

TOWN OF YACOLT
TOWN ORDINANCE # 328
WETLANDS PROTECTION ORDINANCE

WHEREAS, The Town Council of Yacolt, Washington is in regular session this 18 day of February, 1992, and

WHEREAS, All members of the Town Council have had notice of the time, place and purpose of the meeting of said Council, and

WHEREAS, the States Growth Management Act of 1990 (SHB2929) requires local jurisdictions in fast growing counties like Clark County to develop ways to protect environmentally sensitive lands such as wetlands, and

WHEREAS, wetlands serve a number of important purposes, including: Improve water quality, control flooding, provide fish and wildlife habitat, recharge groundwater, prevent shoreline erosion, provide openspace and recreational opportunities, and serve as areas for natural resource education, and

WHEREAS, recent growth in the Town has increased threats to the community's wetlands, and

WHEREAS, Clark County has recently adopted a comprehensive Wetlands Protection Ordinance that would effectively serve as a model guide for equitably protecting local wetlands,

WHEREAS, The Town Council is of opinion that it would be in the best interest for the Town to adopt this Ordinance:

THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF YACOLT, WASHINGTON as follows:

SECTION 1

The Town Council of Yacolt, Washington does hereby accept and adopt the following:

1. Clark County Wetlands Protection Ordinance No. ¹⁹⁹¹⁻⁰⁸⁻⁴⁵~~1992-02-03~~ Chapter 13.36 of Clark County Code.

This Ordinance shall be in effect after its passage and publication according to the Law. Adopted this 18 day of February, 1992

AYES: Councilmembers Kaski, Messer, Mason, Smith

NAYS: None

ABSENT: Councilmember Robertson,

MAYOR: Paul Groves ATTEST: Dee Christensen

I hereby certify that this is a true and correct copy of Ordinance # 328 as read before the Council and passed on the date herein mentioned and passed according to Law.

Dee Christensen
Clerk/Treasurer

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13.36.100 Purpose.

(1) The board finds that wetlands constitute important natural resources which provide significant environmental functions including: the control of flood waters, maintenance of summer stream flows, filtration of pollutants, recharge of groundwater, and provision of significant habitat areas for fish and wildlife. Uncontrolled urban-density development in and adjacent to wetlands can eliminate or significantly reduce the ability of wetlands to provide these important functions, thereby detrimentally affecting public health, safety, and general welfare.

(2) It is the purpose of this chapter to provide balanced wetland protection measures which:

- (a) Further the goal of no net loss of wetland acreage and functions;
- (b) Encourage restoration and enhancement of degraded and low quality wetlands;
- (c) Provide a greater level of protection for higher-quality wetlands;
- (d) Maintain consistency with federal wetland protective measures;
- (e) Avoid overregulation by limiting regulatory applicability to those development proposals which significantly impact important wetlands; and
- (f) Minimize impacts of wetland regulation on private property rights. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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13.36.110 Applicability.

(1) The provisions of this chapter apply only to the following:

(a) Proposals requiring one (1) of the following permits or approvals (hereinafter referred to as "triggering applications") for a project on a parcel of real property containing a nonexempt wetland or wetland buffer:

(i) Subdivision or short subdivision approval under Title 17,

(ii) Site plan approval under Chapter 18.402A involving the construction of new or expanded commercial, industrial, or multifamily structures; PROVIDED, that the expansion of preexisting structures shall be exempt so long as the magnitude of wetland or buffer intrusion does not increase, and

(iii) Grading permits under Chapter 14.04 for real property, except that grading for construction of a single-family/duplex dwelling or accessory structure where no reasonable upland alternative exists is exempt;

(b) Regulated activity (as defined in Section 13.36.120) in a Category 1, 2, or 3 wetland or its buffer.

(2) The standard provisions of Article II (Sections 13.36.200 through 13.36.260) apply to all triggering applications listed in subsection (1) of this section.

(3) The wetland permit provisions of Article IV (Sections 13.36.400 through 13.36.490) apply if:

(a) The triggering application proposes a regulated activity within a nonexempt wetland or its buffer; or

(b) A regulated activity is proposed within a wetland or buffer subject to a conservation covenant entered into pursuant to Section 13.36.250; or

(c) A regulated activity is proposed within a Category 1, 2, or 3 wetland or its buffer.

(4) Wetlands exempted from this chapter are listed in Section 13.36.130. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 1997-05-30; amended by Sec. 2 of Ord. 1997-09-12; amended by Sec. 5 of Ord. 1998-11-02; amended by Ord. 2000-07-32A)

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13.36.120 Definitions.

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

"Altered," when referring to wetlands, means a wetland of which at least fifty percent (50%) has been graded, drained, devegetated, or replanted with non-wetland plants.

"Anadromous" means fish that migrate up rivers and streams from the ocean to breed in fresh water.

"Board" means the board of county commissioners of Clark County, state of Washington.

"Buffer" means an area that surrounds and protects a wetland from adverse impacts to the functions of a wetland.

"Conservation covenant" means a recorded instrument entered into pursuant to subsection (3) of Section 13.36.250 as a condition of approving a triggering application.

"Department" means the Clark County community development department, development services division.

"Director" means the development services manager, or the manager's designee.

"Emergent wetland" means a wetland with at least thirty percent (30%) of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

"Enhancement" means actions performed to improve the condition of an existing degraded wetland or buffer so that the functions provided are of a higher quality.

"Exotic" means any species of plants or animals that are not native to the watershed.

"Forested wetland" means a wetland with at least thirty percent (30%) of the surface area covered by a canopy of woody obligate, facultative wet, or facultative plants greater than twenty (20) feet in height.

"Functions" means the beneficial roles served by wetlands including the control of flood waters, maintenance of summer stream flows, filtration of pollutants, recharge of groundwater, and provision of significant habitat areas for fish and wildlife.

"Headwaters" means springs, lakes, ponds, or wetlands providing significant sources of water to a stream.

"High intensity land use" means roadways, commercial, industrial, and multifamily (more than four units per parcel) land uses.

"Hydric soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the Wetlands Delineation Manual.

"Hydroperiod" means a seasonal occurrence of flooding and/or soil saturation; it encompasses depth, frequency, duration, and seasonal pattern of inundation.

"Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the Wetlands Delineation Manual.

"Intermittent stream" means surface streams with no measurable flow during thirty (30) consecutive days in a normal water year.

"Isolated wetlands" means those wetlands which:

(a) Are outside of and not contiguous to any one hundred (100) year floodplain of a lake, river (other than the Columbia River), or stream; and

(b) Have no contiguous hydric soil or hydrophytic vegetation or regularly occurring (at least once every five (5) years) surface water connection between the wetland and any lake, river, or stream.

