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3 **ORDINANCE NO. 2018-11-*Dlo***

4 An ordinance relating to the Shoreline Master Program; amending Clark County Code  
5 (CCC) sections 40.460.160 Severability, 40.460.220 Shoreline Substantial Development  
6 Permit Required, 40.460.230 Exemptions from a Shoreline Substantial Development  
7 Permit, 40.460.260 Shoreline Variance, 40.460.520 Archaeological, Cultural, and Historic  
8 Resources, 40.460.530 Critical Areas Protection, 40.460.630 Use-Specific Development  
9 Regulations, 40.460.710 Administrative Authority and Responsibility, 40.460.725  
10 Application Review Requirements, and 40.460.800 Definitions.

11 WHEREAS, the Washington Shoreline Management Act (RCW 90.58, referred to herein as  
12 "SMA") recognizes that shorelines are among the most valuable and fragile natural resources of the  
13 state, and that state and local government must establish a coordinated planning program to address  
14 the types and effects of development occurring along shorelines of statewide significance; and,  
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16 WHEREAS, shoreline management is the 14<sup>th</sup> goal of the Growth Management Act of 1991  
17 (GMA); and,  
18

19 WHEREAS, the then Board of County Commissioners (BOCC) adopted Clark County's  
20 Shoreline Master Program (SMP) on July 24, 2012, Ordinance No. 2012-07-16; and,  
21

22 WHEREAS, the Washington Department of Ecology approved Clark County's SMP, which  
23 took effect on September 12, 2012; and,  
24

25 WHEREAS, the county adopted amendments to the SMP on August 19, 2014, Ordinance  
26 No. 2014-08-10; and on November 18, 2014, Ordinance No. 2014-12-10; and on December 15,  
27 2015, Ordinance No. 2015-12-12; and on January 9, 2018, Ordinance No. 2018-01-01; and,  
28

29 WHEREAS, the SMP policies and regulations are in Chapter 13 of the Clark County  
30 Comprehensive Growth Management Plan 2015-2035 and Chapter 40.460 CCC, respectively; and,  
31

32 WHEREAS, the state of Washington SMA guidelines (WAC 173-26) state that each local  
33 government should review its shoreline master program and make amendments deemed necessary  
34 to reflect changing local circumstances, new information or improved data; and,  
35

36 WHEREAS, new information prompting these SMP amendments was provided in the  
37 Washington State Department of Ecology August 7, 2017 CR-103 Adopted Rule implementing the  
38 SMA that became effective September 7, 2017 and the Clark County Ordinance No. 2018-01-03  
39 Critical Areas flood hazard and critical aquifer recharge area (CARA) code amendments; and,  
40

41 WHEREAS, on April 11, 2018, Clark County Community Planning published a SEPA  
42 determination of non-significance (DNS), and by the end of the comment period, no person provided  
43 comments regarding the DNS to the county; and,  
44

45 WHEREAS, on April 23, 2018, Clark County Community Planning submitted the required  
46 sixty day notifications of intent to adopt these provisions to the state Department of Commerce; and,  
47

48 WHEREAS, on May 17, 2018, the Clark County Planning Commission held a duly noticed  
49 work session to review the staff recommendation on the proposed code amendments; and,  
50

51 WHEREAS, on June 21, 2018, the Planning Commission held a duly noticed public hearing  
52 at which it considered and deliberated on the staff proposals for these code amendments, and voted  
53 unanimously to forward a recommendation of approval to the Council regarding the proposed  
54 amendments; and,  
55

1 WHEREAS, on November 27, 2018, the Council held a duly noticed public hearing, took  
2 public testimony, and considered all comments presented to the Council and the recommendations  
3 of the Planning Commission and staff; and,  
4

5 WHEREAS, the Council finds that adoption of these code amendments to the SMP would  
6 be in the best interests of the public health, safety, and welfare of Clark County; now, therefore,  
7

8 **BE IT HEREBY ORDERED, RESOLVED AND DECREED BY THE CLARK COUNTY**  
9 **COUNCIL, CLARK COUNTY, STATE OF WASHINGTON, as follows:**  
10

11 **Section 1. Findings.** The recitals above are incorporated into this ordinance as findings.  
12

13 **Section 2. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16 and codified as CCC 40.460.160  
14 Severability are each hereby amended as follows:  
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16 **40.460.160 Severability**

17 Should any section, subsection, paragraph, sentence, clause or phrase of this Program or its  
18 application to any person or situation be declared unconstitutional or invalid for any reason, such  
19 decision shall not affect the validity of the remaining portions of this chapter or its application to  
20 any other person or situation. ~~The Board of County Commissioners of Clark County Council~~  
21 hereby declares that it would have adopted the ordinance codified in this chapter and each  
22 section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any  
23 one or more sections, subsections, clauses, phrases or portions be declared invalid or  
24 unconstitutional.

25 (Added: Ord. 2012-07-16)  
26

27 **Section 3. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16 and codified as CCC 40.460.220  
28 Shoreline Substantial Development Permit Required are each hereby amended as follows:  
29

30 **40.460.220 Shoreline Substantial Development Permit Required**

31 **A. General Requirements.**

32 1. Substantial development as defined by this Program and RCW 90.58.030(3)(e) shall not  
33 be undertaken by any person on the shorelines of the state without first obtaining a  
34 substantial development permit from the Shoreline Administrator, unless the use or  
35 development is specifically identified as exempt from a substantial development permit, in  
36 which case a letter of exemption is required.

37 2. The Shoreline Administrator may grant a substantial development permit only when the  
38 development proposed is consistent with the policies and procedures of Chapter 90.58 RCW,  
39 the provisions of Chapter 173-27 WAC, and this Program.

40 3. Within an urban growth area a shoreline substantial development permit is not required  
41 on land that is brought under shoreline jurisdiction due to a shoreline restoration project  
42 creating a landward shift in the OHWM.

43 **B. Developments Not Subject to the Act.**

44 1. Native American tribes' actions on tribal lands and federal agencies' actions on federal  
45 lands are not required, but are encouraged, to comply with the provisions of this Program  
46 and the Act. Nothing in this Program shall affect any rights established by treaty to which the  
47 United States is a party.

48 2. Environmental excellence programs entered into under Chapter 43.21K RCW.

49 3. Any project with a certification from the Governor pursuant to Chapter 80.50 RCW  
50 (certification from the State Energy Facility Site Evaluation Council).

51 **C. Developments Not Required to Obtain Shoreline Permits or Local Reviews**

52 Requirements to obtain a substantial development permit, conditional use permit, variance,  
53 letter of exemption, or other review conducted by a local government to implement Chapter  
54 40.460 do not apply to the following developments, pursuant to WAC 173-27-044.

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

1 2. Washington State Department of Transportation (WSDOT) safety and maintenance  
2 projects and activities meeting the conditions of RCW 90.58.356.

3 3. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW  
4 90.58.355, any person installing site improvements for storm water treatment in an existing  
5 boatyard facility to meet requirements of a national pollutant discharge elimination system  
6 storm water general permit.  
7

8 **Section 4. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16 and codified as CCC 40.460.230  
9 Exemptions from a Shoreline Substantial Development Permit, as most recently amended by  
10 Sec. 7 of Ord. 2018-01-01, are each hereby amended as follows:  
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12 **40.460.230 Exemptions from a Shoreline Substantial Development Permit**

13 A. General Requirements.

- 14 1. Except as specifically exempted by statute, all proposed uses and development  
15 occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Act, and this  
16 Program.  
17 2. A use or development that is listed as a conditional use pursuant to this Program or is an  
18 unclassified use or development must obtain a conditional use permit (Section 40.460.270)  
19 even if the development or use does not require a substantial development permit.  
20 3. When a development or use is proposed that does not meet the bulk, dimensional,  
21 and/or performance standards of this Program, such development or use shall only be  
22 authorized by approval of a shoreline variance (Section 40.460.260) even if the development  
23 or use does not require a substantial development permit.  
24 4. If any part of a proposed development requires a shoreline substantial development  
25 permit, then a shoreline substantial development permit is required for the entire proposed  
26 development project.  
27 5. Exemptions from the requirement to obtain a shoreline substantial development permit  
28 shall be construed narrowly. Only those developments that meet the precise terms of one (1)  
29 or more of the listed exemptions may be granted exemptions from the substantial  
30 development permit process. The burden of proof that a development or use is exempt is on  
31 the applicant for the development action.

32 B. List of Exemptions.

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

- 35 1. Any development of which the total cost or fair market value does not exceed five  
36 ~~thousand seven hundred eighteen~~ seven thousand forty-seven dollars (~~\$5,718,047~~) or as  
37 adjusted by the State Office of Financial Management, if such development does not  
38 materially interfere with the normal public use of the water or shorelines of the state. For  
39 purposes of determining whether or not a permit is required, the total cost or fair market  
40 value shall be based on the value of development that is occurring on shorelines of the state  
41 as defined in RCW 90.58.030(2)(c)(e). The total cost or fair market value of the development  
42 shall include the fair market value of any donated, contributed, or found labor, equipment or  
43 materials.  
44 2. Subject to the provisions of Section 40.460.250, normal maintenance or repair of  
45 existing legally established structures or developments, including those that have been  
46 damaged by accident, fire, or elements. The features of the repaired structure or  
47 development, including but not limited to its size, shape, configuration, location, and external  
48 appearance, must be comparable to the original structure or development, and the repair  
49 must not cause substantial adverse effects to shoreline resources or environment. The  
50 replacement of demolished existing single-family residences and their appurtenances is not  
51 considered normal maintenance and repair.  
52 3. Construction of a normal protective bulkhead common to single-family residences. A  
53 "normal protective" bulkhead includes those structural and nonstructural developments  
54 installed at or near, and parallel to, the ordinary high water mark for the sole purpose of  
55 protecting an existing single-family residence and appurtenant structures from loss or  
56 damage by erosion. A normal protective bulkhead is not exempt if constructed for the  
57 purpose of creating dry land. When a vertical or near vertical wall is being constructed or

1 reconstructed, not more than one (1) cubic yard of fill per one (1) foot of wall may be used as  
2 backfill. When an existing bulkhead is being repaired by construction of a vertical wall  
3 fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead  
4 than is necessary for construction of new footings. When a bulkhead has deteriorated such  
5 that an ordinary high water mark has been established by the presence and action of water  
6 landward of the bulkhead then the replacement bulkhead must be located at or near the  
7 actual ordinary high water mark. Beach nourishment and bioengineered erosion control  
8 projects may be considered a normal protective bulkhead when any structural elements are  
9 consistent with the above requirements and when the project has been approved by the  
10 Department of Fish and Wildlife (WDFW).

