EXHIBIT "A"

Edit note: double underlines and ~~single strike outs~~ are effective June 20, 2006. Section 40.440.040.A is effective December 31, 2006. Single underlines are effective July 11, 2007. Deletions effective July 11, 2007 are noted individually in the text.

40.440 HABITAT CONSERVATION

40.440.010 INTRODUCTION

A. Purpose.

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

1. These purposes are to be carried out by reviewing impacts of proposed activities within designated habitat areas, and through the development of education, outreach and incentive programs. Review under this chapter shall be based on best available science and the mandates of the Washington Growth Management Act, and shall include consultation with the Washington Department of Fish and Wildlife (WDFW). The county shall emphasize education and voluntary conservation options prior to regulatory enforcement.

2. Within areas designated by this chapter, development or clearing activities which degrade habitat should generally be avoided where possible. However, activities listed as exempt in this chapter can be undertaken in habitat areas without additional review. Activities not listed as exempt can be undertaken following county review if they do not substantially diminish the habitat functions and values present.

3. It is the intent of the board that this chapter be administered with flexibility and attention to site-specific characteristics.

4. The provisions of this chapter dealing with existing agricultural activities are designed to balance conflicting Growth Management Act goals to preserve both agricultural uses and habitat areas, and recognize:

a. That the maintenance and enhancement of natural resource-based industries, including agriculture, is a goal of the state Growth Management Act;

b. That any regulation should be consistent with the "right to farm" provisions in Chapter 9.26 of this Code;

c. That agricultural lands can provide habitat;

d. That habitat protection must relate to the baseline of existing functions and values given historic agricultural practices, rather than seeking to restore pre-agricultural conditions;

e. That, since agricultural activities are dynamic, habitat functions and values can be expected to fluctuate during the course of an agricultural cycle, which fluctuation must be considered in identifying existing functions and values; and

f. That it is expected that continuation of existing agriculture will not degrade existing functions and values unless sediment, nutrients, or chemicals are allowed to enter streams, or existing beneficial canopy in close proximity to streams is significantly degraded;

B. Applicability.

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

a. Development activities are those proposals already subject to existing county land division, building, grading or other review processes.

b. Non-development clearing activities are proposals which are not otherwise subject to county review, but involve the alteration or removal of vegetation in designated habitat areas.

2. Activities Adjacent to Certain Designated Habitat Areas. Proposed new single-family residential development occurring immediately outside but within three hundred (300) feet of designated priority species polygons or within one hundred (100) feet of designated non-riparian priority habitat polygons shall require consultation with ~~the Washington Department of Fish and Wildlife (~~WDFW~~)~~ prior to issuance of a development permit. In such cases, further review under this chapter is not required unless WDFW finds that there are potential adverse impacts. Agricultural activities adjacent to designated agricultural riparian areas are subject to Section 40.440.040(B). Other proposed land divisions and nonresidential development adjacent to designated wildlife sites shall be subject to SEPA as normally required by Chapter 40.570, (State Environmental Policy Act), and mitigative measures established if there are adverse impacts to the adjacent designated habitat areas.

3. Exempt Activities.

a. All proposed activities outside designated habitat areas are exempt from review under this chapter, except where noted in Section 40.440.010(B)(2) and 40.440.040(B).

b. Within designated habitat areas exempt activities are listed in Section 40.440.010(D). These do not require review.

c. All other ~~P~~proposed activities within habitat areas which are not consistent with an approved stewardship plan or subject to 40.440.040 shall be subject to the provisions of Section 40.440.~~010~~ 020~~(D)~~.

C. Habitat Areas Covered by This Chapter.

1. Categories. This chapter shall apply to nonexempt activities as defined in Table 40.440.010-1 that are proposed within the following habitat areas:

a. Riparian Priority Habitat. Areas extending outward on each side of the stream (as defined in section 40.100.070, Definitions) from the ordinary high water mark to the edge of the one hundred (100) year floodplain, or the following distances, if greater:

(1) DNR Type ~~1 and 2~~ S waters, two hundred fifty (250) feet;

(2) DNR Type ~~3~~ F waters, two hundred (200) feet;

(3) DNR Type ~~4~~ Np ~~and 5~~ waters, one hundred ~~fifty (150)~~(100) feet.

(4) DNR Type Ns waters, seventy five (75) feet.