"Minimizing impacts to wetlands or buffers" means:

(a) Using appropriate and best available technology;

(b) Taking affirmative steps to avoid or reduce impacts;

(c) Sensitive site design and siting of facilities and construction staging areas away from regulated

wetlands and their buffers;

(d) Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures, scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities; and

(e) Not jeopardizing the continued existence of endangered, threatened, rare, sensitive, or monitor species as listed by the federal government or the state of Washington.

"Mitigation" means compensating for wetland impacts such that no overall net loss in wetland acreage and functions occurs.

"Native," when referring to plants or plant communities, means those species or communities which are indigenous to the watershed, including extirpated species.

"Normal water year" means a twelve (12) month period (October 1st--September 30th) with average precipitation based upon data from the past fifty (50) years.

"Obligate," "facultative wet," and "facultative" refer to groupings of plants according to their of occurrence in wetlands. Obligate wetland plants almost always (ninety-nine percent (99%) probability) occur in wetlands under natural conditions. Facultative wet plants usually (sixty-seven percent (67%)--ninety-nine percent (99%) probability) occur in wetlands. Facultative plants are equally likely (thirty-four percent (34%)--sixty-six percent (66%) probability) to occur in wetlands or non-wetlands. Such groupings are more fully defined in the Wetlands Delineation Manual.

"Open water," when not specifically defined by the rating criteria, means a proportion of open water to vegetative cover equal to twenty-five percent (25%) to seventy-five percent (75%) of the total wetland area during a majority of a normal water year.

"Regulated activities" include the following activities within a wetland or its buffer:

(a) The removal, excavation, grading, dredging, dumping, discharging, or filling of any material in excess of fifty (50) cubic yards or impacting more than one (1) acre of wetland or buffer, except where undertaken for maintenance (but not construction) of drainage ditches or for emergency utility repair;

(b) The construction of a structure; PROVIDED, that this subsection shall not apply to the reconstruction of damaged or destroyed structures or the construction or expansion of a residential structure or accessory residential structure on a lawfully established preexisting lot. Residential construction proposed within Category 1, 2, or 3 wetlands shall not be exempted if reasonable upland alternative on-site locations exist;

(c) The construction of stormwater facilities; or

(d) The destruction or alteration of wetlands vegetation through clearing, harvesting, intentional burning, or planting of vegetation that would alter the character of a wetland or buffer; PROVIDED, that this subsection shall not apply to the following activities undertaken in a manner which minimizes impacts:

(i) The harvesting or normal maintenance of vegetation in a manner that is not injurious to the natural reproduction of such vegetation,

(ii) The removal or eradication of noxious weeds so designated in Title 7 of this code or other exotic nuisance plants including non-native blackberries,

(iii) Site investigative work necessary for land use application submittals such as surveys, soil logs, and percolation tests,

(iv) The construction of trails which shall be pervious or elevated when located within wetlands,

(v) Emergency fire or utility repair,

(vi) Activities of the mosquito control district,

(vii) Clearing of more than six (6) dead trees or snags per ten (10) acres within any thirty-six (36) month period in any critical area shall require a permit unless such removal is recommended or required in writing by the Department of Labor and Industries, Department of Fish & Wildlife, or the Clark County extension agent, or other authorized agency, or

(viii) Clearing authorized by an approved forest practice permit that is not permitted as a Class IVG or other conversion to a non-forestry use.

"Rural area" means an area not located within an urban growth boundary as shown on the Clark County comprehensive land use plan.

"Scrub-shrub wetland" means a wetland with at least thirty percent (30%) of its surface area covered by woody vegetation less than twenty (20) feet in height as the uppermost strata.

"Stormwater facilities" are as defined in Section 13.29.120.

"Streams" means those areas where surface waters produce a defined channel or bed at least two (2) feet in width between the ordinary high water marks excluding streams and lakes regulated under the state Shorelines Management Act.

"Triggering application" means an application for one (1) of the permits or approvals listed in subsection (1) of Section 13.36.110.

"Urban area" means an area within an urban growth boundary as shown on the Clark County comprehensive land use plan.

"Water-dependent" means a use or a portion of a use which requires direct contact with the water and cannot exist at a nonwater location due to the intrinsic nature of its operations.

"Watershed" means an area draining to a single surface water system as shown on the Clark County wetland watershed map adopted hereby.

"Wetlands" mean those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands also include streams as defined by this section.

"Wetland classes and subclasses" means descriptive classes of the wetlands taxonomic classification system of the United States Fish and Wildlife Service (Cowardin, et al 1978).

"Wetlands Delineation Manual" means the Corps of Engineers Wetlands Delineation Manual (Technical Report Y-87-1) dated January 1987. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 1997-05-30; amended by Sec. 2 of Ord. 1997-09-12; amended by Ord. 2000-07-32A)

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13.36.130 Exempted wetlands.

This chapter shall not apply to the following wetlands:

- (1) Small. Category 2 and 3 wetlands less than two thousand five hundred (2,500) square feet in area and Category 4 wetlands less than ten thousand (10,000) square feet in area;
- (2) Artificial. Wetlands created from non-wetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, stormwater facilities, farm ponds, and landscape amenities; PROVIDED, that wetlands created as mitigation shall not be exempted;
- (3) Prior Converted Cropland. Wetlands recognized by the United States Army Corps of Engineers as prior converted cropland under its Regulatory Guidance Letter 90-7 to the extent consistent with such Corps recognition. Wetlands meeting the Corps' definition of prior converted cropland, but exempt from federal regulation due to their small size (less than one (1) acre), shall be recognized by the director as prior converted crop lands utilizing the definitions, standards and limitations of Guidance Letter 90-7;
- (4) Riparian. Wetlands less than five (5) feet wide above the ordinary high water mark along streams and lakes which are regulated under the State Shorelines Management Act or under Chapter 13.51;
- (5) Marginal. Category 5 wetlands. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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13.36.140 Interpretation.

(1) Except where a contrary intent clearly appears, the provisions of this chapter shall be construed to the maximum feasible extent consistent with the Federal Clean Water Act, 33 U.S.C. Section 1251 et seq., and the rules and guidelines promulgated pursuant thereto.

(2) Nothing in this chapter shall be construed to preclude application of the State Environmental Policy Act in approving applications not listed in Section 13.36.110. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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13.36.200 General.

The standard provisions of Article II of this chapter apply whenever an application is submitted for one of the triggering applications listed in subsection (1) of Section 13.36.110 for a project on a parcel of real property containing a nonexempt (see Section 13.36.130) wetland or wetland buffer; PROVIDED, that triggering grading permits shall not be subject to Section 13.36.250. The standard provisions shall be implemented in conjunction with the processing of the triggering application.

