternative to the proposed project with less impact
33 on the wetland and buffer area, and
34 (2) The application of this chapter would unreasonably restrict the ability to
35 provide public utility services to the public.
- 36 4. Approval of a development permit application pursuant to the provisions of this
37 chapter does not discharge the obligation of the applicant to comply with the
38 provisions of this chapter.
- 39
- 40 C. Exemptions.
- 41 1. Exempt Activities and Impacts to Wetlands. All exempted activities shall use
42 reasonable methods to avoid potential impacts to wetlands and buffers.
43 Exemptions from permits are not exemptions from wetland stewardship
44 responsibilities. The following developments, activities, and associated uses shall
45 be exempt from the provisions of this chapter, provided that they are otherwise
46 consistent with the provisions of other local, state, and federal laws and
47 requirements:
- 48 a. Reconstruction of damaged or destroyed structures within the same building
49 footprint. Expansion or reconstruction within a new or expanded footprint that

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- 1 affects a non-exempt wetland or wetland buffer is subject to the provisions of
2 this title.
- 3 b. The harvesting or normal maintenance of vegetation in a manner that is not
4 injurious to the natural reproduction of such vegetation.
- 5 c. Existing agricultural activities and structures:
- 6 (1) Agricultural activities and structures in operation at the time of adoption of
7 this ordinance that are affecting wetlands not associated with a riparian
8 corridor are exempt from regulation under this ordinance;
- 9 (2) Changes in agricultural practices within the same "footprint" as the
10 existing agricultural activities in (1) above, including reconstruction of
11 existing agricultural structures, or construction of new agricultural
12 structures, are exempt from regulation under this ordinance;
- 13 (3) Agricultural activities and structures in operation at the time of adoption of
14 this ordinance that are affecting wetlands associated with riparian
15 corridors shall be regulated through chapter 40.440, Habitat
16 Conservation.
- 17 d. The removal or eradication of noxious weeds so designated in Title 7 of this
18 code or other exotic nuisance plants including non-native blackberries,
19 provided that ground disturbing heavy machinery (scraping, ripping, etc.) is
20 not used. Cutting, mowing, and ground disturbance with hand tools is
21 allowed.
- 22 e. Site investigative work necessary for land use application submittals such as
23 surveys, soil logs, and percolation tests.
- 24 f. Emergency clearing to abate immediate danger to persons or property. For
25 emergency clearing of hazard trees, remove only that portion of the hazard
26 tree as necessary to remediate the hazard.
- 27 g. Clearing necessary for the emergency repair of utility or public facilities.
28 Notification of emergency work that causes substantial degradation to
29 functions and values must be reported in a timely manner.
- 30 h. Clearing for operation, maintenance, or repair of existing utilities or public
31 facilities that does not further increase the impact to, or encroach further
32 within the wetland or wetland buffer.
- 33 i. Forest practices regulated by the State of Washington Department of Natural
34 Resources (DNR) under the Forest Practices Rules (WAC Title 222), or
35 regulated under Clark County Code Section 40.260.080, Forest Practices,
36 except forest conversions and conversion option harvest plans.
- 37 j. Clearing, as minimally necessary, for placement of fencing, private wells,
38 septic systems or individual lot sewer, water, electrical, or utility connections
39 in wetland buffers, where practical alternatives do not exist.
- 40 k. Clearing, as minimally necessary, for stream bank restoration, for native
41 replanting or enhancements in wetlands and wetland buffers.
- 42 l. Clearing, as minimally necessary, for soil, water, vegetation and resource
43 conservation projects having received an environmental permit from a public
44 agency in wetlands and wetland buffers.

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- 1 m. Clearing, as minimally necessary, for creating a four (4) foot or narrower path
2 using natural, wood-based or vegetated pervious surfacing in wetlands and
3 wetland buffers.
- 4 n. Land disturbance in wetlands and wetland buffers cumulatively less than five
5 (5) cubic yards in volume and three hundred (300) square feet in area,
6 provided that the wetland hydroperiod is not significantly affected.
- 7
- 8 3. Exempted wetlands. This chapter shall not apply to the following wetlands:
9 a. Small. Isolated Category III wetlands less than two thousand five hundred
10 (2,500) square feet in area and isolated Category IV wetlands less than four
11 thousand three hundred and fifty (4,350) square feet in area;
12 b. Artificial. Wetlands created from non-wetland sites including, but not limited
13 to, irrigation and drainage ditches, grass-lined swales, canals, detention
14 facilities, wastewater treatment facilities, stormwater facilities, farm ponds,
15 and landscape amenities; provided, that wetlands created as mitigation shall
16 not be exempted;
17 c. Riparian. Wetlands fully within five (5) feet, measured horizontally, of bank-
18 full width for streams and the ordinary high water mark for lakes which are
19 regulated under the State Shorelines Management Act (RCW 90.58) or under
20 Clark County Code Chapter 40.440, Habitat Conservation are exempt.
- 21
- 22 D. Interpretation.
- 23 1. This chapter shall apply in addition to zoning and other regulations adopted by
24 the county.
- 25 2. When there is a conflict between any provisions of this chapter or any other
26 regulations adopted by Clark County, that providing the most protection to
27 affected critical areas shall apply.
- 28 3. Compliance with this chapter does not constitute compliance with other federal
29 state and local regulations and permit requirements (for example, Shoreline
30 Substantial Development Permits, Hydraulic Project Approval (HPA) permits,
31 Section 106 of the National Historic Preservation Act, U.S. Army Corps of
32 Engineers Section 404 permits, National Pollutant Discharge Elimination System
33 (NPDES) permits, or DOE Section 401 Water Quality Certification). The
34 applicant is responsible for complying with all requirements, apart from the
35 provisions of this chapter.
- 36

37 **40.450.020 RATING SYSTEM**

- 38 A. General.
- 39 1. The wetland rating system is used in part to determine buffer widths pursuant to
40 Section 40.450.030.E.2. The wetland rating and buffer systems are also used for
41 mitigation and enhancement options under Section 40.450.040.
- 42 2. The determination of the specific category of wetland and buffer for each wetland
43 shall be the responsibility of the department.
- 44
- 45 B. Wetland rating system. Wetlands shall be rated according to the Washington State
46 Department of Ecology wetland rating system found in the Washington State
47 Wetland Rating System for Western Washington, (Ecology Publication #04-06-025,
48 August 2004). The rating system document contains the definitions and methods for
49 determining if the criteria below are met.