~~Type 1 – 5 definitions based on WAC 222-16-031. Erosion gullies or rills, and streams which are manmade,less than six (6) inches wide or not having a defined bed and/or bank are not included.~~ Water types are defined and mapped based on WAC 222-16-030, (Forest Practices Rules). Type S streams include shorelines of the state and have flows averaging 20 or more cubic feet per second; Type F streams are those that are not Type S but still provide fish habitat; and type N streams do not have fish habitat and are either perennial (Np) or seasonal (Ns). All streams are those areas where surface waters flow sufficiently to produce a defined channel or bed as indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. Ns streams must connect to another stream above ground. Seasonal or intermittent streams are surface streams with no measurable flow during thirty consecutive days in a normal water year.

b. Other Priority Habitats and Species (PHS). Areas identified by and consistent with ~~the Washington Department of Fish and Wildlife~~ WDFW priority habitats and species criteria, including areas within one thousand (1,000) feet of individual species point sites. The county shall defer to ~~the Washington Department of Fish and Wildlife~~ WDFW in regards to classification, mapping and interpretation of priority habitat species.

c. Locally Important Habitats and Species. Areas legislatively designated and mapped by the county because of unusual or unique habitat warranting protection because of qualitative species diversity or habitat system health indicators. This subsection shall not apply to areas which have not been designated on official mapping. The criteria for mapping of these areas are that they possess unusual or unique habitat warranting protection because of qualitative species diversity or habitat system health indicators. Recommendations for mapping areas meeting these criteria may be submitted by any person or group, and shall be reviewed annually by the county in conjunction with the plan amendments docket process as specified by Section 40.560.030, (Amendments Docket). Notice of any such recommendations deemed to merit formal consideration shall be provided to impacted property owners pursuant to Section 40.510.030(E)(3), (Type III Process). Such recommendations will not be reviewed as part of individual development requests.

2. Mapping.

a. The above habitat areas are mapped on a countywide basis in the adopted "Priority Habitats and Species Map." Maps are on file in the department and are available for public viewing and circulation. Further distribution of mapped information and notification to potentially impacted property owners will be completed as indicated in Sections 40.440.020(D)(1) and (E)(1).

b. Maps of individual locations of sensitive, threatened, or endangered wildlife species are maintained separately. Under law, this information is not available for widespread public distribution unless authorized by the ~~Washington Department of Fish and Wildlife~~ WDFW. However, property owners may obtain all existing information for their properties upon request.

c. Official maps shall be updated by the county as warranted by new information using the annual review process.

3. Best Available Science. Definitions and maps of habitat areas are based on best available science, as defined in WAC 365-195-905. (Criteria for determining which information is the "best available science") and described in the following documents:

   a. 1999 Washington Department of Fish and Wildlife Priority Habitats and Species List;

   b. 1997 Management Recommendations for Washington's Priority Habitats;

   c. The list of best available science references as maintained by the responsible official; and

   d. Associated GIS data files maintained by Clark County Department of Assessment and GIS.

   Best available scientific data supporting this chapter may be updated and/or re-evaluated as part of future ~~UDC~~ Title 40, (Uniform Development Code) amendments.

4. Determining Site Specific Applicability. In the event of inconsistencies, official habitat area definitions shall prevail over countywide maps in determining applicability of this chapter. The county shall follow the recommendations of ~~the Washington Department of Fish and Wildlife~~ WDFW in the interpretation of site-specific conditions as they relate to the definition of priority habitat and species.

D. Activities Reviewed Under This Chapter.

This chapter applies to activities within designated priority and locally important habitat areas as described in Table 40.440.010-1.

Table 40.440.010-1. Exempt and Reviewed Activities		
Proposal	Is a clearing review required?	Are any additional fees or review timelines required?
Land division or lot reconfiguration entirely outside habitat areas, except as subject to 40.440.010(B)(2)	No. Exempt	Fees pursuant to Chapter 6.~~130~~110A.
Land division or lot reconfiguration containing habitat areas, except as subject to 40.440.010(B)(2)	Exempt if impacted lots establish building and clearing envelopes outside of habitat	Fees pursuant to Chapter 6.~~130~~110A. Adjustment to allow smaller lots necessary for critical lands protection can be provided without additional fees if consistent with overall zoning density as per Section 40.440.020 (C)(1)
Any activities on lots not in habitat areas, except as subject to 40.440.010 (B)(2)	Exempt	None
Any activities on portions of lots not containing habitat areas, except as subject to 40.440.010 (B)(2)	Exempt	None
Remodeling, or replacement ~~or expansion~~, not to exceed ~~twenty-five percent (25%) of~~ the 1997 footprint, of existing homes or ~~existing accessory~~ buildings inside habitat areas. ~~Home remodels, replacements or expansions of up to five hundred (500) square feet, or mobile home replacements of single-wide with double-wide models are also~~	Exempt	None