11 4. Emergency construction necessary to protect property from damage by the elements. An  
12 "emergency" is an unanticipated and imminent threat to public health, safety, or the  
13 environment that requires immediate action within a time too short to allow full compliance  
14 with this chapter. Emergency construction does not include development of new permanent  
15 protective structures where none previously existed. Where new protective structures are  
16 deemed by the Shoreline Administrator to be the appropriate means to address the  
17 emergency situation, upon abatement of the emergency situation the new structure shall be  
18 removed or any permit that would have been required, absent an emergency, pursuant to  
19 Chapter 90.58 RCW, these regulations, or this Program, shall be obtained. All emergency  
20 construction shall be consistent with the policies and requirements of this chapter, Chapter  
21 90.58 RCW, and this Program. As a general matter, flooding or other seasonal events that  
22 can be anticipated and may occur but that are not imminent are not an emergency.

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

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

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

38 8. Construction of a dock, including a community dock, designed for pleasure craft only, for  
39 the private noncommercial use of the owner, lessee, or contract purchaser of a single-family  
40 or multiple-family residence. This exception applies if either (a) the dock is a new dock, and  
41 the fair market value of the dock does not exceed ten thousand dollars (\$10,000), or (b) the  
42 dock is a replacement dock that is constructed to replace an existing dock and is of equal or  
43 lesser square footage than the replaced dock, and the replacement dock has a fair market  
44 value that does not exceed twenty thousand (\$20,000) dollars. However, if subsequent  
45 construction occurs within five (5) years of completion of the prior construction that was  
46 exempt pursuant to this provision, and the combined fair market value of the subsequent and  
47 prior construction exceeds the applicable amount specified in either subsection (B)(8)(a) or  
48 (b) of this section, the subsequent construction shall be considered a substantial  
49 development.

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

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

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

4 ~~12.—Any project with a certification from the Governor pursuant to Chapter 80.50 RCW  
5 (certification from the State Energy Facility Site Evaluation Council).~~

6 ~~1213.~~ Site exploration and investigation activities that are prerequisite to preparation of an  
7 application for development authorization under this chapter, if:

- 8 a. The activity does not interfere with the normal public use of surface waters;
- 9 b. The activity will have no significant adverse impact on the environment including but  
10 not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
- 11 c. The activity does not involve the installation of any structure, and upon completion  
12 of the activity the vegetation and land configuration of the site are restored to conditions  
13 existing before the activity; and
- 14 d. A private entity seeking development authorization under this section first posts a  
15 performance bond or provides other evidence of financial responsibility to the local  
16 jurisdiction to assure that the site is restored to pre-existing conditions.

17 ~~1314.~~ The process of removing or controlling aquatic noxious weeds, as defined in RCW  
18 17.26.020, through the use of an herbicide or other treatment methods applicable to weed  
19 control published by the Departments of Agriculture or Ecology jointly with other state  
20 agencies under Chapter 43.21C RCW.

21 ~~1415.~~ Watershed restoration projects as defined in RCW 89.08.460.

22 ~~1516.~~ a. A public or private project that is designed to improve fish or wildlife habitat or  
23 fish passage when all of the following apply:

- 24 (1) The project has been approved by WDFW;
- 25 (2) The project has received hydraulic project approval (HPA) by WDFW pursuant  
26 to Chapter 77.55 RCW; and
- 27 (3) Clark County has determined that the project is substantially consistent with the  
28 local Shoreline Master Program. Clark County shall make such determination in a  
29 timely manner and provide it by letter to the applicant.

30 b. Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181  
31 are determined to be consistent with local Shoreline Master Programs and do not  
32 require a statement of exemption.

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

36 ~~1618.~~ Other than conversions to nonforest land use, forest practices regulated under  
37 Chapter 76.09 RCW are not subject to additional regulations under the Act or this Program  
38 ~~(40.460.630(E))(RCW 90.58.030(2)(d)(iii)).~~

39 ~~1719.~~ The external or internal retrofitting of an existing structure for the exclusive purpose  
40 of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et  
41 seq.) or to otherwise provide physical access to the structure by individuals with disabilities  
42 (RCW 90.58.030(3)(e)(xiii)).

43 (Amended: Ord. 2015-12-12)

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47 **Section 5. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16 and codified as CCC 40.460.260  
48 Shoreline Variance are each hereby amended as follows:

49 **40.460.260 Shoreline Variance**

50 A. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set  
51 forth in this Program where there are extraordinary or unique circumstances relating to the  
52 property such that the strict implementation of this Program would impose unnecessary hardships  
53 on the applicant or thwart the policies set forth in the Act and this Program.

54 B. When a shoreline variance is requested, the Shoreline Administrator shall be the final  
55 approval authority for the county. However, shoreline variances must have approval from  
56 Ecology, which shall have final approval authority. Shoreline variance permits should be granted  
57

1 in circumstances where denial of the permit would result in a thwarting of the policy enumerated  
2 in the Act (RCW 90.58.020). In all instances extraordinary circumstances shall be shown and the  
3 public interest shall suffer no substantial detrimental effect.

4 C. The Shoreline Administrator is authorized to recommend a variance from the performance  
5 standards of this Program only when all of the following criteria are met (WAC 173-27-170):

- 6 1. That the strict application of the bulk, dimensional or performance standards set forth in  
7 this Program precludes, or significantly interferes with, reasonable use of the property;
- 8 2. That the hardship described in subsection (A) of this section is specifically related to the  
9 property, and is the result of unique conditions such as irregular lot shape, size, or natural  
10 features and the application of this Program, and not, for example, from deed restrictions or  
11 the applicant's own actions;
- 12 3. That the design of the project is compatible with other authorized uses within the area  
13 and with uses planned for the area under the Comprehensive Growth Management Plan and  
14 this Program and will not cause adverse impacts to the shoreline environment;
- 15 4. That the variance will not constitute a grant of special privilege not enjoyed by the other  
16 properties in the area;
- 17 5. That the variance requested is the minimum necessary to afford relief; and
- 18 6. That the public interest will suffer no substantial detrimental effect.

19 D. Variance permits for development and/or uses that will be located waterward of the ordinary  
20 high water mark (OHWM), as defined in RCW 90.58.030(2)(b)(c), or within any wetland as  
21 defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of  
22 the following:

- 23 1. That the strict application of the bulk, dimensional or performance standards set forth in  
24 this Program precludes all reasonable use of the property;
- 25 2. That the proposal is consistent with the criteria established under Sections  
26 40.460.260(C)(2) through (6); and
- 27 3. That the public rights of navigation and use of the shorelines will not be adversely  
28 affected.

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32 **Section 6. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16 and codified as CCC 40.460.520  
33 Archaeological, Cultural, and Historic Resources, as most recently amended by Sec. 4 of Ord.  
34 2015-12-12, are each hereby amended as follows:

35  
36 **40.460.520 Archaeological, Cultural, and Historic Resources**

37 A. When a shoreline use or development is in an area known or with a low-moderate to high  
38 probability/likely to contain archaeological artifacts ~~and data~~ based on the state's predictive model  
39 and the potential impact of the use or development is considered a significant risk to the  
40 archaeological artifacts that may be present based on Section 40.570.080(C)(3)(k)(3), the  
41 applicant shall provide for a site inspection and evaluation by a professional archaeologist prior to  
42 issuance of any shoreline permit or approval. Site inspection requirements shall be consistent  
43 with the predetermination provisions in Section 40.570.080(C)(3)(k). Work may not begin until the  
44 inspection and evaluation have been completed and the county has issued its permit or approval.

45 (Amended: Ord. 2015-12-12)

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49 **Section 7. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16 and codified as CCC 40.460.530  
50 Critical Areas Protection, as most recently amended by Sec. 5 of Ord. 2015-12-12, are each  
51 hereby amended as follows:

52  
53 **40.460.530 Critical Areas Protection**

54 A. General Provisions.

- 55 1. Critical areas as defined in Chapters 40.410 through 40.450 which are located within the  
56 shoreline jurisdiction are protected under this section.

- 1 2. Any allowed use, development, or activity proposed on a parcel with a critical area  
2 located in the shoreline jurisdiction shall be regulated under the provisions of this Program.
- 3 3. Any allowed use, development, or activity meeting the definition of a development  
4 exempt from the shoreline substantial development permit process outlined in WAC 173-27-  
5 040 and Section 40.460.230 shall be consistent with the policies and provisions of this  
6 Program for critical areas protection.
- 7 4. Provisions of the critical areas regulations that are not consistent with the Act and  
8 supporting WAC chapters shall not apply in shoreline jurisdiction.
- 9 5. Habitat that cannot be replaced or restored within twenty (20) years shall be preserved.
- 10 6. Where construction of a single-family residence is proposed, this activity is considered  
11 exempt from obtaining a shoreline substantial development permit when the construction is  
12 located landward of the ordinary high water mark and does not include placement of fill in  
13 wetlands. Construction of single-family residences requiring fill in wetlands must obtain a  
14 shoreline substantial development permit in addition to other shoreline approvals as  
15 applicable.
- 16 7. Unless otherwise stated, no development shall be constructed, located, extended,  
17 modified, converted, or altered, or land divided without full compliance with this Program and  
18 this title.
- 19 8. Unless otherwise stated, critical area buffers within the shoreline jurisdiction shall be  
20 protected and/or enhanced in accordance with this Program and this title.
- 21 9. Shoreline uses and developments and their associated structures and equipment shall  
22 be located, designed and operated using best management practices to protect critical  
23 areas.
- 24 10. The applicant shall demonstrate all reasonable efforts have been taken to avoid and,  
25 where unavoidable, minimize and mitigate impacts such that no net loss of critical area and  
26 shoreline ecological function is achieved. Mitigation shall occur in the following order of  
27 priority:
  - 28 a. Avoiding the impact altogether by not taking a certain action or parts of an action.
  - 29 b. Minimizing impacts by limiting the degree or magnitude of the action and its  
30 implementation by using appropriate technology or by taking affirmative steps to avoid or  
31 reduce impacts.
  - 32 c. Rectifying the impact by repairing, rehabilitating, or restoring the affected  
33 environment;
  - 34 d. Reducing or eliminating the impact over time by preservation and maintenance  
35 operations;
  - 36 e. Compensating for the impact by replacing, enhancing, or providing substitute  
37 resources or environments; and
  - 38 f. Monitoring the impact and the compensation projects and taking appropriate  
39 corrective measures.
- 40 11. In addition to compensatory mitigation, unavoidable adverse impacts may be  
41 addressed through restoration efforts.