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- 1 1. Wetland rating categories
- 2 (a) **Category I.** Category I wetlands are:
- 3 (1) wetlands that are identified by scientists of the Washington Natural
- 4 Heritage Program/DNR as high quality wetlands;
- 5 (2) bogs larger than one half (½) acre;
- 6 (3) mature and old-growth forested wetlands, as defined by WDFW Priority
- 7 Habitat and Species provisions, larger than one (1) acre; or
- 8 (4) wetlands that perform many functions well, as characterized by a wetland
- 9 score of seventy (70) or greater on the rating form.
- 10 Category I wetlands represent a unique or rare wetland type, are more sensitive
- 11 to disturbance than most wetlands, are relatively undisturbed and contain some
- 12 ecological attributes that are impossible to replace within a human lifetime, or
- 13 provide a very high level of functions.
- 14 (b) **Category II.** Category II wetlands are:
- 15 (1) a wetland identified by the Washington State Department of Natural
- 16 Resources as containing "sensitive" plant species;
- 17 (2) a bog between one quarter (¼) and one half (½) acre in size; or
- 18 (3) wetlands with a moderately high level of functions, as characterized by a
- 19 wetland score of fifty one (51) through sixty nine (69) on the rating form.
- 20 Category II wetlands are difficult, though not impossible, to replace, and provide
- 21 high levels of some functions. These wetlands occur more commonly than
- 22 Category I wetlands, but they still need a relatively high level of protection.
- 23
- 24 (c) **Category III.** Category III wetlands are wetlands with a moderate level of
- 25 functions, as characterized by a score of thirty (30) through fifty (50) on the
- 26 rating form. Generally, wetlands in this category have been disturbed in
- 27 some way and are often less diverse or more isolated from other natural
- 28 resources in the landscape than Category II wetlands.
- 29
- 30 (d) **Category IV.** Category IV wetlands have the lowest levels of functions and
- 31 are often heavily disturbed. They are characterized by a score of less than
- 32 thirty (30) on the rating form. These are wetlands that should be replaceable,
- 33 and in some cases may be improved. However, experience has shown that
- 34 replacement cannot be guaranteed in any specific case. These wetlands may
- 35 provide some important functions, and should be protected to some degree.
- 36 2. Date of wetland rating. Wetland rating categories shall be applied as the wetland
- 37 exists on the date of adoption of the rating system by the local government, as
- 38 the wetland naturally changes thereafter, or as the wetland changes in
- 39 accordance with permitted activities. Wetland rating categories shall not change
- 40 due to illegal modifications.
- 41

42 **40.450.030 STANDARDS**

- 43 A. General. The standards apply whenever a non-exempt project (see Section
- 44 40.450.010.(B)) is proposed on a parcel of real property containing a non-exempt
- 45 wetland or wetland buffer (see Section 40.450.010(C)). The standard provisions shall
- 46 be implemented in conjunction with the processing of the development permits listed
- 47 in Section 40.450.010(B).
- 48

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- 1 1. For the purpose of computing the processing limitation period applicable to a
2 development permit application, the application shall not be deemed fully
3 complete until completion (if required) of the wetland determination pursuant to
4 Section 40.450.030(C), the wetland delineation pursuant to Section
5 40.450.030(D), and the buffer designation pursuant to Section 40.450.030(E)(1).
6 This subsection shall not be construed in any way to delay vesting under
7 Washington law.
8 2. Administrative appeals of determinations made under Section 40.450.030 must
9 be filed in conjunction with, and within the limitation period applicable to, an
10 available administrative appeal of the development permit application; -provided,
11 that an aggrieved party may appeal preliminary decisions deciding an exemption,
12 determining or delineating a wetland, determining a buffer, or otherwise finally
13 applying the provisions of this chapter in the same manner, and within the
14 limitation period applicable to, appeals from responsible official decisions under
15 Chapter 40.510.
- 16
- 17 B. Pre-determination. Prior to submittal of a development permit application, a person
18 may request from the responsible official a written pre-determination of whether
19 wetlands exist on any parcel less than forty (40) acres. An applicant may also
20 choose to submit a digital file of delineated wetland boundaries consistent with
21 Section 40.450.030(D)(3) or request staff to digitize the information. The pre-
22 determination shall be binding on the responsible official for a period of three (3)
23 years; provided, that such pre-determination shall be subject to administrative appeal
24 upon its application in conjunction with a development permit application. The fee for
25 a predetermination is contained in Chapter 6.110.
- 26
- 27 C. Wetland determination. In conjunction with the submittal of a development permit
28 application, the responsible official shall determine the probable existence of a
29 wetland on the parcel involved in the development permit application. If wetlands or
30 wetland buffers are found to exist on a parcel, wetland delineation is required.
- 31
- 32 D. Wetland delineation.
- 33 1. Methodology. The location of a wetland and its boundary shall be determined
34 through the performance of a field investigation utilizing the methodology
35 contained in the Wetlands Delineation Manual. If a wetland is located off-site and
36 is inaccessible, the best available information shall be used to determine the
37 wetland boundary and category.
- 38 2. Information Requirements. Wetland boundaries shall be staked and flagged in
39 the field and a delineation report shall be submitted to the department. The report
40 shall include the following information:
- 41 a. USGS quadrangle map with site clearly defined;
- 42 b. Topographic map of area;
- 43 c. National wetland inventory map showing site;
- 44 d. Soil Conservation Service soils map showing site;
- 45 e. Site map, at a scale no smaller than one inch equals one hundred feet (1" =
46 100', a scaling ratio of 1:1200), if practical, showing the following information:
- 47 (1) Wetland boundaries,
- 48 (2) Sample sites and sample transects,
- 49 (3) Boundaries of forested areas,
- 50 (4) Boundaries of wetland classes if multiple classes exist;

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- 1 f. Discussion of methods and results with special emphasis on technique used
2 from the Wetlands Delineation Manual;
3 g. Acreage of each wetland on the site based on the survey if the acreage will
4 impact the buffer size determination or the project design;
5 h. All completed field data sheets per the wetlands delineation manual,
6 numbered to correspond to each sample site.
7 3. Digital file submittal. Upon submittal of the wetland delineation report an
8 applicant shall provide a digital file containing the layers specified in Table
9 40.450.030-1 that conforms to all applicable requirements discussed in Section
10 40.540.060. If the applicant chooses, the county will prepare the digital file
11 based upon the wetland boundary survey map. The applicant shall provide
12 payment for the preparation of the digital file in accordance with Section
13 6.110A.020(2)(B)(III). Additionally, the responsible official shall forward the
14 digital file to the Department of Assessment and GIS.
15
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Table 40.450.030-1. DFX 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 & Parent Parcel Number	Lotnum	Text
Wetland Category	Category	Text
Buffer Distance	Buffdist.	Text