(1) For the purpose of computing the processing limitation period applicable to a triggering application only, the application shall not be deemed fully complete until completion (if required) of the wetland determination pursuant to Section 13.36.220, the wetland delineation pursuant to Section 13.36.230, and the buffer designation pursuant to Section 13.36.240. This subsection shall not be construed in any way to delay vesting under Washington law.

(2) In addition to any notice otherwise required by law for the triggering application, the department shall notify and solicit comments from state and federal agencies having jurisdiction over or an interest in the subject wetlands or buffers. Notice of grading permit applications subject to subsection (1) of Section 13.36.110 shall be given in the same manner as short plat applications.

(3) If a public hearing is held on the triggering application, such hearing will be open to consideration of wetland issues under this chapter. If the only triggering application applicable to a proposal is for a grading permit, a public hearing shall be held by the hearing examiner pursuant to the provisions of Chapter 2.51 if requested in writing by at least twenty (20) or more persons residing within the county within twenty (20) days of the notice provided for in subsection (2) of this section.

(4) Administrative appeals of determinations made under this Article 2 must be filed in conjunction with, and within the limitation period applicable to, an available administrative appeal of the triggering application; PROVIDED, that an aggrieved party may appeal preliminary decisions deciding an exemption, determining or delineating a wetland, determining a buffer, or otherwise finally applying the provisions of this chapter in the same manner, and within the limitation period applicable to, appeals from planning director decisions under Title 18 of this code. (Sec. 1 of Ord. 1992-02-03; amended by Sec. 1 (Att. 1) of Ord. 1998-08-09; amended by Ord. 2000-07-32A)

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13.36.210 Pre-determination.

Prior to submittal of a triggering application, a person may request from the director a written pre-determination of whether wetlands exist on any parcel less than forty (40) acres. The pre-determination shall be binding on the director for a period of three (3) years; PROVIDED, that such pre-determination shall be subject to administrative appeal upon its application in conjunction with a triggering application. The fee for a predetermination is contained in Chapter 6.110. (Sec. 1 of Ord. 1992-02-03; amended by Sec. 7 of Ord. 1997-12-46; amended by Ord. 2000-07-32A)

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13.36.220 Wetland determination.

In conjunction with the submittal of a triggering application, the director shall determine the probable existence of a wetland on the parcel involved in the triggering application. If wetlands or wetland buffers are found to exist on a parcel, a wetland delineation is required. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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13.36.230 Wetland delineation.

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

(2) Information Requirements. Wetland boundaries shall be staked and flagged in the field and a delineation report shall be submitted to the department. The report shall include the following information:

- (a) USGS quadrangle map with site clearly defined;
- (b) Topographic map of area;
- (c) National wetland inventory map showing site;
- (d) Soil Conservation Service soils map showing site;
- (e) Site map, at a scale no smaller than one inch equals one hundred feet (1" = 100'), if practical, showing the following information:
 - (i) Wetland boundaries,
 - (ii) Sample sites and sample transects,
 - (iii) Boundaries of forested areas,
 - (iv) Boundaries of wetland classes if multiple classes exist;
- (f) Discussion of methods and results with special emphasis on technique used from the Wetlands Delineation Manual;
- (g) Acreage of each wetland on the site based on the survey if the acreage will impact the buffer size determination or the project design;
- (h) All completed field data sheets (U.S. Army Corps of Engineers' format for three parameter application) numbered to correspond to each sample site.

(3) Responsibility. The wetland delineation is the responsibility of the applicant. The director shall verify the accuracy of the boundary delineation within ten (10) working days of receiving the delineation report. This review period may be extended when excessively dry conditions prohibit the confirmation of the wetland delineation. If the delineation is found to not accurately reflect the boundary of the wetland, the director will issue a report, within twenty (20) working days of receiving the applicant's delineation report, citing evidence (for example, soil samples) that demonstrates where the delineation is in error. The applicant may then either revise the delineation and submit another report or administratively appeal. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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13.36.240 Buffer designation.

Adjusted wetland buffer width shall be determined by the department in accordance with the rating system and adjustment factors contained in Article III of this chapter. All buffers shall be measured perpendicularly outward from the delineated wetland boundary or, in the case of a stream with no adjacent wetlands, the ordinary high water mark as surveyed in the field. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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13.36.250 Standard requirements.

Any action granting or approving a triggering application shall be conditioned on all the following:

- (1) Marking Buffer During Construction. The location of the outer extent of the wetland buffer shall be marked in the field and such markings shall be maintained throughout the duration of the permit.
- (2) Permanent Marking of Buffer Area. A permanent physical demarcation along the upland boundary of the wetland buffer area shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or hedge row, fencing, or other prominent physical marking approved by the director. In addition, small signs shall be posted at an interval of one (1) per lot or every one hundred (100) feet, whichever is less, and perpetually maintained at locations along the outer perimeter of the wetland buffer approved by the director worded substantially as follows:

Wetland & Buffer --
Please retain in a natural state

- (3) A conservation covenant shall be recorded in a form approved by the prosecuting attorney as adequate to incorporate the other restrictions of this section and to give notice of the requirement to obtain a wetland permit prior to engaging in regulated activities within a wetland or its buffer.
- (4) In the cases of plats, short plats, and recorded site plans, include on the face of such instrument the boundary of the wetland and its buffer and a reference to the separately recorded conservation covenant provided for in subsection (3) of this section. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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13.36.260 Standard requirements--Rural subdivision waivers.

The director shall waive the requirements of this Article II (Sections 13.36.200 through 13.36.250) for any subdivision or short subdivision located in a rural area if the applicant designates development envelopes to be shown on the final plat which are outside of any wetland or buffer. The director may require partial wetland delineation to the extent necessary to ensure eligibility for this waiver. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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13.36.300 General.

(1) The wetland rating system is used in part to determine base buffer widths. The base buffer width is then adjusted based on the buffer type. The wetland and buffer rating systems are also used for mitigation and enhancement options under Article IV, Wetland Permits.

(2) The determination of the specific category of wetland and buffer type for each wetland shall be the responsibility of the department.

(3) A single wetland shall be classified into more than one (1) category if distinct areas exist in the wetland which clearly meet the description of separate categories. Buffers shall also be classified into more than one (1) type when distinct areas exist in the buffer which clearly meet the description for separate types.

(4) Wetlands which are improved and now meet the criteria for a higher category are classified according to the characteristics of the original wetland. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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13.36.310 Wetland rating system.