42 **B. Applicable Critical Areas.**

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

- 46 1. Critical aquifer recharge areas, defined in Chapter 40.410 as adopted by Ordinance  
47 2005-04-15, dated April 26, 2005; Ordinance 2009-03-02; and Ordinance 2018-01-03;
- 48 2. Flood hazard areas, defined in Chapter 40.420 as adopted by Ordinance 2012-07-15,  
49 dated July 24, 2012; and Ordinance 2018-01-03;
- 50 3. Geologic hazard areas, defined in Chapter 40.430 as adopted by Ordinance 2005-04-15,  
51 dated April 26, 2005; Ordinance 2006-09-13; Ordinance 2009-01-01; Ordinance 2012-02-03;  
52 and Ordinance 2012-07-16;
- 53 4. Habitat conservation areas, defined in Chapter 40.440 as adopted by Ordinance 2006-  
54 08-03, dated August 1, 2006; Ordinance 2012-07-16; and Ordinance 2014-12-05; and
- 55 5. Wetlands, defined in Chapter 40.450 as adopted by Ordinance 2006-05-27, dated May  
56 26, 2006; Ordinance 2012-07-03; Ordinance 2012-07-16; and Ordinance 2014-12-05.  
57 (Amended: Ord. 2015-12-12)

- 1 C. Critical Aquifer Recharge Areas.  
 2 1. General Provisions. Chapter 40.410, Critical Aquifer Recharge Areas, Ordinance 2005-  
 3 04-15, dated April 26, 2005; ~~and Ordinance 2009-03-02;~~ and Ordinance 2018-01-03, is  
 4 hereby adopted in whole as part of this Program.  
 5 (Amended: Ord. 2015-12-12)  
 6 D. Flood Hazard Areas.  
 7 1. General Provisions.  
 8 a. The areas of special flood hazard identified by the Federal Emergency Management  
 9 Agency (FEMA) in a report entitled "Flood Insurance Study, Clark County, Washington  
 10 and Incorporated Areas" effective ~~September 5, 2012~~ January 19, 2018, and  
 11 accompanying flood insurance rate maps (FIRMs) and any revisions thereto are hereby  
 12 adopted by reference and declared to be a part of this Program. The Flood Insurance  
 13 Study and the FIRMs are on file with the Public Works Department. In addition, Map 27,  
 14 Potential Channel Migration Zone (CMZ) Areas (Inventory and Characterization Report  
 15 Volume 1, Lewis and Salmon-Washougal Watersheds and Rural Areas), is incorporated  
 16 herein by reference.

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 20 **Section 8. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16 and codified as CCC 40.460.630 Use-  
 21 Specific Development Regulations, as most recently amended by Sec. 9 of Ord. 2018-01-01, are  
 22 each hereby amended as follows:  
 23

24 **40.460.630 Use-Specific Development Regulations**

- 25 A. Agriculture.  
 26 1. Agricultural practices shall prevent erosion of soils and bank materials within shoreline  
 27 areas and minimize siltation, turbidity, pollution, and other environmental degradation of  
 28 watercourses and wetlands.  
 29 2. Stream banks and water bodies shall be protected from damage due to concentration  
 30 and overgrazing of livestock by providing the following:  
 31 a. Suitable bridges, culverts or ramps for stock crossing;  
 32 b. Ample supplies of clean water in tanks on dry land for stock watering; and  
 33 c. Fencing or other grazing controls to prevent damage to riparian vegetation, bank  
 34 compaction or bank erosion.  
 35 3. New confinement lots, feeding operations, lot wastes, stockpiles of manure solids,  
 36 manure lagoons, and storage of noxious chemicals are prohibited.  
 37 4. The disposal of farm wastes, chemicals, fertilizers and associated containers and  
 38 equipment within shoreline jurisdiction is prohibited. Composted organic wastes may be used  
 39 for fertilization or soil improvement.  
 40 5. New uses proposed as part of a conversion of agricultural lands shall comply with the  
 41 provisions of this title and this Program.  
 42 6. For purposes of this Program, the definitions in RCW 90.58.065 and in Section  
 43 40.460.800 for agricultural activities, agricultural equipment and facilities, and agricultural  
 44 products control.  
 45 B. Aquaculture.  
 46 1. No aquatic species shall be introduced into county waters without prior written approval  
 47 of the appropriate state or federal regulatory agency for the species proposed for  
 48 introduction. Such approval(s) shall be submitted in writing to the county as part of the  
 49 shoreline permit application.  
 50 2. Aquaculture facilities shall only be permitted where impacts to existing uses can be fully  
 51 mitigated.  
 52 3. Fish net-pens shall not occupy more than one (1) surface acre of water, excluding  
 53 booming and anchoring equipment, and shall not be located within one (1) mile of any other  
 54 aquaculture facility.  
 55 4. No processing of any aquaculture product, except for the sorting or culling of the  
 56 cultured species and the washing or removal of surface materials or species after harvest,



1 shall occur in or over the water. All other processing activities and facilities shall be located  
2 on land.

3 5. If uncertainty exists regarding potential impacts of a proposed aquaculture activity,  
4 baseline and periodic operational monitoring by a county-approved consultant (unless  
5 otherwise provided for) may be required, at the applicant's expense, and shall continue until  
6 adequate information is available to determine the success of the project and/or the  
7 magnitude of any probable significant adverse environmental impacts. Permits for such  
8 activities shall include specific performance measures and provisions for adjustment or  
9 termination of the project at any time if monitoring indicates significant, adverse  
10 environmental impacts that cannot be adequately mitigated.

11 6. Aquacultural uses and facilities not involving substantial substrate modification shall be  
12 located at least six hundred (600) feet from any wildlife refuge lands; those involving  
13 substantial substrate modification shall be located at least fifteen hundred (1,500) feet from  
14 such areas. Lesser distances may be authorized without a variance if it is demonstrated by  
15 the applicant that the fish and wildlife habitat resources will be protected, and if the change is  
16 supported by the reviewing resource agencies. Greater distances may be required if  
17 recommended by the reviewing resource agencies.

18 7. Aquacultural structures and activities that are not water-dependent (including, but not  
19 limited to, warehouses for storage of products, parking and loading facilities) shall be located  
20 landward of the OHWM and landward of water-dependent portions of the project, and shall  
21 minimize detrimental impacts to the shoreline.

22 8. For aquaculture projects using over-water structures, storage of necessary tools and  
23 apparatus waterward of the OHWM shall be limited to containers of not more than three (3)  
24 feet in height, as measured from the surface of the raft or dock. Materials which are not  
25 necessary for the immediate and regular operation of the facility shall not be stored  
26 waterward of the OHWM.

27 9. No garbage, wastes or debris shall be allowed to accumulate at the site of any  
28 aquaculture operation. All wastes shall be disposed of in a manner that will ensure strict  
29 compliance with all applicable waste disposal standards.

30 10. When feasible, the cleaning of nets and other apparatus shall be accomplished by air  
31 drying, spray washing or hand washing, rather than chemical treatment and application.

32 11. Prior to use of any agents such as antibiotics, vaccines, growth stimulants, or anti-  
33 fouling agents, approval must be obtained from all appropriate state and federal agencies,  
34 including but not limited to the U.S. Food and Drug Administration, Ecology, WDFW, and the  
35 Department of Agriculture, as required, and proof thereof is submitted to the county.

36 12. Only nonlethal, nonabusive predator control methods shall be used. Double netting for  
37 seals, overhead netting for birds, and three (3) foot high fencing or netting for otters are  
38 approved methods of predator control. The use of other nonlethal, nonabusive predator  
39 control measures shall be contingent upon receipt of written approval from the National  
40 Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required.

41 C. Boating Uses.

42 1. General Requirements.

43 a. All boating uses, development, and facilities shall protect the rights of navigation.

44 b. Boating facilities shall be sited and designed to ensure no net loss of shoreline  
45 ecological functions, and shall meet DNR requirements and other state guidance if  
46 located in or over state-owned aquatic lands.

47 c. Boating facilities shall locate on stable shorelines in areas where:

48 (1) There is adequate water mixing and flushing;

49 (2) Such facilities will not adversely affect flood channel capacity or otherwise  
50 create a flood hazard;

51 (3) Water depths are adequate to minimize spoil disposal, filling, beach  
52 enhancement, and other channel maintenance activities; and

53 (4) Water depths are adequate to prevent the structure from grounding out at the  
54 lowest low water or else stoppers are installed to prevent grounding out.

55 d. Boating facilities shall not be located:

56 (1) Along braided or meandering river channels where the channel is subject to  
57 change in alignment;

- (2) On point bars or other accretion beaches;
    - (3) Where new or maintenance dredging will be required; or
    - (4) In areas with important bank margin habitat for aquatic species or where wave action caused by boating use would increase bank erosion rates.
  - e. Boating uses and facilities shall be located far enough from public swimming beaches, fishing and aquaculture harvest areas, and waterways used for commercial navigation to alleviate any adverse impacts, safety concerns and potential use conflicts.
  - f. In-water work shall be scheduled to protect biological productivity (including but not limited to fish runs, spawning, and benthic productivity). In-water work shall not occur in areas used for commercial fishing during a fishing season unless specifically addressed and mitigated for in the permit.
  - g. Accessory uses at boating facilities shall be:
    - (1) Limited to water-oriented uses, including uses that provide physical or visual shoreline access for substantial numbers of the general public; and
    - (2) Located as far landward as possible while still serving their intended purposes.
  - h. Parking and storage areas shall be landscaped or screened to provide visual and noise buffering between adjacent dissimilar uses or scenic areas.
  - i. Boating facilities shall locate where access roads are adequate to handle the traffic generated by the facility and shall be designed so that lawfully existing or planned public shoreline access is not unnecessarily blocked, obstructed nor made dangerous.
  - j. Joint-use moorage with ten (10) or more berths is regulated under this section as a marina (Section 40.460.630(C)(3)). Joint-use moorage with fewer than ten (10) berths is regulated under this section as a moorage facility (Section 40.460.630(C)(4)).
  - k. All marinas and public launch facilities shall provide restrooms/hand-sanitizing facilities for boaters' use that are designed, constructed and maintained to be clean, well lighted, safe and convenient for public use. One (1) restroom and hand-sanitizing facility shall be provided for every seventy-five (75) marina moorage sites or twenty (20) boat launch parking spaces.
  - l. Installation of boat waste disposal facilities such as pump-outs and portable dump stations shall be required at all marinas and shall be provided at public boat launches to the extent possible. The locations of such facilities shall be considered on an individual basis in consultation with the Washington Departments of Health, Ecology, Natural Resources, Parks, and WDFW, as necessary.
  - m. All utilities shall be placed at or below dock levels, or below ground, as appropriate.
  - n. All signage shall adhere to the standards for signs in this Program and Chapter 40.310, except that a marina or boat launch may have one (1) advertising sign oriented towards the water that does not exceed twenty-four (24) square feet in area and fifteen (15) feet in height above the OHWM.
  - o. When appropriate, marinas and boat launch facilities shall install public safety signs, to include the locations of fueling facilities, pump-out facilities, and locations for proper waste disposal.
  - p. Boating facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials used for submerged portions, decking and other components that may come in contact with water shall be approved by applicable state agencies for use in water to avoid discharge of pollutants from wave splash, rain or runoff. Wood treated with creosote, copper chromium, arsenic, pentachlorophenol or other similarly toxic materials is prohibited for use in moorage facilities.
  - q. Boating facilities in waters providing a public drinking water supply shall be constructed of untreated materials, such as untreated wood, approved plastic composites, concrete, or steel.
  - r. Vessels shall be restricted from extended mooring on waters of the state except as allowed by state regulations; and provided, that a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.
2. Boat Launch Facilities.