- 17
18
19 4. Responsibility. The wetland delineation is the responsibility of the applicant. The
20 responsible official shall verify the accuracy of the boundary delineation within
21 ten (10) working days of receiving the delineation report. This review period may
22 be extended when excessively dry conditions prohibit the confirmation of the
23 wetland delineation. If the delineation is found to not accurately reflect the
24 boundary of the wetland, the responsible official shall issue a report, within
25 twenty (20) working days of receiving the applicant's delineation report, citing
26 evidence (for example, soil samples) that demonstrates where the delineation is
27 in error. The applicant may then either revise the delineation and submit another
28 report or administratively appeal.
29
30 E. Buffers. Wetland buffer widths shall be determined by the responsible official in
31 accordance with the standards below.
32 1. All buffers shall be measured horizontally outward from the delineated wetland
33 boundary or, in the case of a stream with no adjacent wetlands, the ordinary high
34 water mark as surveyed in the field.
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- 1 2. Buffer widths are established by comparing the wetland rating category and the
2 intensity of land uses proposed on development sites per Tables 40.450.030-2,
3 40.450.030-3, 40.450.030-4 and 40.450.030-5. For Category IV wetlands, the
4 required water quality buffers, per Table 40.450.030-2, are adequate to protect
5 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.

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Table 40.450.030-5, Land Use Intensity Matrix¹

	Parks and Recreation	Streets and Roads	Stormwater Facilities	Utilities	Commercial/Industrial	Residential²
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

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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 non-buildable tract with the following exceptions:
 - a. Creation of a non-buildable 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 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.

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- 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 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 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 will 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 & 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

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- 1 section and to give notice of the requirement to obtain a wetland permit prior to
2 engaging in regulated activities within a wetland or its buffer.
- 3 4. In the cases of plats, short plats, and recorded site plans, include on the face of
4 such instrument the boundary of the wetland and its buffer and a reference to the
5 separately recorded conservation covenant provided for in Section
6 40.450.030(F)(3).
7
- 8 G. Standard requirements--Waivers. The responsible official shall waive the
9 requirements of subsections 40.350.030(D) and (E) in certain cases described
10 below, if the applicant designates development envelopes which are clearly outside
11 of any wetland or buffer. The responsible official may require partial wetland
12 delineation to the extent necessary to ensure eligibility for this waiver:
- 13 1. Residential building permits and home businesses;
14 2. Land divisions in the rural area:
15 a. Development envelopes shall be required for a fully complete preliminary
16 application;
17 b. Development envelopes shall be shown on the final plat; and
18 c. A note referencing the development envelopes shall be placed on the final
19 plat.
20 3. Site plan reviews where the responsible official determines that all development
21 is clearly separated from the wetlands and wetland buffers:
22 a. Development envelopes shall be required for a fully complete preliminary
23 application;
24 b. Development envelopes shall be shown on the final site plan; and
25 c. A note referencing the development envelopes shall be placed on the final
26 site plan.
27

28 **40.450.040 WETLAND PERMITS**

- 29 A. General.
- 30 1. A wetland permit is required for any development activity that is not exempt
31 pursuant to Section 40.450.010(C)) within wetlands and wetland buffers.
32 2. Standards for wetland permits are provided in Sections 40.450.040(B), (C) and
33 (D).
34 3. All wetland permits require approval of a preliminary and final
35 enhancement/mitigation plan in accordance with the provisions of Section
36 40.450.040(E) unless the preliminary enhancement/mitigation plan requirement
37 is waived under the provisions of Section 40.450.040(E)(2).
38 4. Wetland permit application, processing, preliminary approval, and final approval
39 procedures are set out in Sections 40.450.040(F) through (I).
40 5. Provisions for programmatic permits are provided by 40.450.040(K)
41 6. Provisions for emergency wetland permits are provided by Section
42 40.450.040(L).
43
- 44 B. Standards--General. Wetland permit applications shall be based upon a mitigation
45 plan and shall satisfy the following general requirements:
- 46 1. The proposed activity shall not cause significant degradation of wetland
47 functions;
48 2. The proposed activity shall comply with all state, local and federal laws, including
49 those related to sediment control, pollution control, floodplain restrictions,
50 stormwater management, and on-site wastewater disposal;

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- C. Buffer standards and authorized activities. The following additional standards apply for regulated activities in a wetland buffer:
 - 1. Reduced Width Based on Modification of Land Use Intensity. The required buffer width shall be decreased if design techniques are used that reduce the land use intensity category delineated in Table 40.450.030-5. Eligible design measures include the following:
 - a. General Site Design Measures. High intensity buffers may be reduced to moderate intensity buffers if all of the following mitigation measures are applied to the greatest extent practicable:
 - (1) Buffer Enhancement. Improve the function of the buffer such that buffer areas with reduced function can function properly. This could include the removal and management of noxious weeds and/or invasive vegetation or specific measures to improve hydrologic or habitat function.
 - (2) Shielding of High Intensity Uses.
 - (a) Lights. Direct all lights away from wetlands;
 - (b) Noise. Locate activity that generates noise away from wetlands;
 - (c) Pets and Human Disturbance. Use privacy fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the eco-region; place wetland and its buffer in a separate tract;
 - (3) Surface Water Management.
 - (a) Existing runoff. Retrofit stormwater detention and treatment for roads and existing development to the extent determined proportional by the responsible official, and disperse direct discharge of channelized flows from lawns and landscaping;
 - (b) Change in water regime. Infiltrate and/or disperse stormwater runoff from impervious surfaces and drainage from lawns and landscaping treated in accordance with Chapter 40.380 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 if all of the following mitigation measures are applied to the greatest extent practicable:
 - (1) Limiting effective impervious surface. Limit the extent of impervious site area and/or use low impact development techniques to limit the extent of effective impervious surface. Areas set aside as non-impervious surface must be protected by some type of permanent legal protection such as a covenant or easement.
 - (a) Less than (*threshold to be determined*) percent effective impervious surface results in a moderate intensity impact.
 - (b) Less than (*threshold to be determined*) percent effective impervious surface results in a low intensity impact.
 - (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 40.380 of the Clark County Code. This could include measures such as pre-treatment or tertiary treatment of run-off and limiting discharge from the site to pre-development run-off flow and volume.
 - c. Habitat Corridors. Establishment of a minimum 100 feet wide functioning or enhanced vegetated corridor between the wetland and any other Priority