The rating system contains a general description of each wetland category followed by specific criteria. If the specific criteria conflicts with the general description, the director shall determine the most appropriate classification as applied to a particular site.

(1) Category 1 Wetlands. These are the highest quality and rarest of the wetlands in the county.

Because of their rarity and the unique functions they provide, the risk of degradation to these wetlands must be minimized. Their characteristics include: very valuable for a rare species, a high quality example of a rare wetland type, irreplaceable wetland functions, or impossible to replace within a human lifetime, if at all. These wetlands meet one of the following criteria:

(a) Wetlands verified by a state or federal resource management agency as habitat for species recognized to be endangered or threatened by the U.S. Fish and Wildlife Service, Washington State Department of Wildlife, Washington State Department of Fisheries, or Washington State Department of Natural Resources; or

(b) Sphagnum bogs and fens and forested wetlands where the majority of canopy coverage consists of mature trees eighty (80) years or older for softwoods and fifty (50) years or older for hardwoods; or

(c) Wetlands greater than seven and one-half (7.5) contiguous acres in size and having three (3) or more wetland subclasses one (1) of which is open water; or

(d) Wetlands connected to another habitat area, either upland or aquatic, via a stream or one hundred (100) foot wide vegetated corridor, or surrounded by a minimum of a one hundred (100) foot wide vegetated upland and possessing significant habitat value and diversity as demonstrated by the following characteristics:

(i) A proportion of open water to vegetative cover in dispersed patches where the open water is no greater than sixty percent (60%), and no less than forty percent (40%) of the total wetland area during a majority of a normal water year, and

(ii) At least three (3) wetland subclasses, and

(iii) At least two (2) types of special habitat features which are:

(A) Salmonid rearing areas as demonstrated by the presence of juvenile salmonids,

(B) Snags or trees with dead and dying tops,

(C) Rocky outcroppings or islands, and

(D) Large downed woody debris.

(2) Category 2 Wetlands. These wetlands occur more commonly than Category 1 wetlands but still need a high level of protection. Their characteristics include: habitat for very sensitive or important wildlife or plants, difficult to replace, or extensive wildlife habitat. This category also includes streams or sections of streams with demonstrated spawning habitat for anadromous fish (e.g., salmon and steelhead). These wetlands meet one of the following criteria:

(a) Wetlands verified by a state or federal resource management agency as habitat for sensitive species, extirpated plant species, or species of concern by the U. S. Fish and Wildlife Service, Washington State Department of Wildlife, Washington State Department of Fisheries, or Washington State Department of Natural Resources; or

(b) Forested wetlands outside the urban area which are one (1) acre or greater in size; or

(c) Wetlands where a heron rookery of at least five (5) nests is present; or

(d) Wetlands contiguous with demonstrated spawning habitat for anadromous fish; or

(e) Sections of streams having demonstrated spawning habitat for anadromous fish; or

(f) Wetlands greater than ten (10) contiguous acres in size which have two (2) or more wetland classes one of which is open water; or

(g) Wetlands greater than five (5) contiguous acres in size which have two (2) or more wetland subclasses and open water; or

(h) Wetlands connected to another habitat area, either upland or aquatic, via a stream or one hundred (100) foot wide vegetated corridor, or surrounded by a minimum of a one hundred (100) foot wide vegetated upland and possessing significant habitat value and diversity as demonstrated by the following characteristics:

(i) A proportion of open water to vegetative cover in dispersed patches where the open water is no greater than sixty percent (60%) and no less than forty percent (40%) percent of the total wetland area during a majority of a normal water year, and

(ii) At least two (2) wetland subclasses, and

(iii) At least one (1) of the following special habitat features:

(A) Salmonid rearing areas as demonstrated by the presence of juvenile salmonids,

(B) Snags or trees with dead and dying tops,

(C) Rocky outcroppings or islands, and

(D) Large downed woody debris.

(3) Category 3 Wetlands. These wetlands occur more commonly than Category 1 or 2 and provide important functions such as water quality improvement, flood control, groundwater recharge, or fish and wildlife habitat. They are important for a variety of wildlife species. They are generally difficult to replace and need a moderate level of protection. This category also includes intermittent streams utilized by salmonids (e.g., trout) and all year-around streams. These wetlands meet one of the following criteria:

(a) Wetlands that serve as headwaters of streams and provide either an average annual flow of at least five (5) cubic feet per second or at least twenty percent (20%) of the average annual flow of a stream; or

(b) Streams, both intermittent and year-around, utilized by salmonids; or

(c) Year-around streams, not utilized by salmonids; or

(d) Forested wetlands within the urban area.

(4) Category 4 Wetlands. These wetlands are smaller, isolated, and less diverse vegetatively. It is possible to replace these wetlands and even improve them from a habitat standpoint. Category 4 wetlands do provide important functions and losses must be mitigated. Intermittent streams not utilized by salmonids are also included in this category. These wetlands meet one of the following criteria:

(a) Those portions of wetlands altered by prior legal use or activity which, if left alone, would revert to wetlands providing significant wetland functions;

(b) Wetlands that are the result of regulated man-made drainage facilities that were constructed in natural wetland areas, except artificial wetlands created as mitigation; or

(c) Intermittent streams not utilized by salmonids.

(5) Category 5 Wetlands (Exempted). These are marginal wetlands which provide limited functions in terms of water quality and fish and wildlife habitat. They provide minimal, if any, water quality improvement and the wildlife habitat they provide is undifferentiated from adjacent non-wetland areas. These wetlands meet one (1) of the following criteria:

(a) Isolated wetlands that have only one wetland class and a predominance (ninety percent (90%) or more) of exotic species; or

(b) Wetlands altered by prior legal use or activity which, if left alone, would not revert to wetlands or provide significant wetland functions. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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13.36.320 Base buffer width.

- (1) Category 1 wetland: three hundred (300) feet;
- (2) Category 2 wetland: two hundred (200) feet;
- (3) Category 3 wetland: one hundred (100) feet;
- (4) Category 4 wetland: fifty (50) feet. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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13.36.330 Buffer rating system.

(1) Type A Buffer Criteria.