- 1 a. A private boat launch shall be allowed on a parcel or lot only when public boat  
2 launches are unavailable within one-half (1/2) mile upstream or downstream of any  
3 property line.  
4 b. No more than one (1) private boat launch facility or structure shall be permitted on a  
5 single residential parcel or lot.  
6 c. Boat launch and haul-out facilities, such as ramps, marine travel lifts and marine  
7 railways, and minor accessory buildings shall be designed and constructed in a manner  
8 that minimizes adverse impacts on fluvial processes, biological functions, aquatic and  
9 riparian habitats, water quality, navigation and neighboring uses.  
10 d. Boat launch facilities shall be designed and constructed using methods/technology  
11 that have been recognized and approved by state and federal resource agencies as the  
12 best currently available.

13 3. Marinas.

- 14 a. Marinas shall be designed to:  
15 (1) Provide thorough flushing of all enclosed water areas;  
16 (2) Allow the free movement of aquatic life in shallow water areas; and  
17 (3) Avoid and minimize any interference with geohydraulic processes and  
18 disruption of existing shore forms.  
19 b. Open pile or floating breakwater designs shall be used unless it can be  
20 demonstrated that riprap or other solid construction would not result in any greater net  
21 impacts to shoreline ecological functions, processes, fish passage, or shore features.  
22 c. Wet-moorage marinas shall locate a safe distance from domestic sewage or  
23 industrial waste outfalls.  
24 d. To the maximum extent possible, marinas and accessory uses shall share parking  
25 facilities.  
26 e. New marina development shall provide public access amenities, such as  
27 viewpoints, interpretive displays and public access to accessory water-enjoyment uses  
28 such as restaurants.  
29 f. If a marina is to include gas and oil handling facilities, such facilities shall be  
30 separate from main centers of activity in order to minimize the fire and water pollution  
31 hazard, and to facilitate fire and pollution control. Marinas shall have adequate facilities  
32 and procedures for fuel handling and storage, and the containment, recovery, and  
33 mitigation of spilled petroleum, sewage, and other potentially harmful or hazardous  
34 materials, and toxic products.  
35 g. Live-aboards are restricted to marinas, may occupy up to twenty percent (20%) of  
36 the slips at a marina and shall be connected to utilities that provide potable water and  
37 wastewater conveyance to an approved disposal facility. Live-aboards are not allowed at  
38 joint-use moorages.  
39 h. The marina operator shall be responsible for the collection and dumping of sewage,  
40 solid waste, and petroleum waste.  
41 i. No commercial or sport fish-processing discharge or discarding of unused bait, scrap  
42 fish, or viscera shall be permitted within any marina.

43 4. Moorage Facilities: Docks, Piers, and Mooring Buoys.

- 44 a. Mooring buoys shall be used instead of docks and piers whenever feasible.  
45 b. Existing, legally established, private recreational docks, piers, and floats for  
46 individual lots in existing subdivisions and for existing individual single-family  
47 developments are considered nonconforming uses and structures. If such dock or float  
48 is abandoned, becomes hazardous, or is removed for any reason, it may be replaced  
49 with only one (1) joint-use facility that complies with the policies and regulations of this  
50 Program. All required permits and approvals shall be obtained prior to commencing  
51 construction.  
52 c. All moorage facilities shall be constructed and maintained in a safe and sound  
53 condition. Those that are abandoned or unsafe shall be removed or repaired promptly by  
54 the owner.  
55 d. Docks and piers for water-dependent commercial and industrial uses shall be  
56 allowed to the outer harbor line or combined U.S. Pierhead/Bulkhead line but no more  
57 than that required for the draft of the largest vessel expected to moor at the facility.

1 These provisions are also applicable to multiple-use facilities where the majority use is  
2 water-dependent and public access can safely be provided.

3 e. Fixed piers shall not be permitted for residential use on rivers. Docks for residential  
4 use on a river shall be securely anchored to pilings to allow for changes in river level,  
5 and shall be designed to withstand the one hundred (100) year flood or be seasonably  
6 removable.

7 f. Commercial covered moorage facilities may be permitted only where vessel  
8 construction or repair work is to be the primary activity and covered work areas are  
9 demonstrated to be the minimum necessary over water, including a demonstration that  
10 adequate landside sites are not feasible.

11 g. Covered moorage facilities associated with any residential development shall be  
12 prohibited.

13 h. Provisions for waste discharge shall be made in all proposals for public moorage  
14 facilities, and shall include oil containment barriers when required by the U.S. Coast  
15 Guard under provisions of the Clean Water Act.

16 i. Bulk storage (nonportable storage in fixed tanks) for gasoline, oil and other  
17 petroleum products for any use or purpose is prohibited on docks and piers.

18 j. Residential docks and piers shall be allowed, as follows:

19 (1) A new private dock or pier serving an individual lot is prohibited, unless it can be  
20 demonstrated that such dock or pier will result in no net loss of shoreline ecological  
21 function.

22 (2) New joint-use docks and piers serving two or more lots each with water frontage  
23 are allowed if no marina or public boat launch is located within one-half (1/2) mile of  
24 the upstream property line or one-half (1/2) mile downstream from the downstream  
25 property line, and provided they meet the requirements of this Program.

26 (3) New land divisions with shoreline frontage shall provide for joint-use docks if the  
27 proposal includes construction of a dock. Proposed docks and piers shall include no  
28 more than one mooring space per dwelling unit. Where a new moorage facility is  
29 proposed within a residential waterfront development of more than four (4) units, only  
30 one (1) joint-use facility shall be allowed, but only after demonstrating that such use  
31 is appropriate for the water body. The applicant must also demonstrate that no public  
32 moorage facility is available to residents. This condition of approval with required  
33 access easements and dedications shall be identified on the face of the plat. In  
34 addition, the joint-use dock easement shall be recorded with the County Auditor.

35 (4) Only a single, joint-use moorage facility shall be permitted in association with  
36 hotels, motels, and multifamily residences. No more than one (1) mooring slip per  
37 unit shall be allowed.

38 k. Applicants for joint-use docks and piers shall demonstrate and document that  
39 adequate maintenance of the structure, activities, and associated landward area will be  
40 provided by identified responsible parties. The applicant shall file a legally enforceable  
41 joint use agreement or other legal instrument prior to the issuance of any building  
42 permits. The documents shall at minimum address the following:

43 (1) Apportionment of construction and maintenance expenses;

44 (2) Easements and liability agreements; and

45 (3) Use restrictions.

46 l. Docks and piers shall be designed and constructed to meet the following standards:

47 (1) The maximum dimensions of a dock or pier shall be no greater than necessary,  
48 and shall generally meet the following development standards. These dimensions  
49 may be adjusted by the Shoreline Administrator on a case-by-case basis to protect  
50 sensitive shoreline resources.

51 (a) Docks, piers, and ramps shall be no more than four (4) feet in width.

52 (b) A dock or pier shall be long enough to obtain a depth as required by  
53 WDFW at its landward edge, and only as long as necessary to serve the  
54 intended use.

55 (c) The deck surface of docks and piers shall not exceed three (3) feet in  
56 height above the OHWM on the landward side, and shall extend one (1) foot  
57 above the water surface at all other locations.

1 (2) Over-water structures shall be located in water sufficiently deep to prevent the  
2 structure from grounding out at the lowest low water or stoppers should be installed  
3 to prevent grounding out.

4 (3) The portions of piers, elevated docks, and gangways that are over the  
5 nearshore/littoral area shall have unobstructed grating over the entire surface area.  
6 Floating docks and piers shall have unobstructed grating over at least fifty percent  
7 (50%) of the surface area.

8 (4) Piers/anchors and/or ramps shall extend waterward, perpendicular from the  
9 ordinary high water mark (OHWM), to a point where the water depth is sufficient to  
10 prevent damage to shallow-water habitat.

11 (5) Skirting shall not be placed on piers, ramps, or floats. Protective bumper  
12 material will be allowed along the outside edge of the float as long as the material  
13 does not extend below the bottom edge of the float frame or impede light penetration.

14 (6) If a bulkhead-like base is proposed for a fixed pier or dock where there is net  
15 positive littoral drift, the base shall be built landward of the OHWM or protective  
16 berms. When plastics or other nonbiodegradable materials are used in float, pier, or  
17 dock construction, precautions shall be taken to ensure their containment.

18 (7) Pilings must be structurally sound and cured prior to placement in the water.  
19 Pilings employed for docks, piers, or any other structure shall have a minimum  
20 vertical clearance of one foot above extreme high water. Pile spacing shall be the  
21 maximum feasible to minimize shading and avoid a "wall" effect that would block or  
22 baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result  
23 in structure damage from driftwood impact or entrapment.

24 (8) Docks used for motor boats should be located where the water will be deeper  
25 than seven (7) feet at the lowest low water to avoid prop scour.

26 (9) Docks and piers shall be set back a minimum of ten (10) feet from side property  
27 lines, except that joint-use facilities may be located closer to or upon a side property  
28 line when agreed to by contract or covenant with the owners of the affected  
29 properties. A copy of such agreement shall be recorded with the County Auditor and  
30 filed with the shoreline permit application.

31 m. Recreational floats shall be designed and constructed to meet the following  
32 standards:

33 (1) They shall be located as close to the shore as possible, and no farther  
34 waterward than any existing floats and established swimming areas.

35 (2) They shall be constructed so that the deck surface is a minimum of one (1) foot  
36 above the water surface and with reflectors for night-time visibility.

37 (3) Floats serving the public, a multifamily development, or multiple property  
38 owners shall not exceed one hundred (100) square feet; those serving only a legally  
39 established single-family residence shall not exceed sixty-four (64) square feet.

40 n. Mooring buoys shall be placed as specified by WDFW, DNR, and the U.S. Coast  
41 Guard to balance the goals of protecting nearshore habitat and minimizing obstruction to  
42 navigation. Anchors and other design features shall meet WDFW standards.

43 o. Mooring buoys shall be discernible from a distance of at least one hundred (100)  
44 yards. Only one (1) mooring buoy for each waterfront lot shall be permitted unless  
45 greater need is demonstrated by the applicant and documented by the county. In cases  
46 such as those of a community park with recreational users or a residential development  
47 with lot owners both on and away from the shoreline needing moorage, joint-use  
48 facilities shall be used.

49 p. Mooring buoys for residential use on a river shall be securely anchored to pilings to  
50 allow for changes in river level, and shall be designed to withstand the one hundred  
51 (100) year flood or be seasonably removable.

52 D. Commercial Uses.

53 1. Water-oriented commercial uses are preferred over non-water-oriented commercial  
54 uses.