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- 1 Habitat areas as defined by the Washington State Department of Fish and
2 Wildlife reduces a high land use intensity buffer to a moderate land use
3 intensity buffer provided both of the following conditions are met:
4 (1) Applies only to wetlands with habitat function scores higher than 20 on
5 the rating system form;
6 (2) The habitat corridor must be protected for the entire distance between the
7 wetland and the priority habitat area by some type of permanent legal
8 protection such as a covenant or easement. d. The responsible
9 official may determine that proposed measures, other than those
10 specifically listed in 40.450.040(C)(1)(a) through (c), will effectively
11 reduce land use intensity and protect or enhance functions and values of
12 wetlands and, therefore, allow buffer modifications where appropriate.
- 13 2. Minimum Buffer. In the case of buffer averaging and buffer reduction via
14 40.450.040(C)(1), the minimum buffer width at its narrowest point shall not be
15 less than the low intensity land use water quality buffer widths contained in
16 Table 40.450.030-2.
- 17 3. Buffer Averaging. The boundary of the buffer zone may be modified by averaging
18 buffer widths. If buffer averaging is used, the following conditions must be met:
19 a. A maximum of 25% of the total required buffer area on the site (after all
20 reductions are applied) may be averaged; and
21 b. The total area contained in the buffer, after averaging, shall be at least
22 functionally equivalent and equal in size to the area contained within the
23 buffer prior to averaging.
- 24 4. Stormwater Facilities. Stormwater facilities are only allowed in buffers of
25 wetlands with low habitat function (less than twenty (20) points on the habitat
26 section of the rating system form)), provided the facilities shall be built on the
27 outer edge of the buffer and not degrade the existing buffer function and are
28 designed to blend with the natural landscape. Unless determined otherwise by
29 the responsible official, the following activities shall be considered to degrade a
30 wetland buffer when they are associated with the construction of a stormwater
31 facility:
32 a. Removal of trees greater than four (4) inches diameter at four and one-half (4
33 1/2) feet above the ground or greater than twenty (20) feet in height;
34 b. Disturbance of plant species that are listed as rare, threatened or endangered
35 by the county or any state or federal management agency;
36 c. The construction of concrete structures other than manholes, inlets, and
37 outlets that are exposed above the normal water surface elevation of the
38 facility;
39 d. The construction of maintenance and access roads;
40 e. Slope grading steeper than four to one (4:1) horizontal to vertical above the
41 normal water surface elevation of the stormwater facility;
42 f. The construction of pre-treatment facilities such as fore bays, sediment traps,
43 and pollution control manholes;
44 g. The construction of trench drain collection and conveyance facilities;
45 h. The placement of fencing; and
46 i. The placement of rock and/or riprap, except for the construction of flow
47 spreaders, or the protection of pipe outfalls and overflow spillways, provided
48 that buffer functions for areas covered in rock and/or riprap are replaced.
- 49 5. Road and Utility Crossings. Crossing buffers with new roads and utilities is
50 allowed provided all the following conditions are met:

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- 1 a. Buffer functions, as they pertain to protection of the adjacent wetland and its
2 functions, are replaced; and
3 b. Impacts to the buffer and wetland are minimized.
- 4 6. Other Activities in a Buffer. Regulated activities not involving stormwater
5 management, road and utility crossings, or a buffer reduction via enhancement
6 are allowed in the buffer if all the following conditions are met:
7 a. The activity is temporary and will cease or be completed within three (3)
8 months of the date the activity begins;
9 b. The activity will not result in a permanent structure in or under the buffer;
10 c. The activity will not result in a reduction of buffer acreage, or function;
11 d. The activity will not result in a reduction of wetland acreage, or function.
- 12
- 13 D. Standards – Wetland Activities. The following additional standards apply to the
14 approval of all activities permitted within wetlands under this Section:
- 15 1. Sequencing. Applicants shall demonstrate that a range of project alternatives
16 have been given substantive consideration with the intent to avoid or minimize
17 impacts to wetlands. Documentation must demonstrate that the following
18 hierarchy of avoidance and minimization has been pursued:
19 a. Avoid impacts to wetlands unless the responsible official finds that:
20 (1) For Category I and II wetlands, avoiding all impact is not in the public
21 interest or will deny all reasonable economic use of the site;
22 (2) For Category III and IV wetlands, avoiding all impact will result in a project
23 that is either:
24 (a) Inconsistent with the Clark County Comprehensive Growth
25 Management Plan;
26 (b) Inconsistent with county-wide critical area conservation goals; or
27 (c) Not feasible to construct.
- 28 b. Minimize impacts to wetlands if complete avoidance is infeasible. The
29 responsible official must find that the applicant has limited the degree or
30 magnitude of impact to wetlands by using appropriate technology and by
31 taking affirmative steps to reduce impact through efforts such as:
32 (1) Seeking easements or agreements with adjacent land owners or project
33 proponents where appropriate;
34 (2) Seeking reasonable relief that may be provided through application of
35 other county zoning and design standards;
36 (3) Site design; and
37 (4) Construction techniques and timing.
- 38 c. Compensate for wetland impacts that will occur, after efforts to minimize have
39 been exhausted. The responsible official must find that:
40 (1) The affected wetlands are restored to the conditions existing at the time
41 of the initiation of the project;
42 (2) Unavoidable impacts are mitigated in accordance with this subsection;
43 and
44 (3) The required mitigation is monitored and remedial action is taken when
45 necessary to ensure the success of mitigation activities.
- 46 2. Location of Wetland Mitigation. Wetland mitigation for unavoidable impacts shall
47 be located using the following prioritization:
48 a. On-site. Locate mitigation according to the following priority:
49 (1) within or adjacent to the same wetland as the impact;
50 (2) within or adjacent to a different wetland on the same site.