(a) A non-forested area consisting of a mature, unimpacted naturally occurring native plant community; or

(b) A forested buffer consisting of mature, native vegetation which displays diversity and possesses all the following characteristics:

(i) Multicanopied plant environment,

(ii) A tree canopy with trees greater than twenty (20) feet tall covering seventy-five percent (75%) of the area,

(iii) Three (3) or more species of native trees,

(iv) Three (3) or more species of native shrubs,

(v) Predominance of native plant species,

(vi) Ground surface thoroughly covered with native plant ground covers or a buildup of natural organic debris;

(2) Type B Buffer Criteria. These areas are immature versions of Type A buffers which are expected to mature into Type A buffers and meet all the criteria for Type A buffers within five (5) years. If areas are designed and planted to be this type buffer, then all the following criteria must be met:

(a) New plantings consist exclusively of native plant species,

(b) Shrubs shall be of sufficient size and quantity to provide a multi-layered canopy of shrubs within five (5) years,

(c) Trees shall be planted at a density of five (5) per one thousand (1,000) square feet and be of sufficient size to yield a Type A buffer in ten (10) years;

(3) Type C Buffer Criteria. Buffers that do not meet the criteria outlined for Type A, B, or D;

(4) Type D Buffer Criteria.

(a) Areas with monotypic or no vegetation, or

(b) Areas with a predominance of exotic species. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

Title 13 PUBLIC WORKS

Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.340 Adjusted base buffer width.

- (1) Reduced Width Based on Buffer Quality. The required buffer width shall be decreased based on the quality of the existing buffer. The percentage of decrease from the base buffer width is:
- (a) Type A buffer: forty percent (40%);
 - (b) Type B buffer: thirty percent (30%);
 - (c) Type C buffer: fifteen percent (15%);
 - (d) Type D buffer: zero percent (0%).
- (2) Adjustments Authorized by Wetland Permits. Further adjustments to the required buffer width are authorized by Section 13.36.420 upon issuance of a wetland permit.
- (3) Functionally Isolated Buffer Areas. Areas which are functionally separated from a wetland and do not protect the wetland from adverse impacts due to preexisting roads, structures, or vertical separation, shall be excluded from buffers otherwise required by this chapter.
- (4) Maximum Buffer Area. Except for streams, buffers shall be reduced as necessary so that total buffer area (on- and off-site) does not exceed two (2) times the total wetland area (on- and off-site); PROVIDED, the minimum buffer width at any point shall not be less than fifty percent (50%) of the base buffer widths contained in Section 13.36.320.
- Rural Buffer Areas. Subject to subsection (3) of this section, the required buffer widths for subdivisions and short subdivisions located in rural areas shall be fifty percent (50%) of the base buffer width contained in Section 13.36.320. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

Title 13 PUBLIC WORKS

Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.400 General.

- (1) A wetland permit is required if a triggering application (see Section 13.36.110) proposes a regulated activity (see Section 13.36.120) within a nonexempt wetland (see Section 13.36.130) or its buffer, if a regulated activity is subsequently proposed within a wetland or buffer which is subject to a conservation covenant recorded pursuant to Section 13.36.250, or if a regulated activity is proposed within a Category 1, 2, or 3 wetland or its buffer.
- (2) Standards for wetland permits are provided in Sections 13.36.410, 13.36.415, and 13.36.420.
- (3) All wetland permits require approval of a preliminary and final enhancement/mitigation plan in accordance with the provisions of Section 13.36.430 unless the preliminary enhancement/mitigation plan requirement is waived under the provisions of subsection (2) of Section 13.36.430.
- (4) Wetland permit application, processing, preliminary approval, and final approval procedures are set out in Sections 13.36.440 through 13.36.470.
- (5) Wetland permit variance criteria are contained in Section 13.36.480.
- (6) Provisions for emergency wetland permits are provided by Section 13.36.490. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

Title 13 PUBLIC WORKS

Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.410 Standards--General.

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

- (1) The proposed activity shall not cause significant degradation of hydroperiod, flows, groundwater or surface-water quality, or fish and wildlife habitat;
- (2) The proposed activity shall comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, stormwater management, and on-site wastewater disposal;
- (3) Wetland and wetland buffer impacts shall be minimized. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.415 Standards--Buffer activities.

The following additional standards apply for regulated activities in a wetland buffer:

- (1) Maximum Buffer Reduction. In the case of buffer averaging and buffer reduction via enhancement, the minimum buffer width at any point shall not be less than fifty percent (50%) of the base buffer widths contained in Section 13.36.320;
- (2) Buffer Averaging. The boundary of the buffer zone may be modified by averaging buffer widths. If buffer averaging is used, the following conditions must be met:
 - (a) The total area contained in the buffer after averaging shall be no less than that contained within the buffer prior to averaging, and
 - (b) Averaging will not degrade the functions of the wetland or buffer;
- (3) Buffer Reduction Via Enhancement. Buffers less than the adjusted base width designated pursuant to Section 13.36.340 will be allowed if the following enhancement/mitigation measures are undertaken:
 - (a) Buffer Enhancement. Improving the quality of the buffer such that the buffer meets the criteria for a higher category decreases the base width by the following amounts:
 - (i) Raising buffer from Type D to C or C to B: fifteen percent (15%),
 - (ii) Raising buffer from Type D to B: twenty-five percent (25%),
 - (b) Shielding High Intensity Uses. Shielding the buffer from adjacent high intensity uses shall result in a decrease in such adjusted base buffer width of ten percent (10%). Shielding includes, but is not limited to, berms and permanent solid fences. For commercial and industrial uses, shielding also includes orienting the building so the building itself acts as a shield to the buffer and wetland,
 - (c) Hydrologic Improvement to Wetland. Permanent improvements to the hydrology of a wetland ecosystem, such as removing a ditch that is draining a wetland, shall result in a decrease in the base buffer width of ten percent (10%),
 - (d) Fish and Wildlife Enhancement. Substantial improvements to the fish and wildlife habitat of a wetland or buffer, such as importing snags or meandering a channelized stream, shall result in a decrease in the base width of ten percent (10%),
 - (e) Wetland Enhancement. Improving a wetland by raising it to a higher category decreases the base width by twenty percent (20%). The base buffer width in this case is that required for the original wetland;
- (4) Stormwater Facilities. Stormwater facilities are only allowed in Type C and D buffers, provided the facilities will not degrade the buffer and are designed to blend with the natural landscape. Unless determined otherwise by the director, the following activities shall be considered to degrade a wetland buffer when they are associated with the construction of a stormwater facility:
 - (a) A reduction in buffer type,
 - (b) Removal of trees greater than four (4) inches diameter at four and one-half (4 1/2) feet above the ground or greater than twenty (20) feet in height,
 - (c) Disturbance of plant species that are listed as rare, threatened or endangered by Clark County or any state or federal management agency,
 - (d) The construction of concrete structures other than manholes, inlets, and outlets that are exposed above the normal water surface elevation of the facility,
 - (e) The construction of maintenance and access roads,
 - (f) Slope grading steeper than four to one (4:1) horizontal to vertical above the normal water surface elevation of the stormwater facility,
 - (g) The construction of pre-treatment facilities such as forbays, sediment traps, and pollution control manholes,
 - (h) The construction of trench drain collection and conveyance facilities,
 - (i) The placement of fencing, and