Table 40.440.010-1. Exempt and Reviewed Activities		
~~exempt~~		
~~Farming, forestry or vegetation removal activities inside existing yards, areas of existing agricultural use, or existing cultivated portion of habitat areas~~ Maintenance of existing yards and landscaping in habitat areas	Exempt	None
~~Clearing authorized by forest practices applications other than conversions in habitat areas.~~ Forest practices in habitat areas that are regulated by the Washington Department of Natural Resources under the Forest Practices Rules or regulated under Clark County Code Section 40.260.080, Forest Practices, except conversions or conversion option harvest plans (COHP's)	Exempt	None
Existing agricultural uses within habitat areas *Edit note: This exemption expires on July 11, 2007*	Exempt	None
Emergency clearing to abate immediate danger to persons or property. For emergency clearing of hazard trees, remove only that portion of a hazard tree as is minimally necessary to remediate the hazard. Cut wood should be left in the habitat area	Exempt	None
Clearing necessary for the emergency repair of utility or public facilities, provided that notification of emergency work that causes substantial degradation to functions and values is reported in a timely manner.	Exempt	None
Clearing for operation, maintenance or repair of existing utilities or public facilities that does not further increase the impact to, or encroach further within the habitat area	Exempt	None
~~Fire hazard clearing recommended by fire marshal, or consistent with written fire marshal or fire chief guidelines in habitat areas~~	~~Exempt~~	~~None~~
Clearing of defined nuisance vegetation in habitat areas which utilizes methods that minimize disturbance of soils and non-nuisance vegetation. Replanting with native vegetation should be pursued to prevent re-infestation	Exempt	None
Clearing as minimally necessary for placement of fencing, private wells, septic systems or individual lot sewer, water, electrical or utility connections in habitat areas, where practical alternatives do not exist	Exempt	None
Clearing as minimally necessary for stream bank restoration, for native replanting or enhancements in	Exempt	None

Table 40.440.010-1. Exempt and Reviewed Activities		
habitat areas		
Clearing as minimally necessary for routine road maintenance activities in habitat areas consistent with Regional Road Maintenance ESA Program Guidelines	Exempt	None
Clearing as minimally necessary for soil, water, vegetation or resource conservation projects having received an environmental permit from a public agency in habitat areas	Exempt	None
Clearing as minimally necessary for creating a 4-foot or narrower path using natural, wood-based, or ~~gravel~~ vegetated pervious surfacing in habitat areas	Exempt	None
Clearing as minimally necessary for surveying or testing in habitat areas	Exempt	None
Clearing or development in riparian habitat areas which is at least one hundred (100) feet from the waterline and separated by a continuous public or private roadway serving three (3) or more lots	Exempt	None
Non-development clearing activities in habitat areas consistent with a recorded stewardship plan for which any mitigation specified in the plan is timely completed	Exempt	None
Existing agricultural uses within non-riparian habitat areas	Exempt	None
Existing agricultural uses within riparian habitat areas	Reviewed under section 40.440.040B.1.b	None
New home or other construction in habitat areas	Review required	No additional timelines. Applicable review (building permit, etc.) must comply with ordinance standards. Fees pursuant to Title 6
All other vegetation clearing in habitat areas	Review required	Fees pursuant to Title 6. Applicable review, if any, must comply with ordinance standards. If no other review involved, clearing request will be reviewed administratively

40.440.020 STANDARDS AND NONREGULATORY MEASURES

A. Approval Criteria.

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

1. Intent. Designated habitats are to be protected through avoidance or reduction of ~~most~~ the impacts of activities. This section provides standards for the review of proposed nonexempt activities within designated habitat areas.

2. Basic Criteria. Applicants proposing activities subject to this chapter shall demonstrate that the activity:

   a. Substantially maintains the level of habitat functions and values as characterized and documented using best available science; and

   b. Minimizes habitat disruption or alteration beyond the extent required to undertake the proposal.

3. Mitigation Measures.

   a. Mitigation measures may be established pursuant to the above basic criteria.

   b. Disrupted functions and values shall be mitigated on-site as a first priority, and off-site thereafter.

   c. An up-to-date science-based guide such as the "Clark County Guide to Best Management Practices for Permitted Development in Habitat Areas" should be used to guide on-site mitigation. Off-site mitigation should be guided by applicable watershed, fish recovery, sub-basin or other science-based plans. Any science used to guide mitigation actions, whether on-site or off-site must meet the criteria and characteristics of best available science listed in WAC 365-195-905, (Criteria for determining which information is the "best available science"), or the state standards in effect at the time of application.

   d. Subject to individual circumstances, potential mitigation measures may include, but are not limited to the following:

      ~~a.~~(1) Avoiding the impact all together by not taking a certain action or parts of an action;

      ~~b.~~(2) Exploring alternative on-site locations to avoid or reduce impacts of activities;

      ~~c.~~(3) Preserving important vegetation and natural habitat features by establishing buffers or by limiting clearing or alteration;

      (4) Replacing invasive exotic plants with native species (refer to the Clark County Native Plant Communities Guide or other relevant publication for guidance);

      (5) Prohibiting introduction of invasive plant species in habitat areas;

      ~~d.~~(6) Enhancing, restoring or replacing vegetation or other habitat features and functions. In riparian areas, this may include ~~buffer~~ riparian zone averaging as specified in Section 40.440.020(C)(3);

      (7) Using native plants where appropriate when planting within habitat areas (refer to the Clark County Native Plant Communities Guide or other relevant publication for guidance);