55 2. An applicant for a new commercial use or development shall demonstrate that:

56 a. There will not be a net loss of shoreline ecological function by reason of the use or  
57 development; and

- 1           b. The use or development will have no significant adverse impacts to other shoreline  
2 resources or other shoreline uses.
- 3           3. Loading, service areas, and other accessory uses and structures shall be located  
4 landward of a commercial structure or underground whenever possible, but shall in no case  
5 be waterward of the structure. Loading and service areas shall be screened from view with  
6 native plants.
- 7           4. Where allowed, non-water-oriented commercial uses may be permitted:  
8           a. As part of mixed use developments where the primary use is residential and where  
9 there is a substantial public benefit with respect to the goals and policies of this Program  
10 such as providing public access or restoring degraded shorelines;  
11           b. Where navigability is severely limited at the proposed site and the commercial use  
12 provides a significant public benefit with respect to the Act's objectives such as providing  
13 public access and ecological restoration; or  
14           c. If the site is physically separated from the shoreline by another property or public  
15 right-of-way.
- 16           5. Non-water-oriented commercial uses may occupy:  
17           a. Up to a total of twenty-five percent (25%) of the total frontage length of all parcels in  
18 the master planned development (regardless of ownership); or  
19           b. Up to a total of twenty-five percent (25%) of the total project area within shoreline  
20 jurisdiction of all parcels in the master planned development (regardless of ownership).

21 (Amended: Ord. 2014-08-10)

22 E. Forest Practices.

23           1. Commercial harvest of timber undertaken on shorelines shall comply with the applicable  
24 policies and provisions of the Forests and Fish Report (U.S. Fish and Wildlife Service, et al.,  
25 1999) and the Forest Practices Act, Chapter 76.09 RCW as amended, and any regulations  
26 adopted pursuant thereto (WAC Title 222), as administered by the Department of Natural  
27 Resources.

28           2. Timber harvest conducted under a Forest Practice authorized under WAC 222 or  
29 Section 40.260.080 is not development as defined in 90.58 RCW and is not subject to the  
30 Shoreline Master Program. Other activities conducted under a Forest Practice, such as road  
31 improvement, maintenance or construction, culvert replacements, or placement of landings,  
32 are development subject to Chapter 40.460.

33           23. When timberland is to be converted to another use, such conversion shall be clearly  
34 indicated on the Forest Practices application. Failure to indicate the intent to convert the  
35 timberland to another use on the application will result in subsequent conversion proposals  
36 being reviewed pursuant to Conversion Option Harvest Plan. Failure to declare intent to  
37 convert on the application shall provide adequate grounds for denial of subsequent  
38 conversion proposals for a period of six (6) years from date of forest practices application  
39 approval per RCW 76.09.060(3)(d), (e) and (f), RCW 76.09.460, and RCW 76.09.470,  
40 subject to the provisions of Sections 40.260.080(A)(4)(a)(2) and (C).

41           34. With respect to timber situated within two hundred (200) feet landward of the OHWM  
42 within shorelines of statewide significance, Ecology or the county shall allow only selective  
43 commercial timber cutting, so that no more than thirty percent (30%) of the merchantable  
44 trees may be harvested in any ten (10) year period of time; provided, that other timber  
45 harvesting methods may be permitted in those limited instances where the topography, soil  
46 conditions, or silviculture practices necessary for regeneration render selective logging  
47 ecologically detrimental; and provided further, that clear cutting of timber which is solely  
48 incidental to the preparation of land for other uses authorized by this chapter may be  
49 permitted. Exceptions to this standard shall be by conditional use permit only.

50           45. For the purposes of this Program, preparatory work associated with the conversion of  
51 land to nonforestry uses and/or developments shall not be considered forest practices and  
52 shall be reviewed in accordance with the provisions for the proposed nonforestry use and the  
53 general provisions of this Program, including vegetation conservation.

54 \*\*\*

1 **Section 9. Amendatory.** Sec. 3, Part C, Ord. 2012-07-16 and codified as CCC 40.460.710  
2 Administrative Authority and Responsibility, as most recently amended by Sec. 10 of Ord. 2018-  
3 01-01, are each hereby amended as follows:  
4

5 **40.460.710 Administrative Authority and Responsibility**

- 6 A. Shoreline Administrator and Shoreline Management Review Committee.  
7 1. The responsible official or his/her designee is the Shoreline Administrator for the county.  
8 2. The Shoreline Management Review Committee (SMRC), consisting of the Public Works  
9 Director (Chairman), Community Development Director, and the Parks and Lands Division  
10 Manager~~Director~~, or their designated representatives, shall convene as often as necessary  
11 on the call of the Chairman to review shoreline requests and permit applications for which the  
12 notice of application procedures of Chapter 173-27 WAC and this section have been  
13 completed. After considering the application and other relevant material, SMRC may, by  
14 majority vote, take one (1) of the following actions:  
15 a. Approve issuance of the permit;  
16 b. Approve the permit subject to certain specified conditions; or  
17 c. Formulate recommendations on the application to be forwarded to the Shoreline  
18 Administrator for action.  
19 3. The Shoreline Administrator, through the Shoreline Management Review Committee,  
20 shall have the authority to act upon the following matters:  
21 a. Interpretation, enforcement, and administration of this Program as prescribed in this  
22 title;  
23 b. Applications for shoreline management substantial development permits;  
24 c. Applications for shoreline conditional use permits;  
25 d. Applications for shoreline variances;  
26 e. Modifications or revisions to any of the above approvals; and  
27 f. Requests for statements of exemption.  
28 4. The Shoreline Administrator shall document all project review actions in shoreline areas  
29 in order to periodically evaluate the cumulative effects of authorized development on  
30 shoreline conditions per WAC 173-26-191.

31 B. Clark County Planning Commission.

32 The County Planning Commission shall be responsible for hearing and making  
33 recommendations for action to the ~~Board of County Commissioners~~ county council on the  
34 following types of matters:

- 35 1. Amendments to the Shoreline Master Program. Any of the provisions of this Program  
36 may be amended as provided for in WAC 173-26-100 and WAC 173-26-104.  
37 2. Review and Adjustments. Periodic review of this Program shall be conducted as  
38 required by state law and regulations (RCW 90.58.080(4)). Adjustments shall be made as  
39 necessary to reflect changing local circumstances, new information or improved data, and  
40 changes in state statutes and regulations. This review process shall be consistent with WAC  
41 173-26-090 and shall include a local citizen involvement effort and public hearing to obtain  
42 the views and comments of the public.

43 C. ~~Board of County Commissioners~~ Clark County Council.

44 The ~~Board of County Commissioners~~ council shall be responsible for making final  
45 determinations on amendments to this Program, which shall be adopted by ordinance. The ~~Board~~  
46 council shall enter findings and conclusions setting forth the factors it considered in reaching its  
47 decision. Amendments shall be submitted to and reviewed by Ecology.  
48

49 \*\*\*

50  
51 **Section 10. Amendatory.** Sec. 3, Part C, Ord. 2012-07-16 and codified as CCC 40.460.725  
52 Application Review Requirements, are each hereby amended as follows:  
53

54 **40.460.725 Application Review Requirements**

- 55 A. Upon receipt of a fully complete completed shoreline substantial development permit,  
56 shoreline variance, or shoreline conditional use permit application, the county will issue a notice  
57 of application as required for a Type III action pursuant to Section 40.510.030(E).

- 1 B. The comment period for such applications shall be thirty (30) days.
- 2 C. An application for a shoreline substantial development permit, shoreline variance, or
- 3 shoreline conditional use permit shall be reviewed using the timelines for a Type III action
- 4 pursuant to Section 40.510.030(F).
- 5 D. To the fullest extent possible, the shoreline permit process shall be integrated with other
- 6 planning and licensing procedures of this title. Shoreline applications may accompany another
- 7 related application through the review process, and interested persons may present views
- 8 thereon, but no formal public hearing is required.
- 9 E. Proposed actions that would alter designated critical areas or their buffers, as established by
- 10 this Program (Section 40.460.530) shall be reviewed for compliance with this Program. If
- 11 required, the applicable critical area report and/or mitigation plan and/or habitat management plan
- 12 shall be submitted as part of the development application. The critical area review shall be
- 13 conducted and processed in conjunction with the highest threshold of review that is applicable to
- 14 the primary development proposed:
  - 15 1. Review pursuant to Section 40.460.230 (list of exemptions);
  - 16 2. Land use permit or building permit;
  - 17 3. Excavation, grading, clearing and erosion control permit;
  - 18 4. SEPA threshold determination;
  - 19 5. Shoreline substantial development permit;
  - 20 6. Shoreline conditional use permit; or
  - 21 7. Shoreline variance.
- 22 F. The county shall review restoration projects for consistency with this Program in an
- 23 expeditious manner and shall issue its decision along with any conditions within forty-five (45)
- 24 days of receiving all materials necessary to review the request for exemption from the applicant.
- 25 G. Issuance of shoreline permits approved by SMRC shall be the responsibility of the Shoreline
- 26 Administrator.
- 27 H. All shoreline permits issued for development or use within shoreline jurisdiction shall include
- 28 written findings prepared by the Shoreline Administrator, documenting compliance with bulk and
- 29 dimensional policies and regulations of this Program. The Shoreline Administrator may attach
- 30 conditions to the approval as necessary to assure consistency with Chapter 90.58 RCW and this
- 31 Program. Such conditions may include a requirement to post a performance bond assuring
- 32 compliance with permit requirements, terms and conditions.

33 I. Special permit review procedures apply for WSDOT projects pursuant to RCW 47.01.485  
 34 and RCW 90.58.140.  
 35 (Added: Ord. 2012-07-16)

36 \*\*\*

37  
 38  
 39 **Section 11. Amendatory.** Sec. 3, Part B, Ord. 2012-07-16 and codified as CCC 40.460.800  
 40 Definitions, as most recently amended by Sec. 11 of Ord. 2018-01-01, are each hereby amended  
 41 as follows:

42 **40.460.800 Definitions**

43 For purposes of this Program and this chapter, the following definitions shall apply. Additional  
 44 definitions applicable to this Program can be found in Section 40.100.070.  
 45  
 46

Accessory structure	"Accessory structure" means a subordinate building incidental to the use of the main building.
Accessory use	"Accessory use" means any use or activity incidental and subordinate to a primary use or development.
Accretion	"Accretion" means the growth of a beach by the addition of material transported by wind and/or water. Included are such shore forms as barrier beaches, points, spits, hooks, and tombolos.
Act	"Act" means the Washington State Shoreline Management Act of 1971 (Chapter 90.58 RCW), as amended.
Adjacent lands	"Adjacent lands" means lands adjacent to the shorelines of the state (not in shoreline jurisdiction) (RCW 90.58.340).