- (j) The placement of rock and/or riprap, except for the construction of flow spreaders, or the protection of pipe outfalls and overflow spillways, PROVIDED that buffer functions for areas covered in rock and/or riprap are replaced;
- (5) Road and Utility Crossings. Crossing buffers with new roads and utilities is allowed provided all the following conditions are met:
 - (a) Buffer functions, as they pertain to protection of the adjacent wetland and its functions, are replaced,
 - (b) Impacts to the buffer and wetland are minimized;
- (6) Other Activities in a Buffer. Regulated activities not involving stormwater management, road and utility crossings, or a buffer reduction via enhancement are allowed in the buffer if all the following conditions are met:
 - (a) The activity is temporary and will cease or be completed within three (3) months of the date the activity begins,
 - (b) The activity will not result in a permanent structure in or under the buffer,
 - (c) The activity will not result in a reduction of buffer acreage, type, or functions,
 - (d) The activity will not result in a reduction of wetland acreage, classification, or functions. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

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Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.420 Standards--Wetland activities.

The following additional standards apply for regulated activities in a wetland:

(1) Avoidance. Unless either a variance is approved pursuant to Section 13.36.480 or the proposed activity would result in an overall net gain in applicable wetland functions with no decrease in wetland acreage, wetland permits shall not be issued for the following:

(a) Activities within wetlands meeting the criteria of subsections (1)(a) or (1)(b) or (2)(c) or (2)(e) or (3)(a) of Section 13.36.310;

(b) Activities within wetlands meeting the criteria of subsections (1)(c) or (1)(d) or (2)(a) or (2)(b) or (2)(d) or (2)(f) or (2)(g) or (2)(h) or (3)(c) or (3)(d) of Section 13.36.310 unless such activities both meet the general standards of Section 13.36.410 and are either for:

(i) Utility or public road and trail uses, or

(ii) Water dependent uses.

(2) Wetland Replacement.

(a) Replacement wetlands shall be located in the same watershed as impacted wetlands;

(b) Unenhanced Concurrent Replacement. The following ratios apply when a wetland is replaced with the same category of wetland and the replacement is accomplished within one (1) year of the wetland impact:

Category 1	6:1
Category 2	3:1
Category 3 (Forested)	3:1
Category 3 (Scrub-shrub)	2:1
Category 3 (Emergent)	1.5:1
Category 4	1.25:1

(c) Unenhanced Pre-Development Replacement. The following ratios apply when a replacement wetland of the same category is created prior to impact to an existing wetland. The replacement wetland must meet the criteria for the appropriate wetland category and provide equal or superior wetland functions for at least one (1) complete growing season:

Category 1	1.5:1
Category 2	1.25:1
Category 3 and 4	1:1

(d) Enhanced Replacement. Replacing or enhancing a Category 3 or 4 wetland such that the new wetland is of higher quality and meets the criteria for a higher category, will result in a reduced replacement ratio. The replacement will be based on a one to one (1:1) replacement ratio which is reduced by twenty percent (20%) for each increase in wetland category. Thus replacing a Category 4 wetland with a Category 2 wetland results in a replacement ratio of six-tenths to one (0.6:1). In other words, six (6) acres of newly created Category 2 wetland can replace ten (10) acres of Category 4 wetland.

(3) Wetland Banking.

(a) Construction, enhancement or restoration of wetlands to use as mitigation for future wetland development impacts in the same watershed is permitted subject to the following:

(i) A wetland permit shall be obtained prior to any mitigation banking. If a wetland permit is not

obtained prior to mitigation bank development, mitigation credit will not be awarded. On projects proposing off-site wetland banking in addition to required wetland mitigation, a separate wetland permit will be required for each activity. The performance and maintenance bond requirements of subsections (3)(c) and (d) of Section 13.36.460 shall not be applicable, provided there are no requests for mitigation credit prior to the county determining the mitigation banking is successful. If mitigation banking is not fully functioning, as defined in the wetland permit, at the time mitigation credit is requested, subsections (3)(c) and (d) of Section 13.36.460 shall apply,

(ii) Federal and state wetland regulations, if applicable, may supersede county requirements;

(b) The mitigation credit allowed will be determined by the county, based on the wetland category, condition and mitigation ratios as specified in subsection (2) of this section. Prior to granting mitigation banking credit, all wetland mitigation banking areas must comply with subsections (2) and (3) of Section 13.36.250, and if applicable subsection (3) of Section 13.36.460;

(c) On projects proposing off-site wetland banking in addition to required wetland mitigation, a separate permit fee will be required for each activity;

(d) Purchase of banked wetland credits is permitted to mitigate for wetland impacts in the same watershed provided the applicant has minimized wetland impacts, where reasonably possible, and the following requirements are met:

(i) Documentation, in a form approved by the prosecuting attorney, adequate to verify the transfer of wetland credit shall be submitted,

(ii) A plat note along with information on the title shall be recorded in a form approved by the prosecuting attorney as adequate to give notice of the requirements of this section being met by the purchase of banked wetland credits.

(4) Special Area Management Plans. (Reserved).

(5) Stormwater Facilities. Stormwater facilities may be constructed in Category 4 wetlands, PROVIDED that the director determines that wetland functions will not be degraded as a result of the facility; PROVIDED FURTHER that stormwater runoff is treated for water quality in accordance with the requirements of Chapter 13.29 prior to discharge into the wetland.

(6) Utility Crossings. Crossing wetlands by utilities is allowed PROVIDED the activity is not prohibited by subsection (1) of Section 13.36.420, Avoidance, and PROVIDED all the following conditions are met:

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

(b) The activity results in no more than a short-term six (6) month decrease in wetland functions;

(c) Impacts to the wetland are minimized.

(7) Other Activities in a Wetland. Regulated activities not involving stormwater management, utility crossings, or wetland replacement are allowed in a wetland, PROVIDED the activity is not prohibited by subsection (1) of Section 13.36.420, Avoidance, and PROVIDED all the following conditions are met:

(a) The activity will not result in a reduction of wetland acreage, classification or functions;

(b) The activity is temporary and will cease or be completed within three (3) months of the date the activity begins. (Sec. 1 of Ord. 1992-02-03; amended by Sec. 8 of Ord. 1997-12-46; amended by Sec. 6 of Ord. 1998-11-02; amended by Ord. 2000-07-32A)

Title 13 PUBLIC WORKS

Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.430 Enhancement/mitigation plans.