      ~~e.~~(8) Managing access to habitat areas, including exclusionary fencing for livestock if needed;

      (9) Stream crossings:

         (a) Using existing stream crossings whenever a review of suitability, capacity, access and location, habitat impacts of alternatives, maintenance, liability and economics indicates the existing crossing is feasible;

(b) Constructing new stream crossings, when necessary, in conformance to the Water Crossing Structure Standards in WAC 220-110-070, (Hydraulic Code Rules), which are incorporated by reference;

f.(10) Seasonally restrictioning on construction activities;

g.(11) Implementing best management practices and integrated management practices;

h.(12) Monitoring or review of impacts and assurance of stabilitation of the area;

i.(13) Establishing performance measures or bonding;

j.(14) Establishing conservation covenants and other mechanisms to insure long-term preservation or maintenance of mitigation actions;

(15) Utilizing low impact development techniques;

(16) Promoting water quality by limiting the use of lawn and garden chemicals in habitat areas; and/or

(17) Avoiding topsoil removal and minimizing topsoil compaction.

k.(18) Compensating for on site impacts through off-site mitigation only when inside the unincorporated area, as close as practicable to the site, and when all reasonable on-site mitigation alternatives have been exhausted. Off-site mitigation shall be functionally equivalent, be reviewed on a case-by-case basis in consultation with the Washington Department of Fish and Wildlife, and shall delegate adequate enforcement authority to the county, as approved by the Prosecuting Attorney's Office. For riparian habitat, off-site mitigation must also be located within the same watershed. Public regional development activities reviewed and approved by federal or state agencies shall be exempt from the geographic restrictions of this subsection. Providing off-site mitigation, subject to the following conditions:

(a) When the combination of on-site and off-site mitigation fails to substantially maintain functions and values within the stream system, the application shall be denied;

(b) All reasonable on-site mitigation alternatives have been exhausted;

(c) Off-site mitigation is functionally equivalent to the impacts;

(d) Off-site mitigation is appropriate in size and scale to the impacts that are not fully mitigated on the original site;

(e) Proposed off-site mitigation is reviewed by the county on a case-by-case basis with input from WDFW;

(f) Off-site mitigation may be in the form of:

i. The purchase of credits from a permitted habitat bank, or

ii. A voluntary contribution to the established Cumulative Effects Fund for the watershed within which the project is located, or

iii. A specific mitigation project :

[a] Specific off-site mitigation projects for riparian habitat areas must be located within the same watershed as the original site.

[b] Specific off-site mitigation projects for all other habitat areas must be in an unincorporated area as close as possible to the original site.

[c] Public regional development activities that are reviewed and approved by federal and state agencies are exempt from these geographic restrictions;

(g) Adequate enforcement authority must be delegated to the county, as approved by the Prosecuting Attorney;

4. The responsible official shall approve, approve with conditions or deny proposals based on compliance with the criteria and the adequacy of proposed mitigation measures to ensure compliance, and applicable reasonable use assurances of Section 40.440.020(B).

5. The responsible official shall retain final authority for such determinations, which shall be issued consistent with the review timelines of Chapter 40.510, (Type I, II, III, and IV Processes), and shall be based on best scientific information and analysis available within those timelines.

6. The responsible official shall consult with and substantially follow the resulting recommendations of ~~the Washington Department of Fish and Wildlife~~ WDFW, unless alternative determinations are supported by scientific analysis.

B. Reasonable Use Assurances. ~~The following assurances shall apply in implementing the standards of this chapter:~~ The county assures property owners of the following, as long as impacts are mitigated to the maximum extent practicable, permit conditions limiting locations and requiring mitagations may be imposed, and erosion control measures required:

1. ~~The standards of this chapter shall not be used to preclude the placement of a single-family residence on an otherwise legally buildable lot of record. Standards may be applied on established properties to limit the proposed location of structures and proposed removal of vegetation.~~ This chapter shall not be used to prohibit:

a. Placement of a single-family residence and residential accessory structures on an otherwise legally buildable lot of record;

b. Expansion of a home existing prior to 1997, not to exceed 25% of the 1997 footprint;

c. Replacement of a single-wide mobile home with another dwelling, not to exceed twice the footprint of the original mobile home; or

d. Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or fire chief guidelines.

2. This chapter shall not be used to deny all reasonable economic use of private property. These criteria must be met in order to verify denial of all reasonable economic use:

a. The application of this chapter would deny all reasonable economic use of the property;

b. No other reasonable economic use of the property has less impact on the habitat area;

c. Any habitat alteration is the minimum necessary to allow for reasonable economic use of the property; and

d. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after May 30, 1997.

3. ~~The standards of t~~This chapter shall not be used to deny or reduce the number of lots of a proposed rural land division allowed under applicable zoning density.