Aggrieved person	"Aggrieved person" means a person who is suffering from an infringement or denial of legal rights or claims.
Agricultural activities	"Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.
Agricultural equipment and facilities	"Agricultural equipment" and "agricultural facilities" include, but are not limited to: <ul style="list-style-type: none"> <li>• The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;</li> <li>• Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;</li> <li>• Farm residences and associated equipment, lands, and facilities; and</li> <li>• Roadside stands and on-farm markets for marketing fruit or vegetables.</li> </ul>
Agricultural land	"Agricultural land" means those specific land areas on which agricultural activities, <u>as defined in WAC 173-26-020(3)</u> , are conducted, <del>as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of this Program, land converted to agricultural use is subject to compliance with the requirements of this Program.</del>
Agricultural products	"Agricultural products" includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty (20) years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products.
Amendment	"Amendment" means a revision, update, addition, deletion, and/or re-enactment to an existing shoreline master program.
Appurtenance	"Appurtenance" means a structure or development normally and necessarily connected to a primary use.
Appurtenance, normal	"Appurtenance, normal" means appurtenances for residential uses limited to garages (up to three (3) cars), shops (up to one thousand (1,000) square feet), decks, driveways, utilities, and fences.
Aquaculture	"Aquaculture" means the cultivation or farming of fish, shellfish, or other aquatic plants and animals (WAC 173-26-020(6)).
Associated wetlands	"Associated wetlands" means those wetlands which are in proximity to and either influence or are influenced by waters of a lake, river or stream subject to the Shoreline Management Act.
Average grade level	"Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. For structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure (WAC 173-27-030(3)).
Beach enhancement	"Beach enhancement" means the process of restoring a beach to a state more closely resembling a natural beach, using beach feeding, vegetation drift sills, and other nonintrusive means as applicable.
Bedlands	"Bedlands" means those submerged lands, including tidelands where appropriate, underlying navigable waters.
Berm	"Berm" means: <ul style="list-style-type: none"> <li>• A linear mound or series of mounds of earth, sand and/or gravel generally paralleling the water at or landward of the line of ordinary high water; or</li> <li>• A linear mound used to screen an adjacent activity, such as a parking lot, from transmitting excess noise and glare.</li> </ul>

Best available science	"Best available science" means the most reliable and available scientific information, most often used in the context of local government compliance with the State Growth Management Act (RCW 36.70A.172) for developing policies and development regulations regarding critical areas (Chapter 365-195 WAC).
Best available technology	"Best available technology" means the most effective method, technique, or product available which is generally accepted in the field, and which is demonstrated to be reliable, effective, and preferably low maintenance.
Bioengineering	"Bioengineering" means project designs or construction methods which use live woody vegetation or a combination of live woody vegetation and specially developed natural or synthetic materials to establish a complex root grid within the existing bank which is resistant to erosion, provides bank stability, and maintains a healthy riparian environment with habitat features important to fish life. Use of wood structures or limited use of clean angular rock may be allowable to provide stability for establishment of the vegetation (WAC 220-110-020(12)).
Boat	"Boat" means any floating vessel or watercraft, including ships and barges, which is designed and used for navigation for commerce or recreation.
Boat house	"Boat house" means an over-water structure designed for storage of boats.
Boat launch facility	"Boat launch facility" means a facility or structure providing access in and out of the water for boats, such as ramps, rails, or lift stations.
Boatyard	<u>"Boatyard" means a facility engaged in the construction, repair, and maintenance of small vessels, where 85% of those vessels are 65 feet or less in length, or the boatyard generates more than 85% of its gross receipts working on those vessels. Services typically provided include, but are not limited to: pressure washing hulls, painting and coating, engine and propulsion system repair or replacement, hull repair, joinery, bilge cleaning, fuel and lubrication system repair or replacement, welding and grinding of the hull, buffing and waxing, marine sanitation devise (MSD) repair and replacement, vessel deconstruction activity on land, and other activities necessary to maintain a vessel. This definition includes mobile and do-it-yourself activities.</u>
Breakwater	"Breakwater" means a structure aligned parallel to shore, sometimes shore-connected, that provides protection from waves.
Buffer area	"Buffer area" means a tract or strip of land that is designed and designated to permanently remain vegetated in a natural condition to protect an adjacent aquatic or wetland site from upland impacts, improve water quality, and to provide habitat for wildlife.
Bulkhead	"Bulkhead" means a solid, open-pile, or irregular wall of rock, rip-rap, concrete, steel, or timber or combination of these materials erected parallel to and near ordinary high water mark to provide a protective vertical wall resistant to water and wave action.
Channel	"Channel" means an open conduit for water either naturally or artificially created, but does not include artificially created irrigation, return flow, or stock-watering channels (WAC 173-27-030(8b)).
Channel migration zone	"Channel migration zone" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.
Clean Water Act	"Clean Water Act" means the primary federal law providing water pollution prevention and control, previously known as the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).
Commercial	"Commercial" means a business use or activity at a scale greater than a home business or cottage industry involving retail or wholesale marketing of goods and services. Examples of commercial uses include restaurants, offices, and retail shops.
Commercial fishing	"Commercial fishing" means the activity of capturing fish and other seafood under a commercial license.
Conditional use	"Conditional use" means a use, development, or substantial development which is classified as a conditional use, or is not classified within this Program, and requires a conditional use permit (WAC 173-27-030(4)).
Covered moorage	"Covered moorage" means a boat moorage, with or without walls, that has a roof to protect a boat.
Critical habitat	"Critical habitat" means specific geographical areas that possess physical or biological features that are essential to the conservation of federally listed species.

	These designated areas may require special management considerations or protection.
Date of filing	"Date of filing" means the date of actual receipt by Ecology of the county's decision. <ul style="list-style-type: none"> <li>For a variance or conditional use permit, the date of filing is the date Ecology's decision is transmitted to the county.</li> <li>For a variance or conditional use permit decision in conjunction with a shoreline substantial development permit decision, the date of filing is the date Ecology's decision is transmitted to the county.</li> </ul>
<u>Development</u>	<u>"Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level (RCW 90.58.030(3)(a)). "Development" does not include dismantling or removing structures if there is no other associated development or re-development.</u>
Development regulations	"Development regulations" means the controls placed on development or land uses, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under Chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto (WAC 173-26-020(8)).
Dike	"Dike" means an artificial embankment normally set back from the bank or channel in the floodplain for the purpose of keeping floodwaters from inundating adjacent land.
Dock	"Dock" means a landing or moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances.
Dredge material	"Dredge material" means material removed by dredging.
Dredging	"Dredging" means the removal or displacement of earth or sediments such as gravel, sand, mud, silt, or debris from below the OHWM.
Dredging, maintenance	"Maintenance dredging" means dredging for the purpose of maintaining a prescribed minimum depth previously authorized by a federal, state, and/or local permit as part of any specific waterway project. Maintenance dredging also includes dredging that maintains the previously authorized width of a channel, boat basin or berthing area.
Dredging, nonmaintenance	"Nonmaintenance dredging" means any dredging that is not maintenance dredging.
Drift sector	"Drift sector" means the extent of the littoral drift area downstream from and caused by a breakwater, jetty, rock weir or groin.
Ecology	"Ecology" means the Washington Department of Ecology.
Ecosystem-wide processes	"Ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions (WAC 173-26-020(12)).
Effective date of permit	"Effective date of permit" means, for shoreline substantial development, conditional use, and variance permits, the date of filing as provided in RCW 90.58.140(6) which includes completion of all appeals or legal actions.
Emergency	"Emergency" means the unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with Chapter 173-27 WAC.
Enhancement	"Enhancement" means alterations performed to improve the condition of an existing degraded area so that shoreline functions provided are of a higher quality. Enhancements are to be distinguished from resource creation or restoration projects.
Erosion	"Erosion" means the general process or the group of processes whereby the materials of the earth's crust are loosened, dissolved, or worn away, and simultaneously moved from one place to another, by natural forces that include weathering, solution, corrosion, and transportation, but usually exclude mass wasting.
Exempt/exemption	"Exempt/exemption" means developments that are not required to obtain a Shoreline Substantial Development Permit but which must otherwise comply with applicable provisions of the Act and this Program.

Fair market value	"Fair market value" means the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials (WAC 173-27-030(8)).
Feasible	"Feasible" means an action, such as a development project, mitigation, or preservation requirement, that meets all of the following conditions: <ul style="list-style-type: none"> <li>• The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;</li> <li>• The action provides a reasonable likelihood of achieving its intended purpose; and</li> <li>• The action does not physically preclude achieving the project's primary intended legal use.</li> </ul> In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.
Feeder bluff	"Feeder bluff" means any bluff (or cliff) experiencing periodic erosion from waves, sliding, or slumping, whose eroded earth, sand, or gravel material is naturally transported (littoral drift) via a driftway to an accretion shore form. Feeder bluff exceptional segments lack a backshore, old or rotten logs, and coniferous bluff vegetation.
Fill	"Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation of or creates dry land (WAC 173-26-020(16)).
Fill, speculative	"Speculative fill" means the placement of fill material not associated with an approved project.
Fish and wildlife habitat conservation area	"Fish and wildlife habitat conservation areas" means habitat for endangered, threatened and sensitive species; priority habitats and areas associated with priority species; habitats of local importance; and water bodies, and that are designated in Chapter 40.440.
Float	"Float" means a fixed platform structure anchored in and floating upon a water body that does not connect to the shore, and that provides landing for water-dependent recreation or moorage for vessels or watercraft.
Floating home	"Floating home" means a single-family dwelling unit constructed on a float that is moored, anchored, or otherwise secured in waters, and is not a boat, even though it may be capable of being towed.
Floating on-water residence	"Floating on-water residence" means any floating structure other than a floating home, as defined above, that is designed or used primarily as a residence on the water and has detachable utilities, and whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or a sublease to use space in a marina, since a date prior to July, 1, 2014.
Flood hazard reduction	"Flood hazard reduction" means measures taken to reduce flood damage or hazards. Flood hazard reduction measures may consist of nonstructural or indirect measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, bioengineering measures, and stormwater management programs; and of structural measures, such as dikes, levees, and floodwalls intended to contain flow within the channel, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.
Floodplain	See "special flood hazard area."
Floodway	"Floodway" means the area that has been established in Federal Emergency Management Agency flood insurance rate maps or floodway maps. <u>The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state (RCW 90.58.030).</u>