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- 1 b. Off-site. Locate mitigation within the same watershed, as shown on Figure
2 40.450.040-1, or use an established wetland mitigation bank; the service area
3 determined by the mitigation bank review team and identified in the executed
4 mitigation bank instrument;
- 5 c. In-kind. Locate or create wetlands with similar landscape position and the
6 same hydro-geomorphic (HGM) classification based on a reference to a
7 naturally occurring wetland system; and
- 8 d. Out-of-kind. Mitigate in a different landscape position and/or HGM
9 classification based on a reference to a naturally occurring wetland system.
- 10 3. Types of Wetland Mitigation. The various types of wetland mitigation allowed are
11 listed below in the general order of preference.
- 12 a. Restoration: The manipulation of the physical, chemical, or biological
13 characteristics of a site with the goal of returning natural or historic functions
14 to a former or degraded wetland. For the purpose of tracking net gains in
15 wetland acres, restoration is divided into:
- 16 (1) Re-establishment: The manipulation of the physical, chemical, or
17 biological characteristics of a site with the goal of returning natural or
18 historic functions to a former wetland. Re-establishment results in a gain
19 in wetland acres (and functions). Activities could include removing fill
20 material, plugging ditches, or breaking drain tiles.
- 21 (2) Rehabilitation: The manipulation of the physical, chemical, or biological
22 characteristics of a site with the goal of returning natural or historic
23 functions to a degraded wetland. Re-establishment results in a gain in
24 wetland function, but does not result in a gain in wetland acres. Activities
25 could involve breaching a dike to reconnect wetlands to a floodplain or
26 return tidal influence to a wetland.
- 27 b. Creation (Establishment): The manipulation of the physical, chemical, or
28 biological characteristics of a site with the goal of developing a wetland on an
29 upland or deepwater site where a wetland did not previously exist.
30 Establishment results in a gain in wetland acres. Activities typically involve
31 excavation of upland soils to elevations that will produce a wetland hydro-
32 period, create hydric soils, and support the growth of hydrophytic plant
33 species.
- 34 c. Enhancement: The manipulation of the physical, chemical, or biological
35 characteristics of a wetland site to heighten, intensify, or improve the specific
36 function(s) or to change the growth stage or composition of the vegetation
37 present. Enhancement is undertaken for specified purposes such as water
38 quality improvement, flood water retention, or wildlife habitat. Enhancement
39 results in a change in some wetland functions and can lead to a decline in
40 other wetland functions, but does not result in a gain in wetland acres.
41 Activities typically consist of planting vegetation, controlling non-native or
42 invasive species, modifying site elevations or the proportion of open water to
43 influence hydro-periods, or some combination of these activities.
- 44 d. Protection/Maintenance (Preservation): Removing a threat to, or preventing
45 the decline of, wetland conditions by an action in or near a wetland. This
46 includes the purchase of land or easements repairing water control structures
47 or fences, or structural protection such as repairing a barrier island. This
48 term also includes activities commonly associated with the term,
49 preservation.
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1 Preservation does not result in a gain of wetland acres, but may result in
2 improved wetland functions.

3 4. Wetland Mitigation Ratios.

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

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- 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 ordinance;
 - (4) The preservation area is not an existing or proposed wetland mitigation site; and
 - (5) The following preservation/mitigation ratio's apply:

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Table 40.450.040-2, Wetland Preservation Ratios for Category I and II Wetlands (In Area)				
	In Addition to Standard Mitigation		As the Only Means of Mitigation	
Habitat Function of Wetland to be Replaced	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

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- 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. 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 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 40.450.040(C)(5); and
 - (2) The total indirect wetland impact from buffer reductions is less than 0.25 acre.

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- 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 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 shall 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 40.450.040(D)(4);

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- 1 (2) Approved reasonable use exceptions where sufficient on-site wetland and
2 wetland buffer mitigation is not practical;
- 3 (3) Small impacts affecting less than 0.10 acre of wetland where on-site
4 enhancement and/or preservation is not adequate to meet the
5 requirements of 40.450.040(D)(4); or
- 6 (4) As an additional mitigation measure when all other mitigation options
7 have been applied to the greatest extent practicable.
- 8 8. Stormwater Facilities. Stormwater facilities are allowed in wetlands with habitat
9 scores less than 20 on the rating form, in compliance with the following
10 requirements:
 - 11 a. Stormwater detention and retention necessary to maintain wetland hydrology
12 is authorized provided that the responsible official determines that wetland
13 functions will not be degraded; and
 - 14 b. Stormwater runoff is treated for water quality in accordance with the
15 requirements of Chapter 40.380 prior to discharge into the wetland.
- 16 9. Utility Crossings. Crossing wetlands by utilities is allowed, provided the activity is
17 not prohibited by subsection (1) of Section 40.450.040(D), and provided all the
18 following conditions are met:
 - 19 a. The activity does not result in a decrease in wetland acreage or classification;
 - 20 b. The activity results in no more than a short-term six (6) month decrease in
21 wetland functions; and
 - 22 c. Impacts to the wetland are minimized.
- 23 10. Other Activities in a Wetland. Activities not involving stormwater management,
24 utility crossings, or wetland mitigation are allowed in a wetland, provided the
25 activity is not prohibited by subsection 40.450.040(D)(1), and provided all the
26 following conditions are met:
 - 27 a. The activity shall not result in a reduction of wetland acreage or function; and
 - 28 b. The activity is temporary and shall cease or be completed within three (3)
29 months of the date the activity begins.
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- 31 E. Mitigation Plans.
 - 32 1. General. Mitigation plans are required for activities in a buffer or wetland. Content
33 requirements which are inappropriate and inapplicable to a project may be
34 waived by the responsible official upon request of the applicant at or subsequent
35 to the pre-application consultation provided for in Section 40.450.040(F)(1).
 - 36 2. Preliminary Mitigation Plan. The purpose of the preliminary plan is to determine
37 the feasibility of the project before extensive resources are devoted to the
38 project. The responsible official may waive the requirement for a preliminary
39 mitigation plan when a wetland permit is not associated with a development
40 permit application listed in Section 40.450.010(B)). The preliminary mitigation
41 plan consists of two (2) parts: baseline information for the site and a conceptual
42 plan. If off-site wetland mitigation is proposed, baseline information for both the
43 project site and mitigation site is required.
 - 44 a. Baseline information shall include:
 - 45 (1) Wetland delineation report as described in Section 40.450.030(D)(2);
 - 46 (2) Copies of relevant wetland jurisdiction determination letters, if available,
47 such as determinations of prior converted crop lands, correspondence
48 from state and federal agencies regarding prior wetland delineations, etc.
 - 49 (3) Description and maps of vegetative conditions at the site;
 - 50 (4) Description and maps of hydrological conditions at the site;