4. This chapter shall not be used to deny a development proposal from a public agency or public utility, if:

a. There is no practical alternative to the proposed project with less impact on the habitat area;

b. The ability of the public agency or utility to provide services to the public would be unreasonably restricted; and

c. The application is approved through a Type III process pursuant to Section 40.510.030, (Type III Processes). Fees are subject to the Type III Variance fee schedule in Chapter 6.110A.010, (Development Fees).

C. The following regulatory alternatives or incentives shall apply in implementing the standards of this chapter:

1. Proposed land divisions involving critical areas may transfer density as follows:

a. Rural area land divisions may utilize the cluster provisions of 40.210.020(D), (Rural Cluster Development).

b. Urban area land divisions may utilize density transfer provisions of Section 40.220.010(C)(5), (Density Transfer).

2. Existing abutting nonconforming lots under common ownership may be reconfigured under the standards of Section 40.210.010(D), (Non-conforming Lots).

3. Required riparian zone widths on clearing proposals on existing lots may be varied through the use of internal riparian zone averaging. Subject to review under this chapter, for clearing proposals on existing lots, portions of the riparian zone can be reduced up to fifty percent (50%) from the normal standards of this chapter if riparian zone widths are correspondingly increased elsewhere within the applicant parcel, such that the overall size and function and values of the riparian zone are maintained in the parcel. Riparian zone averaging proposals must clearly identify the existing riparian functions and values on the parcel and any impacts that the proposed averaging may have upon them.

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

D. Individual Stewardship Plans.

1. To encourage educational and voluntary conservation measures, the county shall notify property owners potentially impacted by wildlife habitat area regulations, and shall assist any owners interested in developing individual stewardship plans which will establish parameters and guidelines for future on-site activities in designated habitat areas. In addition, property owners may consult with WDFW and other agencies or private groups or individuals to develop the scientific information for their stewardship plans.

2. The county shall provide information on best management practices and other educational and explanatory materials to property owners. The county shall coordinate with ~~the Washington Department of Fish and Wildlife~~ WDFW and other agencies or private groups with expertise in wildlife or land management in the development and distribution of these materials.

3. The county shall work cooperatively with interested property owners to establish and record a notice of stewardship plan. Stewardship plans should at a minimum include the following:

   a. Mapping of existing structures, roads, driveways and known utilities, and property lines;

   b. Mapping of existing designated habitat areas, water bodies, known wetlands, vegetation and wildlife types, and yards or cultivated areas;

   c. Identification of functions and values associated with the habitat areas, water bodies, wetlands and vegetation and wildlife;

   ~~c~~d. Mapping and written description of future activities on the site including time frame; and

   ~~d~~e. Mapping and description of the protective and mitigative measures~~, if any,~~ for the identified functions and values to be undertaken as part of plan.

4. Notice of stewardship plans shall be recorded and shall run with the land unless and until a request for revocation or modification has been submitted by the property owner and approved by the county. The county shall approve all such requests unless there are any uncompleted mitigation measures which were agreed to in the stewardship plan as necessary to compensate for clearing of habitat areas undertaken pursuant to the plan. Revocation may trigger the tax penalties associated with withdrawal from an open space taxation program, if applicable.

5. Property owners with approved stewardship plans are exempt from regulation under this chapter for non-development proposals which are consistent with the stewardship plan and do not otherwise require county building, grading, or other review.

6. Stewardship plans shall be approved under criteria in Section 40.440.020(A).

7. Appeals may be filed under the provisions of Chapter 40.510, (Type I, II, III & IV Processes).

E. Nonregulatory Implementation Measures.

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

1. Education and Outreach Measures.

   a. Notify property owners within critical areas;

   b. Develop clear and understandable manuals explaining recommended best management practices for typical rural and urban land owner activities;

   c. Provide seminars and presentations for interested owners and groups;

   d. Coordinate efforts with existing conservation, stewardship or small resource user groups with expertise in wildlife or habitat area land management issues;

   e. Expand local wildlife inventory information through baseline survey of local habitats and species;

   f. Provide cooperative outreach to individual property owners in critical areas who wish to develop stewardship plans to establish parameters for future activities involving clearing on their property.

2. Incentive Measures.

   a. Create and/or expand incentives through the current use taxation program;

   b. Develop and/or expand land acquisition programs;~~.~~

c. Develop non-monetary incentives for project proponents to exceed mitigation requirements.

F. Specific Activities.

Special procedures and standards apply to certain specific activities as provided for in Section 40.440.040.

G. Habitat Banking. (reserved)

40.440.030 ADMINISTRATION

A. Coordination with Other Permits.

Development proposals requiring review under this chapter which involve other county permits shall be reviewed under the timelines of the existing review without additional cost; provided, that application information required under this chapter (Section 40.440.030(C)) is submitted and approval criteria (Section 40.440.020(A)) are addressed.