Forb	"Forb" means an herbaceous, nonwoody plant other than grass.
Forest practices	"Forest practices" means any activity conducted on or directly related to forest land and relating to growing, harvesting, or processing timber. These activities include but are not limited to: road and trail construction, final and intermediate harvesting, pre-commercial thinning, reforestation, fertilization, prevention and suppression of disease and insects, salvage of trees, and brush control (WAC 222-16-010(21)).
Gabion	"Gabion" means a structure composed of masses of rocks, rubble, or masonry held tightly together usually by wire mesh so as to form blocks or walls. They are sometimes used on heavy erosion areas to retard wave action, to reduce mass wasting, or as foundations for breakwaters or jetties.
Geologic hazard area study	"Geological hazard area study" means a scientific study or evaluation of geological, hydrological, geochemical and/or geomorphological aspects of a site conducted by a qualified expert that meets the requirements of Section 40.430.030(C)(4).
Grassy swale	"Grassy swale" means a vegetated drainage channel that is designed to remove various pollutants from stormwater runoff through biofiltration.
Groin	"Groin" means a barrier-type structure extending from the backshore or stream bank into a water body for the purpose of the protection of a shoreline and adjacent upland by influencing the movement of water and/or deposition of material.
Height	"Height" means the distance measured from the average grade level to the highest point of a structure; provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where it obstructs the view of a substantial number of residences on areas adjoining such shorelines (or the Master Program provides otherwise); and provided further that temporary construction equipment is excluded in this calculation (WAC 173-27-030(9)).
Hook	"Hook" means a spit or narrow cape of sand or gravel which turns landward at its outer end.
Institutional use	"Institutional use" means a use and related structure(s) for the provision of educational, medical, cultural, public safety, social and/or recreational services to the community, including but not limited to schools, colleges, museums, community centers, and the relevant essential public facilities identified in WAC 365-196-550.
In-stream structure	"In-stream structure" means a structure placed by humans within a stream or river waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose. A stormwater outfall is not an in-stream structure.
Interested party	"Interested party" means a person who has notified local government of their desire to receive a copy of the final order on a permit under WAC 173-27-030.
Invasive	"Invasive" means a non-native plant or animal species that: <ul style="list-style-type: none"> <li>• Causes or may cause significant displacement in range or significant reduction in abundance of native species; or</li> <li>• Threatens or may threaten natural resources or their use in the state; or</li> <li>• Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or</li> <li>• Threatens or harms human health (RCW 77.08.010(28)).</li> </ul>
Jetty	"Jetty" means a structure usually projecting out into the water for the purpose of protecting a navigation channel, a harbor, or to influence water currents.
Joint-use moorage facility	"Joint-use moorage facility" means a moorage for pleasure craft and/or landing for water sports for use in common by shoreline residents with adjoining lots, each with water frontage, or of a certain subdivision or community within shoreline jurisdiction or for use by patrons of a public park or quasi-public recreation area, including rental of nonpowered craft. A joint-use moorage facility is a marina if: <ul style="list-style-type: none"> <li>• It provides commercial goods or services;</li> <li>• It is of a large scale (more than ten (10) slips);</li> <li>• Moorage is proposed to be leased to upland property owners; or</li> <li>• The proposal includes a boat launching facility other than a ramp.</li> </ul>
Lake	"Lake" means a body of standing water in a depression of land or expanded part of a river, including reservoirs, of twenty (20) acres or greater in total area. A lake is bounded by the ordinary high water mark or, where a stream enters a lake, the extension of elevation of the lake's ordinary high water mark within the stream (RCW 90.58.030(2)(c); WAC 173-20-030; WAC 173-22-030(4)).

Levee	"Levee" means a large dike or embankment, often having an access road along the top, which is designed as part of a system to protect land from floods.
Limited utility extension	"Limited utility extension" means the extension of a utility service that is categorically exempt under Chapter 43.21C RCW for natural gas, electricity, telephone, water or sewer to service an existing use and which will not extend more than twenty-five hundred (2,500) linear feet within the shorelines of the state.
Littoral	"Littoral" means the area of the shore from the OHWM waterward to a depth of two meters below ordinary low water or to the maximum extent of nonpersistent emergent plants.
Littoral drift	"Littoral drift" means the mud, sand, or gravel material moved parallel to the shoreline in the nearshore zone by waves and current.
Live-aboard	"Live-aboard" means a boat or vessel principally used as an over-water residence. Principal use as an over-water residence means that it is occupied in a single location for a period exceeding two (2) months in any one (1) calendar year. Live-aboards are licensed and designed for use as a mobile structure with detachable utilities or facilities, anchoring, and the presence of adequate self-propulsion and steering equipment to operate as a boat.
Local government	"Local government" means any county, incorporated city, or town which contains within its boundaries shorelines of the state subject to Chapter 90.58 RCW.
Log booming	"Log booming" means the placement in or removal of logs and log bundles from the water, and the assembly and disassembly of rafts for waterborne transportation.
Marina	"Marina" means a water-dependent commercial use which consists of a system of piers, buoys, or floats that provides moorage for at least ten (10) boats. For the purposes of this Program, large community moorage facilities, yacht club facilities, and camp or resort moorage areas are also considered marinas. Boat launch facilities and supplies and services for small commercial or pleasure craft are often associated with marinas. Uses accessory to marinas may include fuel docks and storage, boating equipment sales and rental, repair services, public launching, bait and tackle shops, potable water, waste disposal, administration, parking, groceries, and dry goods. "Foreshore marinas" are marinas located waterward of the ordinary high water mark. "Backshore marinas" are marinas located landward of the ordinary high water mark. There are two (2) common types of backshore marinas: <ul style="list-style-type: none"> <li>• A wet-moorage marina that is dredged out of the land artificially creating a basin; and</li> <li>• A dry-moorage marina which has upland storage with a hoist, marine travel lift, or ramp for water access.</li> </ul>
Marine railway	"Marine railway" means a set of steel rails running from the upland area into the water upon which a cart or dolly can carry a boat to be launched.
Marine travel lift	"Marine travel lift" means a mechanical device that can hoist vessels off trailers and transport them into the water. Often associated with dry land moorage.
May	"May" means the action is acceptable, provided it conforms to the provisions of this Program.
Merchantable trees	"Merchantable trees" means live trees, six (6) inches in diameter at breast height (DBH) and larger, unless documentation of current, local market conditions is submitted and accepted by the local jurisdiction indicating nonmarketability. "Merchantable trees" shall not include trees smaller than four (4) inches DBH.
Mining	"Mining" means the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses (WAC 173-26-241).
Mitigation	"Mitigation" means to avoid, minimize or compensate for adverse impacts to shoreline ecological functions and processes.
Mixed-use project	"Mixed-use project" means a development which includes a combination of components, such as residential uses, hotels, marinas, habitat improvement actions, public access provisions, and other uses.
Moorage	"Moorage" means a pier, dock, buoy or float, either fixed or floating, to which boats may be secured.
Mooring buoy	"Mooring buoy" means a floating object anchored to the bottom of a water body that provides tie-up capabilities for boats or watercraft.
Multifamily dwelling	"Multifamily dwelling" means a building containing two (2) or more dwelling units including but not limited to duplexes, apartments, and condominiums.

Must	"Must" means a mandate; the action is required.
Navigable waters	"Navigable waters" means that a body of water is capable or susceptible of having been or being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court (WAC 332-30-106).
Navigational channels	"Navigational channels" means those routes on the waters of Clark County beyond the outer harbor line, commonly used by ships for useful commerce.
Nonconforming structure	"Nonconforming structure" means a structure that was lawfully constructed or established prior to the effective date of the applicable Act or Program provision, and that no longer conforms to the applicable shoreline provisions (WAC 173-27-080(1)).
Nonconforming use	"Nonconforming use" means a use or activity that was lawfully established prior to the effective date of the applicable Act or Program provision, and that no longer conforms to the applicable shoreline provisions. (WAC 173-27-080(1)).
Normal maintenance	"Normal maintenance" means those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition (WAC 173-27-040(2)(b)), except for maintenance that would cause substantial adverse effects to shoreline resources or environment; and, provided, that the replacement of demolished existing single-family residences and their appurtenances is not considered normal maintenance; and further provided, that maintenance of nonconforming structures and developments is subject to the provisions of Sections 40.420.010 and 40.460.250. See also "normal repair." (Amended: Ord. 2015-12-12)
Normal repair	"Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except for repair that would cause substantial adverse effects to shoreline resources or environment; and, provided, that the replacement of a demolished existing single-family residence and its appurtenances is not considered normal repair; and further provided, that repair or replacement of nonconforming uses is subject to Sections 40.420.010 and 40.460.250. See also "normal maintenance." (Amended: Ord. 2015-12-12)
Noxious weeds	"Noxious weeds" means non-native plants which are destructive, competitive, and difficult to control, as defined by the Washington State Noxious Weed Control Board.
Operation	"Operation" means an industrial, commercial, institutional, or residential activity that may be publicly or privately owned and operated, and may involve the use of stationary facilities, equipment, transport vehicles, or transfer equipment. To the extent allowed by state or federal law, this definition includes all federal, state, or local government entities.
Ordinary high water mark	"Ordinary high water mark" means that mark found by examining the bed and banks of a body of water and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or Ecology; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the OHWM adjoining fresh water shall be the line of mean high water (RCW 90.58.030(2)(c) and WAC 173-22-030(6)).
Outer harbor line	"Outer harbor line" means the line located and established by the Department of Natural Resources in navigable waters that delineates the extent of water area that may be leased to private interests.
Over-water structure	"Over-water structure" means a structure or other construction located waterward of the ordinary high water mark (OHWM) or a structure or other construction erected on piling above the surface of the water, or upon a float.
Parking	"Parking" means the temporary storage of automobiles or other motorized vehicles. Accessory parking is that which directly serves an approved shoreline use.
Party of record	"Party of record" means all persons, agencies or organizations who have submitted written comments in response to a notice of application, made oral comments in a formal public hearing conducted on the application, or requested in writing to be a "party of record." Notwithstanding any of the foregoing, no person shall be a party of record who has not furnished an accurate post office mailing address.

Permit	"Permit" means any substantial development, variance, conditional use permit, or revision authorized under Chapter 90.58 RCW.
Permitted use	"Permitted use" means a use which is allowed under the rules and regulations of this Program.
Person	"Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.
Pier	"Pier" means a fixed platform structure supported by piles in a water body that abuts the shore to provide landing for water-dependent recreation or moorage for vessels or watercraft and does not include above-water storage.
Pierhead line	"Pierhead line" means the waterward limit to which open pile work may be constructed as designated by the federal government.
Point	"Point" means a low profile shoreline promontory of more or less triangular shape, the top of which extends seaward. A point may be the wavecut shelf remnant of a headland bluff or a purely accretional deposit which began as a hooked spit and becomes a point by subsequently closing the lagoon gap between the headland and the tip of the hook. Points are characterized by converging berms that normally enclose a lagoon, marsh, or meadow, depending on the point's stage of development.
Port	"Port" means a municipal corporation which is a special purpose district of local government authorized by the Washington State Constitution and regulated by RCW Title 53.
Potentially harmful materials	<p>"Potentially harmful materials" means hazardous materials as defined in this section as well as other materials such as the following which, if discharged or improperly disposed, may present a risk to water resources:</p> <ul style="list-style-type: none"> <li>• Petroleum products including but not limited to petroleum fuel and petroleum based coating and preserving materials;</li> <li>• Oils containing PCBs;</li> <li>• Antifreeze and other liquid automotive products;</li> <li>• Metals, either in particulate or dissolved form, in concentrations above established regulatory standards; flammable or explosive materials;</li> <li>• Radioactive material;</li> <li>• Used batteries; corrosives, acids, alkalis, or bases;</li> <li>• Paints, stains, resins, lacquers or varnishes;</li> <li>• Degreasers;</li> <li>• Solvents;</li> <li>• Construction materials;</li> <li>• Drain cleaners and other toxic liquid household products;</li> <li>• Pesticides, herbicides, fungicides or fertilizers unless applied in accordance with local, state and federal standards;</li> <li>• Steam cleaning and carpet cleaning wastes;</li> <li>• Car wash water;</li> <li>• Laundry wastewater;</li> <li>• Soaps, detergents, ammonia;</li> <li>• Swimming pool backwash;</li> <li>• Chlorine, bromine, and other disinfectants;</li> <li>• Heated water;</li> <li>• Domestic animal wastes;</li> <li>• Sewage;</li> <li>• Recreational vehicle waste;</li> <li>• Animal carcasses, excluding salmonids;</li> <li>• Food wastes;</li> <li>• Collected lawn clippings, leaves or branches;</li> <li>• Trash or debris;</li> <li>• Silt, sediment, or gravel;</li> <li>• Dyes; and</li> <li>• Untreated or unapproved wastewater from industrial processes.</li> </ul>
Priority species	<p>"Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the following criteria:</p> <ul style="list-style-type: none"> <li>• State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the Department of Fish and Wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.</li> </ul>