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- 1 (5) Description of soil conditions at the site based on a preliminary on-site
2 analysis;
- 3 (6) A topographic map of the site; and
- 4 (7) A functional assessment of the existing wetland and buffer.
- 5 (a) Application of the rating system in 40.450.020.B will generally be
6 considered sufficient for functional assessment;
- 7 (b) The responsible official may accept or request an alternate functional
8 assessment methodology when the applicant's proposal requires
9 detailed consideration of specific wetland functions;
- 10 (c) Alternate functional assessment methodologies used shall be
11 scientifically valid and reliable.
- 12 b. The contents of the conceptual mitigation plan shall include:
- 13 (1) Goals and objectives of the proposed project;
- 14 (2) A wetland buffer width reduction plan, if width reductions are proposed,
15 that includes:
- 16 (a) The land use intensity, per Table 40.450.030-5, of the various
17 elements of the development adjacent to the wetlands;
- 18 (b) The wetland buffer width(s) required by Tables 40.450.030-2, 3 and 4;
- 19 (c) The proposed buffer width reductions, including documentation that
20 proposed buffer width reductions fully protect the functions of the
21 wetland in compliance with Section 40.450.040(C).
- 22 (3) A wetland mitigation plan that includes:
- 23 (a) A sequencing analysis for all wetland impacts;
- 24 (b) A description of all wetland impacts that require mitigation under this
25 chapter; and
- 26 (c) Proposed mitigation measures and mitigation ratios.
- 27 (4) Map showing proposed wetland and buffer. This map should include the
28 existing and proposed buffers and all proposed wetland impacts regulated
29 under this chapter;
- 30 (5) Site plan;
- 31 (6) Discussion and map of plant material to be planted and planting densities;
- 32 (7) Preliminary drainage plan identifying location of proposed drainage
33 facilities including detention structures and water quality features (e.g.,
34 swales);
- 35 (8) Discussion of water sources for all wetlands on the site;
- 36 (9) Project schedule;
- 37 (10) Discussion of how the completed project will be managed and monitored;
38 and
- 39 (11) A discussion of contingency plans in case the project does not meet the
40 goals initially set for the project.
- 41 3. Final Mitigation Plan. The contents of the final mitigation plan shall include:
- 42 a. The approved preliminary mitigation plan and all conditions imposed on that
43 plan. If the preliminary mitigation plan requirement is waived, the final plan
44 shall include the content normally required for the preliminary plan listed in
45 Sections 40.450.040(E)(2)(a), (E)(2)(b)(1), and (E)(2)(b)(2);
- 46 b. Performance Standards. Specific criteria shall be provided for evaluating
47 whether or not the goals and objectives of the mitigation project are being
48 met. Such criteria may include water quality standards, survival rates of
49 planted vegetation, species abundance and diversity targets, habitat diversity
50 indices, or other ecological, geological or hydrological criteria;
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- 1 c. Detailed Construction Plans. Written specifications for the mitigation project
2 shall be provided. The specifications shall include: the proposed construction
3 sequence, grading and excavation details, water and nutrient requirements
4 for planting, specification of substrate stockpiling techniques, and planting
5 instructions, as appropriate. These written specifications shall be
6 accompanied by detailed site diagrams, scaled cross-sectional drawings,
7 topographic maps showing slope percentage and final grade elevations, and
8 any other drawings appropriate to show construction techniques or
9 anticipated final outcome;
- 10 d. Monitoring Program. The mitigation plan shall include a description of a
11 detailed program for monitoring the success of the mitigation project. :
- 12 (1) The mitigation project shall be monitored for a period necessary to
13 establish that the mitigation is successful, but not for a period of less than
14 five (5) years. Creation and forested wetland mitigation projects shall be
15 monitored for a period of at least ten (10) years;
- 16 (2) Monitoring shall be designed to measure the performance standards
17 outlined in the mitigation plan and may include but not be limited to:
- 18 (a) Establishing vegetation plots to track changes in plant species
19 composition and density over time;
- 20 (b) Using photo stations to evaluate vegetation community response;
- 21 (c) Sampling surface and subsurface waters to determine pollutant
22 loading, and changes from the natural variability of background
23 conditions (pH, nutrients, heavy metals);
- 24 (d) Measuring base flow rates and storm water runoff to model and
25 evaluate water quality predictions, if appropriate;
- 26 (e) Measuring sedimentation rates, if applicable; and
- 27 (f) Sampling fish and wildlife populations to determine habitat utilization,
28 species abundance and diversity.
- 29 (3) A monitoring protocol shall be included outlining how the monitoring data
30 will be evaluated by agencies that are tracking the progress of the project;
- 31 (4) Monitoring reports shall be submitted annually, or on a pre-arranged
32 alternate schedule, for the duration of monitoring period;
- 33 (5) Monitoring reports shall analyze the results of monitoring, documenting
34 milestones, successes, problems, and recommendations for corrective
35 and/or contingency actions to ensure success of the mitigation project.
- 36 e. Associated Plans and Other Permits. To ensure consistency with the final
37 mitigation plan, associated plans and permits shall be submitted, including,
38 but not limited to:
- 39 (1) Engineering Construction Plans;
- 40 (2) Final Site Plan or Proposed Plat;
- 41 (3) Final landscaping plan;
- 42 (4) Habitat permit;
- 43 (5) WDFW HPA;
- 44 (6) USACE Section 404 permit; and
- 45 (7) WDOE Administrative Order or Section 401 certification.
- 46 f. Evidence of Financial and Scientific Proficiency. A description of how the
47 mitigation project will be managed during construction and the scientific
48 capability of the designer to successfully implement the proposed project. In
49 addition, a demonstration of the financial capability of the applicant to
50 successfully complete the project and ensure it functions properly at the end
51 of the specified monitoring period;

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- 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 inch equals one hundred feet (1" = 100', a scaling ratio of 1:1200) 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 6.110.

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 1 Wetland Permit. The following wetland permits shall be reviewed under the Type 1 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; and
 - (5) Reauthorization 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.