B. Non-Development Proposals.

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

C. Submittal Information.

1. Applications for ~~Proposed~~ nonexempt activities requiring review under this chapter shall be submitted with ~~applications as follows:~~ the following:

   a. Development applications involving other county review shall submit application materials according to specifications of other reviews involved, and shall also include a completed proposed habitat activity form.

   b. Non-development applications not involving other county review shall be submitted with a completed proposed habitat activity form.

2. Where required by state law, a completed environmental checklist pursuant to the State Environmental Policy Act (SEPA) shall also be submitted unless categorically exempted by the SEPA Rules.

3. The county shall develop and make available proposed habitat activity forms. These forms shall clearly and concisely provide direction to applicants on what information is needed in the following areas:

   a. Name, address, location, and basic tracking information for the application;

   b. Existing conditions information, natural and manmade features on the site;

   c. Description and mapping of proposed activities and how this would change existing conditions on the site.

4. Proposals under this chapter are encouraged but not required to include a report or other assistance from a biologist, botanist, ecologist, or other similarly qualified or trained professional.

5. Persons interested in establishing an individual stewardship plan for future activities as specified in Section 40.440.020(D) should contact the department.

D. Permit Authority and Timelines.

1. An approval granted under this chapter shall remain valid until proposed activities are undertaken and completed. An approved permit not acted upon shall be valid for two (2) years, and upon showing of good cause, may be extended for an additional twelve (12) months.

2. Approval for habitat area activities as part of other county development approvals shall be valid for a time period specified by the other permit(s) involved.

3. Approved stewardship plans shall remain valid as specified in Section 40.440.020(D).

E. Appeals.

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

F. Enforcement.

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

1. Applications for county land use permits on sites that have been found to be in violation of this chapter pursuant to the process set forth in Title 32 of this code, (Enforcement), shall not be processed until three (3) years after the completion of clearing~~;~~. ~~provided, that~~ ~~t~~The three (3) years may be reduced upon approval and implementation of a restoration or mitigation plan, to include the following:

a. A plan for the replanting of trees, brush and groundcover of a type and distribution comparable to that existing prior to clearing; provided, that the responsible official may approve alternative species in order to promote expedient soil stabilization, and may require additional tree planting as mitigation for the loss of mature trees; and

b. A monitoring plan to assure at least a ninety percent (90%) survival rate of re-established plantings after at least three (3) but not more than eight (8) growing seasons; and

c. Where fish and wildlife habitat areas are cleared in violation of this chapter, a plan to restore habitat functionality, as it existed prior to the violation, subject to the review and evaluation of ~~the Washington Department of Fish and Wildlife~~ WDFW.

d. Satisfaction of the terms and conditions of any judgement or order entered based upon the violation.

e. Financial assurances in the form of a bond or other security acceptable to the county, in an amount sufficient to re-establish the mitigation in the event of failure or subsequent disturbance may be required by the responsible official. The financial assurances shall remain in place for the length of the time specified for monitoring in the plan and shall be released after a request by the applicant and a final inspection. In the event of failure of the mitigation, failure to fully execute the mitigation plan, or subsequent disturbance, forfeiture of the financial assurances shall be required and the funds shall be used to re-establish the mitigation or to complete the execution of the plan. In the event that such re-establishment or completion is deemed impractical by the director, the funds shall

accrue to the established Cumulative Effects Fund for the watershed within which the site is located.

2. In the absence of any mitigation measures approved by the department for sites cleared in violation of this standard, the county may refuse to approve any permit for up to an additional three (3) years.

G. Specific Activities.

Special procedures and standards apply to certain specific activities as provided for in Section 40.440.040.

40.440.040 SPECIFIC ACTIVITIES

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

Edit note: The following section, A, is effective at midnight on December 31, 2006.

A. Routine Utility and Public Facility Maintenance and Operations.

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

1. Application submittal requirements. Unless waived by the responsible official with specific findings in the approval document, applications for programmatic habitat permits shall include a programmatic permit plan that includes the following:

a. A discussion of the purpose and need for the permit;

b. A description of the scope of activities in habitat areas;

c. Identification of the geographical area to be covered by the permit;

d. The range of functions and values within designated habitat areas covered by the permit;

e. Specific measures and performance standards to be taken to avoid, minimize and mitigate impacts on the functions and values:

(1) Procedures for identification of designated habitat areas;

(2) Maintenance practices proposed to be used;

(3) Restoration measures;

(4) Mitigation measures and assurances;

(5) Annual reporting to the responsible official that documents compliance with permit conditions and proposes any additional measures or adjustments to the approved programmatic permit plan;

(6) Reporting to the responsible official any specific habitat degradations resulting from maintenance activities when the degradation occurs or within a timely manner;

(7) Responding to any department requests for information about specific work or projects;

(8) Procedures for reporting and/or addressing activities outside the scope of the approved permit.

(9) Training all employees, contractors and individuals under the supervision of the applicant who are involved in permitted work.