(1) General. Enhancement/mitigation plans are required for activities in a buffer or wetland. Content requirements which are inappropriate and inapplicable to a project may be waived by the director upon request of the applicant at or subsequent to the pre-application consultation provided for in subsection (1) of Section 13.36.440.

(2) Preliminary Plan. The purpose of the preliminary plan is to determine the feasibility of the project before extensive resources are devoted to the project. The director may waive the requirement for a preliminary enhancement/mitigation plan when a wetland permit is triggered by a grading permit on real property in the rural area or required without a triggering application (Section 13.36.110). The preliminary enhancement/mitigation plan consists of two (2) parts: baseline information for the site and a conceptual plan. If a replacement wetland is proposed, baseline information for both the original and proposed wetland sites is required.

(a) Baseline information shall include:

- (i) Wetland delineation report as described in subsection (2) of Section 13.36.230,
- (ii) Description and maps of vegetative conditions at the site,
- (iii) Description and maps of hydrological conditions at the site,
- (iv) Description of soil conditions at the site based on a preliminary on-site analysis,
- (v) A topographic map of the site,
- (vi) Assessment of the functional uses of the existing wetland and buffer;

(b) The contents of the conceptual plan shall include:

- (i) Goals and objectives of the proposed project,
- (ii) Description of wetland type to be created,
- (iii) Map showing proposed wetland and buffer. This map should include the base buffer and the proposed buffer,
- (iv) Site plan,
- (v) Discussion and map of plant material to be planted and planting densities,
- (vi) Preliminary drainage plan identifying location of proposed drainage facilities including detention structures and water quality features (e.g., swales),
- (vii) Discussion of water sources for the wetland,
- (viii) Project schedule,
- (ix) Discussion of how the completed project will be managed and monitored,
- (x) Discussion of contingency plans in case the project does not meet the goals initially set for the project.

(3) Final Plan. The contents of the final enhancement/mitigation plan shall include:

(a) Preliminary enhancement/mitigation plan and all conditions imposed on that plan. If the preliminary enhancement/mitigation plan requirement is waived, the final plan shall include the content normally required for the preliminary plan listed in this section under (2)(a), (2)(b)(i), and (2)(b)(ii);

(b) Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the enhancement/mitigation project are being met. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria;

(c) Detailed Construction Plans. Written specifications for the enhancement/mitigation project shall be provided. The specifications shall include: the proposed construction sequence, grading and excavation details, water and nutrient requirements for planting, specification of substrate stockpiling techniques, and planting instructions, as appropriate. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction

techniques or anticipated final outcome;

(d) Monitoring Program. Description of a detailed program for monitoring the success of the enhancement/mitigation project. Monitoring may include, but is not limited to:

(i) Establishing vegetation plots to track changes in plant species composition and density over time,

(ii) Using photo stations to evaluate vegetation community response,

(iii) Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, heavy metals),

(iv) Measuring base flow rates and storm water runoff to model and evaluate water quality predictions, if appropriate,

(v) Measuring sedimentation rates, if applicable, and

(vi) Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity. A protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the project. A monitoring report shall be submitted annually, at a minimum, documenting milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years;

(e) Associated Plans and Other Permits.

(i) Final landscaping plan,

(ii) Final drainage plan,

(iii) Final erosion and sediment control plan;

(f) Evidence of Financial and Scientific Proficiency. A description of how the enhancement/mitigation project will be managed during construction and the scientific capability of the designer to successfully implement the proposed project. In addition, a demonstration of the financial capability of the applicant to successfully complete the project and ensure it functions properly over a five (5) year period. Evidence that required bonding can be obtained;

(g) Contingency Plan. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

Title 13 PUBLIC WORKS

Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.440 Wetland permit--Application.

(1) Pre-Permit Consultation. Any person intending to apply for a wetland permit is encouraged, but not required, to meet with the department during the earliest possible stages of project planning in order to discuss wetland impact avoidance, minimization, compensation, and the required contents of an enhancement/mitigation plan before large commitments have been made to a particular project design. Effort put into preapplication consultations and planning will help applicants create projects which will be more quickly and easily processed.

(2) Applications. Applications for wetland permits shall be made to the department on forms furnished by the department. Unless the director waives one (1) or more of the following information requirements, applications shall include:

(a) Wetland delineations and adjusted standard buffer width designations pursuant to Articles II and III of this chapter;

(b) A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than one inch equals four hundred feet (1" = 400') showing the location, width, depth and length of all existing and proposed structures, roads, stormwater facilities, sewage treatment, and installations within the wetland and its buffer;

(c) The exact sites and specifications for all regulated activities including the amounts and methods;

(d) A proposed preliminary enhancement/mitigation plan meeting the requirements of Section 13.36.430. If the preliminary plan requirement has been waived, a final enhancement/mitigation plan shall be required in its place.

(3) Fees. At the time of application, the applicant shall pay a filing fee pursuant to Chapter 6.110.

(4) Completeness. No later than ten (10) working days after receipt of the permit application the department shall notify the applicant as to the completeness of the application. An application shall not be deemed complete until and unless all information necessary to evaluate the proposed activity, its impacts, and its compliance with the provisions of this chapter have been provided to the satisfaction of the department. Such determination of completeness shall not be construed as an approval or denial of the permit application. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 1997-05-30; amended by Sec. 2 of Ord. 1997-09-12; amended by Sec. 9 of Ord. 1997-12-46; amended by Ord. 2000-07-32A)

Title 13 PUBLIC WORKS

Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.450 Wetland permit--Processing.

(1) Consolidation. The department shall, to the extent practicable and feasible, consolidate the processing of wetland permits with other county regulatory programs which affect activities in wetlands, such as subdivision, grading, floodplain and site plan approval, so as to provide a timely and coordinated permit process. Where no other county permit or approval is required for the wetland activity, the wetland permit shall be processed in accordance with the notice, decision and appeal procedures applicable to a Type II process under Section 18.600.070.

(2) Notification. In addition to notices otherwise required pursuant to subsection (1) of this section, notice of a wetland permit application shall be given to federal and state agencies that have jurisdiction over or an interest in the subject wetlands. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

Title 13 PUBLIC WORKS

Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.460 Wetland permit--Preliminary approval.

(1) Decision Maker. A wetland permit application which has been consolidated with another permit or approval request which requires a public hearing (e.g., preliminary plat) shall be heard and decided in accordance with the procedures applicable to such other request. Any other wetland permit application shall be acted on by the director within ninety (90) days following submittal of a fully complete application; PROVIDED, that such limitation period may be extended with the consent of the applicant. If a decision must be made and there is insufficient information, a denial will be issued.