	<ul style="list-style-type: none"> <li>• Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.</li> <li>• Species of recreational, commercial, and/or tribal importance. Native and non-native fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.</li> <li>• Species listed under the federal Endangered Species Act as proposed, threatened, or endangered (WAC 173-26-020(25)).</li> </ul>
Program (Shoreline Master Program)	"Program" means the comprehensive use plan for the county's shorelands, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program approved under Chapter 90.58 RCW shall be considered an element of Clark County's comprehensive plan. All other portions of the Shoreline Master Program for Clark County adopted under Chapter 90.58 RCW, including use regulations, shall be considered a part of Clark County's development regulations.
Project area	"Project area" means the area which will be directly physically affected by a proposed development.
Provisions	"Provisions" means policies, regulations, standards, guideline criteria, or environment designations.
Public access	"Public access" means the physical ability of the general public to reach, touch and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations (WAC 173-26-221).
Public interest	"Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development (WAC 173-27-030(14)).
Qualified professional	"Qualified professional" means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4).
Recreational use	<p>"Recreational use" means a use and related structures for the provision of recreational activities, as follows:</p> <ul style="list-style-type: none"> <li>• Active recreational use/facility: involves a large number of participants or viewers; requires high levels of maintenance; or that results in high levels of noise. Examples are sports fields, golf courses, skate parks, and motorized boat launches.</li> <li>• Passive recreational use/facility: involves a small number of participants or viewers at any given time; requires low levels of maintenance; or that results in little noise generation. Examples are wildlife viewing areas, picnic tables, hand launch facilities and nonmotorized trails.</li> </ul>
Residential use	"Residential use" means the development of single-family and multifamily dwellings and their normal appurtenances, and the creation of new residential lots through land division.
Restoration	"Restoration" means to re-establish or upgrade impaired ecological processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.
Revetment	"Revetment" means a sloped wall constructed of riprap or other material placed on stream banks or other shorelines to retard bank erosion and minimize lateral stream movement. A revetment typically slopes waterward and has rough or jagged facing. The slope differentiates it from a bulkhead, which is a vertical structure.
Riprap	"Riprap" means a foundation or retaining wall of stones or rock placed along the water's edge or on an embankment to prevent erosion.
Rock weir	See "groin."
Setback	"Setback" means the distance an activity or structure must be located from the ordinary high water mark.
Shall	"Shall" means a mandate; the action must be done.

Shorelands	"Shorelands" means those lands extending landward for two hundred (200) feet in all directions as measured on a horizontal plane from the OHWM; floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways; the full extent of floodplains; and all wetlands and river deltas associated with the streams and lakes and tidal waters that are subject to the provisions of this Program; the same to be designated as to location by Ecology.
Shoreline Administrator	"Shoreline Administrator" means the responsible official or his/her designee.
Shoreline designations	"Shoreline designations" means the categories of shorelines established by this Program in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas.
Shoreline ecological functions	"Shoreline ecological functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem (WAC 173-26-200(2)(c)).
Shoreline jurisdiction	"Shoreline jurisdiction" means all shorelines of the state and shorelands, as defined in RCW 90.58.030 and in Section 40.460.210(A) of this Program.
Shoreline modifications	"Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.
Shoreline restoration project	"Shoreline restoration project" means a project designed to restore impaired ecological function of a shoreline.
Shoreline stabilization	"Shoreline stabilization" means actions taken to address erosion impacts to property and structures caused by processes such as current, flood, wind, or waves. Structural measures include but are not limited to bulkheads, revetments and rip-rap. Nonstructural measures include building setbacks, relocation of structures, and bioengineered methods that use vegetation or wood.
Shoreline substantial development permit	"Shoreline substantial development permit" means the permit required by this Program for uses that are substantial developments in shoreline jurisdiction.
Shorelines	"Shorelines" means all of the water areas of Clark County, including reservoirs, and their associated shorelands, together with the lands underlying them, except: (a) shorelines of statewide significance; (b) shorelines on segments of streams upstream of a point where the mean annual flow is twenty (20) cubic feet per second or less, and the wetlands associated with such upstream segments; and (c) shorelines on lakes less than twenty (20) acres in size and wetlands associated with such small lakes. (RCW 90.58.030(2)(e) and Chapters 173-18, 173-22 and 173-26 WAC).
Shorelines Hearings Board	"Shorelines Hearings Board" means the quasi-judicial body established by the Shoreline Management Act of 1971 to hear appeals by any aggrieved party on the issuance of substantial development permits, conditional uses, variance, or enforcement penalties.
Shorelines of statewide significance	"Shorelines of statewide significance" means a select category of shorelines of the state, defined in RCW 90.58.030(2)(f), where special policies apply, and as described below: <ul style="list-style-type: none"> <li>• Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand (1,000) acres or more, measured at the ordinary high water mark, and their associated shorelands; and</li> <li>• Those natural rivers or segments thereof, downstream of a point where the mean annual flow is measured at one thousand (1,000) cubic feet per second or more, and their associated shorelands.</li> </ul>
Shorelines of the state	"Shorelines of the state" means the total of all "shorelines" and "shorelines of statewide significance" within the state.
Should	"Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and Chapter 173-26 WAC, against taking the action.
Sign	"Sign" means any structure, device, advertisement, advertising device, or visual representation intended to advertise, identify, or communicate information to attract the attention of the public for any reason. Informational signs are noncommercial and intended to communicate safety, directional, navigation, educational, or interpretive information.

Significant vegetation removal	"Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, where it does not affect ecological functions, does not constitute significant vegetation removal (WAC 173-26-020(33)).
Solid waste facility	"Solid waste facility" means any land or structure where solid waste is stored, collected, transported, or processed in any form, whether loose, baled or containerized, including but not limited to the following: transfer stations, landfills, or solid waste loading facilities. Solid waste handling and disposal facilities do not include the following: handling or disposal of solid waste as an incidental part of an otherwise permitted use; and solid waste recycling and reclamation activities not conducted on the same site as and accessory to the handling and disposal of garbage and refuse.
Special flood hazard area	"Special flood hazard area" means the one hundred (100) year floodplain and refers to the land area susceptible to inundation with a one percent (1%) chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood hazard maps as adopted in Chapter 40.420 or a reasonable method which meets the objectives of the Act (WAC 173-26-020(15)).
Stormwater	"Stormwater" means runoff resulting from precipitation or snowmelt, including surface runoff, drainage, and interflow.
Substantial development	"Substantial development" means any development of which the total cost or fair market value exceeds <del>five thousand seven hundred eighteen</del> <u>seven thousand forty-seven</u> dollars (\$ <del>5,7187,047</del> ), or as adjusted by the State Office of Financial Management, or any development which materially interferes with the normal public use of the water or shorelines of the state, except as specifically exempted pursuant to RCW 90.58.030(3)(e) and WAC 173-27-040.
Substantially degrade	"Substantially degrade" means to cause significant ecological impact (WAC 173-26-020(35)).
Surface water	"Surface water" means water that flows across the land surface, in channels, or is contained in depressions in the land surface, including but not limited to ponds, lakes, rivers, and streams.
Terrestrial	"Terrestrial" means of or relating to land as distinct from air and water.
Transmit	"Transmit" means to send from one person or place to another by mail or hand delivery. The date of transmittal for mailed items is the date that the document is certified for mailing or, for hand-delivered items, is the date of receipt at the destination (WAC 173-27-030(16)).
Transportation facility	"Transportation facility" means a road, railway, bridge, and related structures such as culverts, fills, and embankments, for the purpose of moving people or freight using motorized and nonmotorized means of transport, including the relevant essential public facilities identified in WAC 365-196-550.
Upland	"Upland" means generally the dry land area above and landward of the OHWM.
Variance	"Variance" means to grant relief from the specific bulk, dimensional or performance standards set forth in the applicable Master Program and not a means to vary a use of a shoreline. See RCW 90.58.160 and WAC 173-27-030(17).
Vegetation conservation	"Vegetation conservation" means activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and non-native species (WAC 173-26-221).
Vessel	<u>See "boat." A floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency (WAC 173-27-030).</u>

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**Section 12. Effective Date.**

This ordinance shall take effect 14 days after state Department of Ecology approval.

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1 **Section 13. Instructions to Clerk.**

2 The Clerk to the Council shall:

- 3
- 4 1. Transmit a copy of this ordinance to the Washington State Department of Commerce
- 5 within ten (10) days of its adoption pursuant to RCW 36.70A.106.
- 6
- 7 2. Transmit a copy of this ordinance to the Washington State Department of Ecology.
- 8
- 9 3. Transmit a copy of the adopted ordinance to Code Publishing, Inc. forthwith to
- 10 update the electronic version of the County Code.
- 11
- 12 4. Transmit a copy of the adopted ordinance to the Community Development
- 13 Department Director.
- 14
- 15 5. Record a copy of this ordinance with the Clark County Auditor.
- 16
- 17 6. Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW
- 18 36.70A.290, and Clark County Code 1.02.140, and transmit a copy to Community
- 19 Planning.
- 20

21 **Section 14. Roll Call Vote.**

22 The following persons voted in favor of the above ordinance [amendments]:

23 Stewart, Olson, Boldt, Blom, Quiring.

27 The following persons voted in opposition to the above ordinance [amendments]:

31 ADOPTED this 27<sup>th</sup> day of NOV. 2018.

34 Attest:

35 [Signature]  
36  
37 Clerk to the Council

CLARK COUNTY COUNCIL  
FOR CLARK COUNTY, WASHINGTON

By: [Signature]  
Marc Boldt, Chair

40 Approved as to Form Only:  
41 Anthony F. Golik  
42 Prosecuting Attorney

43 By: [Signature]  
44 Christine Cook  
45 Sr. Deputy Prosecuting Attorney

By: \_\_\_\_\_  
Julie Olson, Councilor

By: \_\_\_\_\_  
Jeanne Stewart, Councilor

By: \_\_\_\_\_  
Eileen Quiring, Councilor

By: \_\_\_\_\_  
John Blom, Councilor