2. Permit Review.

a. Programmatic permit applications that are exempt from SEPA are subject to type I review.

b. Programmatic permit applications that are not exempt from SEPA are subject to type II review.

c. Programmatic permit applications under type II review shall not be subject to the distribution requirements of CCC 40.510.020(E)(2)(a)(3). (Public Notice). Within fourteen (14) calendar days after the date an application is accepted as fully complete, the county shall publish in a newspaper of general circulation a summary of the notice, including the date, time and manner of making comments, the nature and location of the proposal and instructions for obtaining further information.

3. Findings and Approval.

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

b. An approved programmatic permit must, at a minimum, include:

(1) A programmatic permit plan; and

(2) A provision stating the duration of the permit.

4. Duration and Reauthorization.

a. The duration of a programmatic permit is for five years unless:

(1) An annual performance based reauthorization program is approved within the permit, or;

(2) A shorter duration is supported by findings.

b. Requests for reauthorization of a programmatic permit must be received prior to the expiration of the original permit.

(1) Reauthorization is reviewed and approved through the process described in subsection (A)(1-3).

(2) Permit conditions and performance standards may be modified through the reauthorization process.

(3) The responsible official may temporarily extend the original permit if the review of the reauthorization request extends beyond the expiration date.

B. Agricultural Uses, including Animal Husbandry (reserved).

Edit note: "(reserved)", line 506 above, is deleted effective July 11, 2007 and the remainder of this section is effective at midnight on July 11, 2007.

1. Applicability.

a. Non-riparian habitat.

(1) Agricultural activities in existence on July 11, 2006 within designated non-riparian habitat areas are presumed not to cause substantial degradation of existing habitat functions and values and are, therefore, exempt from regulation under this chapter.

Determining what agricultural activities are in existence on July 11, 2006 shall take into account agricultural cycles that involve varying intensity of agricultural use.

(2) The conversion of designated non-riparian habitat areas to agricultural use subsequent to July 11, 2006 shall be subject to the non-development clearing rules of this chapter. Conversion does not include changes from one agricultural use to another agricultural use or changes in crops.

b. Riparian habitat.

(1) Agricultural activities in existence on July 11, 2006 within designated riparian habitat areas, and the expansion thereof onto adjacent lands not to exceed twenty-five percent (25%) of the footprint of the existing agricultural use (Agricultural/habitat protection plan only), shall be subject to the agricultural module provided below. Determining what agricultural activities are in existence on July 11, 2006, shall take into account agricultural cycles that involve varying intensity of agricultural use.

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

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

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

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

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

a. Agricultural/habitat protection plan option.

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

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

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

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

(b) A map of regulated riparian habitat areas.

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

(d) A description of best management practices and other mitigation measures to be undertaken in order to achieve the standard in subsection a(2) above.

(e) The owner's signature attesting that the information in the plan is accurate to the best of the owner's knowledge, and the mitigation measures specified in the plan will be implemented.

(f) The signature of an ag-habitat technician certified by the county attesting that they have inspected the area covered by the plan and that the plan satisfies the standard in subsection a(2) above.

(4) Guidelines. The responsible official shall work with a committee appointed by the board to include interest group representatives (at least one of whom shall be a designee of the Clark-Cowlitz Farm Bureau, whose view(s) shall be given appropriate weight to ensure that the guidelines will be both practical and cost effective) and habitat professionals to develop for board adoption following a duly advertised public hearing a set of guidelines which:

(a) includes a checklist to identify riparian habitat functions and values;

(b) identifies potential positive and negative habitat affects of various agricultural activities; and

(c) describes best management practices and other measures to enhance the positive effects and mitigate or minimize any potential negative effects; and

(d) includes "off-the-shelf" agricultural/habitat protection plans which may be applied to typical agricultural properties and activities.

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

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

(6) Filing. The ag-habitat technician shall notify the county responsible official of the adoption of an approved Agricultural/habitat protection plan by a property owner indicating the property covered by the plan and, at the choice of the property owner either providing a copy of the plan or summarizing the contents of the plan. Notice of such approval shall also be recorded with the Clark County Auditor and run with the land unless the plan is modified or rescinded.

(7) Modification/rescission. Agricultural/habitat protection plans may be modified by the owner at any time utilizing the same process as applicable to initial approval. Plans may be rescinded by the owner with approval of the responsible official if the owner certifies either that future agricultural activities will be undertaken utilizing the default option or agricultural activities have ceased. Notice of modification/rescission shall be recorded with the Clark County Auditor.

b. Default option.