(2) Findings. A decision preliminarily approving or denying a wetland permit shall be supported by findings of fact relating to the standards and requirements of this chapter.

(3) Conditions. A decision preliminarily approving a wetland permit shall incorporate at least the following as conditions:

(a) The approved preliminary enhancement/ mitigation plan;

(b) Applicable conditions provided for in Section 13.36.250;

(c) Posting of a cash performance bond or other security acceptable to the director in an amount and with surety and conditions sufficient to fulfill the requirements of Section 13.36.430 and, in addition, to secure compliance with other conditions and limitations set forth in the permit. The director shall release the bond upon determining that:

(i) All activities, including any required compensatory mitigation, have been completed in accordance with the terms and conditions of the permit and the requirements of this chapter, and

(ii) Upon the posting by the applicant of a maintenance bond, if applicable;

(d) Posting of a cash maintenance bond or other security acceptable to the director in an amount and with surety and conditions sufficient to guarantee that structures, improvements, and mitigation required by the permit or by this chapter perform satisfactorily for two (2) years for Category 3 and 4 wetlands and six (6) years for Category 1 and 2 wetlands after they have been completed. The director shall release the maintenance bond upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or mitigation have been satisfactorily met for the required period;

(e) Upon forfeiture of a performance or maintenance bond, the proceeds thereof shall be utilized either to corrected deficiencies which resulted in forfeiture or, if such correction is deemed by the county to be impractical or ineffective, to enhance other wetlands in the same watershed.

(4) Administrative Appeal. A consolidated wetland permit decision may be administratively appealed in conjunction with, and within the same limitation period, applicable to the other county permit or approval; PROVIDED, that wetland permits preliminarily issued or denied by the director may be appealed in the same manner, and within the same limitation period, applicable to a Type II process under Section 18.600.070.

(5) Duration. Wetland permit preliminary approval shall be valid for a period of three (3) years from the date of issuance or termination of administrative appeals or court challenges, whichever occurs later, unless:

(a) A longer period is specified in the permit; or

(b) The applicant demonstrates good cause to the director's satisfaction for an extension not to exceed an additional one (1) year. (Sec. 1 of Ord. 1992-02-03; amended by Sec. 1 (Att. 1) of Ord. 1998-08-09; amended by Ord. 2000-07-32A)

Title 13 PUBLIC WORKS

Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.470 Wetland permit--Final approval.

(1) Issuance. The director shall issue final approval of the wetland permit authorizing commencement of the activity permitted thereby upon:

- (a) Submittal and approval of a final enhancement/mitigation plan pursuant to Section 13.36.430;
- (b) Installation and approval of field markings as required by subsection (1) of Section 13.36.250;
- (c) The recording of a conservation covenant as required by subsection (3) of Section 13.36.250;
- (d) The posting of a performance bond as required by subsection (3)(c) of Section 13.36.460;
- (e) The director may waive the requirement for one or both financial guarantees provided that one or more of the following conditions are met:

- (i) The total estimated performance guarantee is less than the equivalent value of the staff time required to manage the financial guarantees for the entire monitoring period,
- (ii) The wetland permit was triggered by a grading permit on real property in a rural area or by proposed work in a Category 1, 2, or 3 wetland without a triggering application and the applicant can demonstrate to the director's satisfaction that posting the required financial guarantees will constitute a significant hardship.

(2) Duration. Wetland permit final approval shall be valid for a period of two (2) years from the date of issuance unless:

- (a) A longer period is specified in the permit; or
- (b) The director grants an extension upon the written request of the original permit holder or successor in title demonstrating to the satisfaction of the director:
 - (i) That the original intent of the permit would not be altered or enlarged by the extension, and
 - (ii) That relevant circumstances and standards have not changed substantially since the permit application, and
 - (iii) That the applicant has complied with the terms of the permit.

(3) Revocation. In addition to other remedies provided for elsewhere, the director may suspend or revoke a permit if the applicant or permittee has not complied with any of the conditions or limitations set forth in the permit, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the permit. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

Title 13 PUBLIC WORKS

Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.480 Variance.

(1) If an applicant for a wetland permit demonstrates to the satisfaction of the approval authority that application of the standard of this article would preclude all reasonable economic use of the parcel, a variance to such standards shall be granted if the applicant also demonstrates all of the following to the satisfaction of the approval authority:

- (a) That no reasonable use with less impact on the wetland and its buffer is possible;
- (b) That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to wetlands and wetland buffers;
- (c) That the proposed activities will result in minimum feasible alteration or impairment to the wetland's functional characteristics and its existing contours, vegetation, fish and wildlife resources, and hydrological conditions;
- (d) That disturbance of wetlands has been minimized by locating any necessary alteration in wetland buffers to the extent possible;
- (e) That the proposed activities will not jeopardize the continued existence of endangered, threatened, rare, sensitive, or monitor species as listed by the federal government or the state of Washington;
- (f) That the proposed activities will not cause significant degradation of groundwater or surface water quality;
- (g) That the proposed activities comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
- (h) That there will be no material damage to nearby public or private property and no significant threat to the health or safety of people on or off the property; and
- (i) That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of the ordinance codified in this chapter.

(2) Notice of a wetland variance request shall be given in conjunction with the notice of any consolidated permit application; PROVIDED, that if there is no consolidated permit application or if such application does not require a public hearing, the variance request shall be scheduled for hearing before the Clark County land use hearing examiner upon the same notice as is provided for preliminary plat applications pursuant to Chapter 17.301. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)

Title 13 PUBLIC WORKS

Chapter 13.36 WETLAND PROTECTION ORDINANCE

13.36.490 Emergency wetland permit.

(1) Authorization. Notwithstanding the provisions of this chapter or any other laws to the contrary, the director may issue prospectively or, in the case of imminent threats, retroactively a temporary emergency wetlands permit if:

(a) The director determines that an unacceptable threat to life or loss of property will occur if an emergency permit is not granted; and

(b) The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this act and other applicable laws.

(2) Conditions. Any emergency permit granted shall incorporate, to the greatest extent practicable feasible but not inconsistent with the emergency situation, the standards and criteria required for non-emergency activities under this act and shall:

(a) Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety (90) days; and

(b) Require, within this ninety (90) day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the ninety (90) days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

(3) Notice. Notice of issuance of an emergency permit shall be published in a newspaper having general circulation in Clark County not later than ten (10) days after issuance of such permit.

(4) Termination. The emergency permit may be terminated at any time without process upon a determination by the director that the action was not or is no longer necessary to protect human health or the environment. (Sec. 1 of Ord. 1992-02-03; amended by Ord. 2000-07-32A)