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- 1 (3) Programmatic permit applications subject to Type II review shall not be
2 subject to the distribution requirements of Section 40.510.020(E)(2)(a)(3).
3 Within fourteen (14) calendar days after the date an application is
4 accepted as fully complete, the county shall publish in a newspaper of
5 general circulation a summary of the notice, including the date, time and
6 manner of making comments, the nature and location of the proposal and
7 instructions for obtaining further information.
- 8 c. Type III Wetland Permit. Reasonable use exceptions, other than residential
9 and home business permits, made under Section 40.450.010(B)(3), shall be
10 reviewed under the Type III review process described in Section 40.510.030:
- 11 2. Consolidation. The department shall, to the extent practicable and feasible,
12 consolidate the processing of wetland permits with other county regulatory
13 programs which affect activities in wetlands, such as SEPA review, subdivision,
14 grading and site plan approval, so as to provide a timely and coordinated permit
15 process. Where no other county permit or approval is required for the wetland
16 activity, the wetland permit shall be processed in accordance with Section
17 40.450.040(G)(1).
- 18 3. Notification. In addition to notices otherwise required pursuant to Section
19 40.450.040(G)(1), notice of Type II and Type III wetland permit applications shall
20 be given to federal and state agencies that have jurisdiction over, or an interest
21 in, the affected wetlands.
- 22
- 23 H. Wetland permit--Preliminary approval.
- 24 1. Decision Maker. A wetland permit application which has been consolidated with
25 another permit or approval request which requires a public hearing (e.g.,
26 preliminary plat) shall be heard and decided in accordance with the procedures
27 applicable to such other request. Any other wetland permit application shall be
28 acted on by the responsible official within the timeline specified in Section 40.510
29 for the required permit type.
- 30 2. Findings. A decision preliminarily approving or denying a wetland permit shall be
31 supported by findings of fact relating to the standards and requirements of this
32 chapter.
- 33 3. Conditions. A decision preliminarily approving a wetland permit shall incorporate
34 at least the following as conditions:
- 35 a. The approved preliminary mitigation plan;
36 b. Applicable conditions provided for in Section 40.450.030(E)(4);
37 c. Posting of a performance assurance pursuant to Section 40.450.040(J); and
38 d. Posting of a maintenance assurance pursuant to Section 40.450.040(J).
- 39 4. Administrative Appeal. A consolidated wetland permit decision may be
40 administratively appealed in conjunction with, and within the same limitation
41 period, applicable to the other county permit or approval; provided, that wetland
42 permits preliminarily issued or denied by the responsible official may be appealed
43 in the same manner, and within the same limitation period, applicable to a Type II
44 process under Section 40.510.020.
- 45 5. Duration. Wetland permit preliminary approval shall be valid for a period of three
46 (3) years from the date of issuance or termination of administrative appeals or
47 court challenges, whichever occurs later, unless:
- 48 a. A longer period is specified in the permit; or
49 b. The applicant demonstrates good cause to the responsible official's
50 satisfaction for an extension not to exceed an additional one (1) year.
- 51

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- 1 I. Wetland permit--Final approval.
- 2 1. Issuance. The responsible official shall issue final approval of the wetland permit
- 3 authorizing commencement of the activity permitted thereby upon:
- 4 a. Submittal and approval of a final mitigation plan pursuant to Section
- 5 40.450.040(E)(3);
- 6 b. Installation and approval of field markings as required by Section
- 7 40.450.030(E)(4)(a);
- 8 c. The recording of a conservation covenant as required by Section
- 9 40.450.030(E)(4)(c);
- 10 d. The posting of a performance assurance as required by Section
- 11 40.450.040(H)(3);
- 12 2. Duration.
- 13 a. Wetland or wetland buffer impacts. Final approval shall be valid for the
- 14 period specified in the final wetland permit, or the associated development
- 15 approval. Extension of the permit shall only be granted in conjunction with
- 16 extension of an associated permit;
- 17 b. Compensatory mitigation. The compensatory mitigation requirements of the
- 18 permit shall remain in effect for the duration of the monitoring and
- 19 maintenance period specified in the approval.
- 20
- 21 J. Wetland Permit Financial Assurances.
- 22 1. Types of Financial Assurances. The responsible official shall accept the
- 23 following forms of financial assurances:
- 24 a. An escrow account secured with an agreement approved by the responsible
- 25 official;
- 26 b. A bond provided by a surety for estimates that exceed five thousand dollars
- 27 (\$5,000);
- 28 c. A deposit account with a financial institution secured with an agreement
- 29 approved by the responsible official;
- 30 d. A letter of commitment from a public agency; and
- 31 e. Other forms of financial assurance determined to be acceptable by the
- 32 responsible official.
- 33 2. Financial Assurance Estimates. The applicant shall submit itemized cost
- 34 estimates for the required financial assurances. The responsible official may
- 35 adjust the estimates to ensure that adequate funds will be available to complete
- 36 the specified compensatory mitigation upon forfeiture. In addition the cost
- 37 estimates must include a contingency as follows:
- 38 a. Estimates for bonds shall be multiplied by one hundred fifty percent (150%);
- 39 b. All other estimates shall be multiplied by one hundred ten percent (110%).
- 40 3. Waiver of Financial Assurances. For Type 1 wetland permits, the responsible
- 41 official may waive the requirement for one or both financial assurances if the
- 42 applicant can demonstrate to the responsible official's satisfaction that posting
- 43 the required financial assurances will constitute a significant hardship.
- 44 4. Acceptance of Work and Release of Financial Assurances.
- 45 a. Release of Performance Assurance. Upon request, the responsible official
- 46 shall release the performance assurance when the following conditions are
- 47 met:
- 48 (1) Completion of construction and planting specified in the approved
- 49 compensatory mitigation plan;
- 50 (2) Submittal of an as-built report documenting changes to the compensatory
- 51 mitigation plan that occurred during construction;

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- 1
2 (3) Field inspection of the completed site(s); and
3 (4) Provision of the required maintenance assurance.
4 b. Release of Maintenance Assurance. Upon request, the responsible official
5 shall release the maintenance assurance when the following conditions are
6 met:
7 (1) Completion of the specified monitoring and maintenance program;
8 (2) Submittal of a final monitoring report demonstrating that the goals and
9 objectives of the compensatory mitigation plan have been met as
10 demonstrated through:
11 (a) Compliance with the specific performance standards established in
12 the wetland permit; or
13 (b) Functional assessment of the mitigation site(s); and
14 (c) Field inspection of the mitigations site(s)
15 c. Incremental Release of Financial Assurances. The responsible official may
16 release financial assurances incrementally only if specific milestones and
17 associated costs are specified in the compensatory mitigation plan and the
18 document legally establishing the financial assurance.
19 5. Transfer of Financial Assurances. The responsible official may release financial
20 assurances at any time if equivalent assurances are provided by the original or a
21 new permit holder.
22 6. Forfeiture. If the permit holder fails to perform or maintain compensatory
23 mitigation in accordance with the approved wetland permit, the responsible
24 official may declare the corresponding financial assurance forfeit pursuant to the
25 following process:
26 a. The responsible official shall, by registered mail, notify the wetland permit
27 holder/agent that is signatory to the financial assurance and the financial
28 assurance holder, of non-performance with the terms of the approved
29 wetlands permit;
30 b. The written notification shall cite a reasonable time for the permit holder, or
31 legal successor, to comply with provisions of the permit and state the
32 County's intent to forfeit the financial assurance should the required work not
33 be completed in a timely manner.
34 c. Should the required work not be completed timely, the County shall declare
35 the assurance forfeit.
36 d. Upon forfeiture of a financial assurance, the proceeds thereof shall be utilized
37 either to correct the deficiencies which resulted in forfeiture or, if such
38 correction is deemed by the responsible official to be impractical or
39 ineffective, to enhance other wetlands in the same watershed or contribute to
40 an established cumulative effects fund for watershed scale habitat and
41 wetland conservation.
42
43 K. Programmatic permits for routine maintenance and operations of utilities and public
44 facilities. The responsible official may issue programmatic wetland permits for
45 routine maintenance and operations of utilities and public facilities within wetlands
46 and wetland buffers, and for wetland enhancement programs. It is not the intent of
47 the programmatic permit process to deny or unreasonably restrict a public agency or
48 utility's ability to provide services to the public. Programmatic permits only authorize
49 activities specifically identified in and limited to the permit approval and conditions.
50 1. Application submittal requirements. Unless waived by the responsible official
51 with specific findings in the approval document in accordance with