(1) Regulated area. For the purposes of the default option, the regulated riparian area is divided into two zones. Except as provided below the inner zone, closest to the stream, extends from the ordinary high water mark outward fifty (50) feet on Types S and F streams and thirty (30) feet on Type N streams. The outer zone extends an additional fifty (50) feet on Types S and F streams and forty-five (45) feet on Type N streams. Where slopes exceed twenty-five percent (25%), the inner zone is the greater of the prescribed zone or the top of the slope break. Where wetlands are present within the inner zone, the zone is extended to the greater of the prescribed width of the inner zone or the wetland buffer as designated in Chapter 40.450 (Wetland Protection). However, in no case is the inner zone greater than the combined widths prescribed for in the inner and outer zones for that stream type. Where there is an existing road within the inner zone, the zone stops at the edge of the road improvement that is closest to the stream and the outer zone extends outward from that edge.

(2) Standard. Clearing within the inner zone is allowed only to enhance habitat functions and values. Animal husbandry within the inner zone is prohibited. Clearing and animal husbandry within the outer zone shall not substantially degrade habitat functions and values as they existed on July 11, 2006, after considering normal fluctuations due to the agricultural cycle. Although it is presumed that continuation of agricultural activities within the outer zone that existed on July 11, 2006 will not substantially degrade existing habitat functions and values, evidence of substantial degradation such as excess sediment, nutrients or chemicals moving from the outer zone into the stream resulting from agricultural activities, constitute grounds for enforcement action which may require restoration of lost functions and values. Pesticide application within the outer zone must conform to label specifications and application within the inner zone must be by a licensed applicator.

(3) Reasonable use. If the inner zone impacts more than fifty percent (50%) of a parcel that is ten (10) acres or less in area, or more than twenty-five percent (25%) of a parcel that is five (5) acres or less in area, the responsible official may approve a reasonable use reduction to the width of the inner zone. In such case, clearing and animal husbandry may be allowed up to ten (10) feet from the ordinary high water mark provided that reasonable practices and other appropriate mitigation measures are employed to limit sediment, nutrients and chemicals from entering the stream.

3. Administration.

a. No application fees apply to the approval of Agriculture/habitat protection plans.

b. No county review is associated with the default option unless the owner seeks approval of a reasonable use reduction of the inner zone, which application shall be processed without application fees.

c. Evidence of violation of the standards in subsections 40.440.040(B)(2)(a)(2) or (B)(2)(b)(2) shall be grounds for enforcement action under the provisions of Title 32 (Enforcement) and Section 40.440.030(F).

AMENDATORY CODE PROVISIONS ASSOCIATED WITH THE HABITAT CONSERVATION ORDINANCE

EXHIBIT "B"

TABLE 6.110A.010

J	Habitat Conservation	
I	Clearing permit	541
II	Habitat predetermination	85
III	Stewardship plan	0
IV	Programmatic permit – Type I	1,400
V	Programmatic permit – Type II	2,800
VI	Programmatic permit – Re-authorization	700
VII	Agriculatural management plan	0

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40.100.070 DEFINITIONS

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Agriculture, or Agriculture Uses or Agricultural Activities	"Agriculture", or "Agriculture uses", or "Agricultural activities" means the use of the land for agricultural purposes, including, but not limited to, farming, dairying pasturage, agriculture, horticulture, floriculture, viticulture and wineries, apiaries, and animal and poultry husbandry, and the necessary accessory uses and structures for storing produce; provided, however, that the construction and operation of any such accessory use or structure shall be incidental to that of normal agricultural activities, and provided further, that the above uses shall not

	include slaughterhouses and meat packing or commercial feeding of animals.
Animal husbandry	"Animal husbandry" means the care and raising of domesticated animals, such as cattle, horses, sheep, llamas, and poultry, but not including household pets, such as dogs and cats.
Hazard tree	"Hazard tree" means any tree which, in the opinion of the responsible official, ((or)) an expert approved by Clark County (such as, but not limited to, a professional forester or landscape architect), or a similar expert employed by another public agency or utility, has a strong likelihood of causing a hazard to life or property.
Low impact development	"Low impact development" means a stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated into engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic functions.
Riparian zone	"Riparian zone" means areas encompassing riparian priority habitat, a subset of priority habitat and as defined by the Washington Department of Fish and Wildlife (WDFW), extending outward from the ordinary high water mark of water to the one hundred (100) year floodplain or the following distances if greater: Definitions of the ((Type 1 through 5 waters are found in WAC 222-16-030: DNR Type 1 and 2 waters, two hundred fifty (250) feet; DNR Type 3 water, two hundred (200) feet; DNR Type 4 and 5 waters, one hundred fifty (150) feet. Erosion gullies or rills, and streams which are manmade, less than six (6) inches wide or not having a defined bed and/or bank are not included.)) Types S, F, Np and Ns waters are found in WAC 222-16-030. Type S water, two hundred fifty (250) feet; Type F water, two hundred (200) feet; Type Np water, one hundred (100) feet; Type Ns water, seventy-five (75) feet. Not included are erosion gullies or rills, and irrigation ditches, canals, stormwater run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse which has been altered

	by humans.
Utilities	"Utilities" means facilities operated by public or private entities to supply water, electricity, gas, sewer, transportation, or other similar services to the public.

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