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- 1 40.450.040(K)(2), applications for programmatic wetland permits shall include a
2 programmatic permit plan that includes the following,;
- 3 a. A discussion of the purpose and need for the permit;
 - 4 b. A description of the scope of activities in wetlands and wetland buffers;
 - 5 c. Identification of the geographical area to be covered by the permit;
 - 6 d. The range of functions and values of wetlands potentially affected by the
7 permit;
 - 8 e. Specific measures and performance standards to be taken to avoid, minimize
9 and mitigate impacts on wetland functions and values including:
 - 10 (1) Procedures for identification of wetlands and wetland buffers;
 - 11 (2) Maintenance practices proposed to be used;
 - 12 (3) Restoration measures;
 - 13 (4) Mitigation measures and assurances;
 - 14 (5) Annual reporting to the responsible official that documents compliance
15 with permit conditions and proposes any additional measures or
16 adjustments to the approved programmatic permit plan;
 - 17 (6) Reporting to the responsible official any specific wetland or wetland buffer
18 degradations resulting from maintenance activities when the degradation
19 occurs or within a timely manner;
 - 20 (7) Responding to any department requests for information about specific
21 work or projects;
 - 22 (8) Procedures for reporting and/or addressing activities outside the scope of
23 the approved permit; and
 - 24 (9) Training all employees, contractors and individuals under the supervision
25 of the applicant who are involved in permitted work.
- 26 2. Findings. A decision preliminarily approving or denying a programmatic wetland
27 permit shall be supported by findings of fact relating to the standards and
28 requirements of this chapter.
- 29 3. Approval Conditions. Approval of a programmatic wetland permit shall
30 incorporate at least the following as conditions:
- 31 a. The approved programmatic permit plan;
 - 32 b. Annual reporting requirements; and
 - 33 c. A provision stating that duration of the permit.
- 34 4. Duration and Reauthorization.
- 35 a. The duration of a programmatic permit is for five years, unless:
 - 36 (1) an annual performance based reauthorization program is approved within
37 the permit; or
 - 38 (2) a shorter duration is supported by findings.
 - 39 b. Requests for reauthorization of a programmatic permit must be received prior
40 to the expiration of the original permit.
 - 41 (1) Reauthorization is reviewed and approved through the process described
42 in Section 40.450.040(K)(1).
 - 43 (2) Permit conditions and performance standards may be modified through
44 the reauthorization process.
 - 45 (3) The responsible official may temporarily extend the original permit if the
46 review of the reauthorization request extends beyond the expiration date.
- 47
- 48 L. Wetland permit--Emergency.
- 49 1. Authorization. Notwithstanding the provisions of this chapter or any other laws to
50 the contrary, the responsible official may issue prospectively or, in the case of
51 imminent threats, retroactively a temporary emergency wetlands permit if:

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- 1 a. The responsible official determines that an unacceptable threat to life or loss
2 of property will occur if an emergency permit is not granted; and
3 b. The anticipated threat or loss may occur before a permit can be issued or
4 modified under the procedures otherwise required by this act and other
5 applicable laws.
- 6 2. Conditions. Any emergency permit granted shall incorporate, to the greatest
7 extent practicable and feasible but not inconsistent with the emergency situation,
8 the standards and criteria required for non-emergency activities under this act
9 and shall:
- 10 a. Be limited in duration to the time required to complete the authorized
11 emergency activity, not to exceed ninety (90) days; and
12 b. Require, within this ninety- (90) day period, the restoration of any wetland
13 altered as a result of the emergency activity, except that if more than the
14 ninety (90) days from the issuance of the emergency permit is required to
15 complete restoration, the emergency permit may be extended to complete
16 this restoration.
- 17 3. Notice. Notice of issuance of an emergency permit shall be published in a
18 newspaper having general circulation in Clark County not later than ten (10) days
19 after issuance of such permit.
- 20 4. Termination. The emergency permit may be terminated at any time without
21 process upon a determination by the responsible official that the action was not
22 or is no longer necessary to protect human health or the environment.
- 23
- 24 M. Revocation. In addition to other remedies provided for elsewhere in this chapter, the
25 responsible official may suspend or revoke wetland permit(s) issued in accordance
26 with this chapter and associated development permits, pursuant to the provisions of
27 Title 32 of the Clark County Code, if the applicant or permittee has not complied with
28 any or all of the conditions or limitations set forth in the permit, has exceeded the
29 scope of work set forth in the permit, or has failed to undertake the project in the
30 manner set forth in the permit.
- 31
- 32 N. Enforcement. At such time as a violation of this chapter has been determined,
33 enforcement action shall be commenced in accordance with the enforcement
34 provisions of Title 32 of this code, and may also include the following:
- 35 1. Applications for county land use permits on sites that have been cited or issued
36 an administrative notice and order under Title 32 of this code, or have been
37 otherwise documented by the responsible official for activities in violation of this
38 chapter, shall not be processed for a period of six (6) years provided:
- 39 a. The county has the authority to apply the permit moratorium to the property;
40 and
41 b. The county records the permit moratorium.
- 42 c. The responsible official may reduce or wave the permit moratorium duration
43 upon approval of a wetland permit under Section 40.450.040.
- 44 2. Compensatory mitigation requirements under Sections 40.450.040.C and D may
45 be increased by the responsible official as follows:
- 46 a. All or some portion of the wetland or wetland buffer impact cannot be
47 permitted or restored in place; and
48 b. Compensatory mitigation for the impact is delayed more than one year from
49 the time of the original citation or documentation of the violation.
- 50