

Proposed Revisions to 40.450 to Address the Revised Wetland Rating System

Description:

The Washington Department of Ecology recently updated the Washington State Wetland Rating System. If we do not complete these proposed revisions we will be using a different and scientifically indefensible wetland rating system after Jan 1, 2015. Applicants will be forced to complete two separate rating forms, one for the county and one for DOE.

What is changed:

1. Written descriptions and rating form scores that define each wetland category.
2. The Habitat Function rating score that relates to the “low” habitat function threshold.
3. Buffer widths based on Habitat Function scores on the rating form. The range of habitat buffer widths has not changed, just the increments that buffers change as the rating form score increases.

Note that some of the numerical buffer standards proposed may need to change when DOE issues final guidance on converting buffer widths between the current and new rating system.

1 **40.450 WETLAND PROTECTION**

2 **40.450.010 Introduction**

3 A. Purpose.

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

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

13 B. Applicability.

- 14 1. The provisions of this chapter apply to all lands, all land uses and development activity, and all
15 structures and facilities in the county, whether or not a permit or permit authorization is required, and
16 shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity
17 that owns, leases, or administers land within the county. No person, company, agency, or applicant shall
18 alter a wetland or wetland buffer except as consistent with this chapter.
- 19 2. The county will not approve any permit or otherwise issue any authorization to alter the condition of
20 any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a
21 wetland or wetland buffer, without first ensuring compliance with the requirements of this chapter,
22 including, but not limited to, the following development permits:
 - 23 a. Building permit;
 - 24 b. Grading permit;
 - 25 c. Forest practices conversion permit regulated by Section 40.260.080;

- 26 d. Conditional use permit;
- 27 e. Short subdivision;
- 28 f. Subdivision;
- 29 g. Planned unit development;
- 30 h. Site plan; or
- 31 i. Zoning variance.
- 32 3. Shoreline Master Program. Within shoreline jurisdiction, development may be allowed for those uses in
- 33 the Shoreline Master Program (Chapter 40.460) either through a statement of exemption pursuant to
- 34 Section 40.460.230(C) or an application with a wetlands review as part of the shoreline permit process.
- 35 4. Reasonable Use Exceptions. The following exceptions shall apply in implementing the standards of this
- 36 chapter, although the standards shall be applied to the maximum extent practicable to avoid and
- 37 minimize impacts on wetland functions and values. Mitigation for unavoidable adverse impacts shall be
- 38 required. The standards of this chapter shall not be used to preclude the following activities in wetland
- 39 areas:
- 40 a. The placement of a single-family residence and normal accessory structures on an otherwise legally
- 41 buildable lot of record. Standards may be applied on established properties to limit the proposed
- 42 location and size of structures, and proposed removal of vegetation.
- 43 (1) The expansion of a home on a lot that does not show building or development envelopes,
- 44 wetlands or wetland buffers on the recorded plat, not to exceed twenty-five percent (25%) of
- 45 the existing building footprint;
- 46 (2) The replacement of single-wide mobile home with another dwelling and normal accessory
- 47 structures; and
- 48 (3) Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or
- 49 fire chief guidelines.

- 50 b. The standards of this chapter shall not be used to deny all reasonable economic use of private
51 property. The following criteria must be met in order to verify that all reasonable economic use of
52 the property has been denied:
- 53 (1) The application of this chapter would deny all reasonable economic use of the property;
54 (2) No other reasonable economic use of the property has less impact on the wetland and buffer
55 area;
56 (3) Any wetland or buffer alteration is the minimum necessary to allow for reasonable economic
57 use of the property; and
58 (4) The inability of the applicant to derive reasonable economic use of the property is not the result
59 of actions by the applicant after the date of adoption of the ordinance codified in this chapter.
- 60 c. The standards of this chapter shall not be used to deny or reduce the number of lots of a proposed
61 rural land division allowed under applicable zoning density.
- 62 (1) Standards may be applied on established properties to limit the proposed location and size of
63 structures and proposed removal of vegetation.
64 (2) Land divisions in rural zoning districts (R-5, R-10 and R-20) may utilize the cluster provisions of
65 Section 40.210.020(D).
- 66 d. The application of this chapter shall not be used to deny a development proposal for a linear facility
67 from a public agency or public utility, provided the agency or utility meets the following criteria:
- 68 (1) There is no practical alternative to the proposed project with less impact on the wetland and
69 buffer area; and
70 (2) The application of this chapter would unreasonably restrict the ability to provide public utility
71 services to the public.
- 72 e. The reasonable use provisions in this chapter do not apply to wetlands protection within shoreline
73 jurisdiction. In such cases, reasonable use requests shall be subject to the shoreline variance process
74 pursuant to Section 40.460.260.

75 5. Approval of a development permit application pursuant to the provisions of this chapter does not
76 discharge the obligation of the applicant to comply with the provisions of this chapter.

77 (Amended: Ord. 2012-07-16)

78 C. Exemptions.

79 1. Exempt Activities and Impacts to Wetlands. All exempted activities shall use reasonable methods to
80 avoid potential impacts to wetlands and buffers. Exemptions from permits are not exemptions from
81 wetland stewardship responsibilities. The following developments, activities, and associated uses shall
82 be exempt from the provisions of this chapter; provided, that they are otherwise consistent with the
83 provisions of other local, state, and federal laws and requirements:

84 a. Reconstruction of damaged or destroyed structures within the same building footprint. Expansion or
85 reconstruction within a new or expanded footprint that affects a nonexempt wetland or wetland
86 buffer is subject to the provisions of this title.

87 b. The harvesting or normal maintenance of vegetation in a manner that is not injurious to the natural
88 reproduction of such vegetation.

89 c. Existing agricultural activities and structures:

90 (1) Agricultural activities and structures in operation at the time of adoption of the ordinance
91 codified in this chapter that are affecting wetlands not associated with a riparian corridor are
92 exempt from regulation under this chapter;

93 (2) Changes in agricultural practices within the same "footprint" as the existing agricultural
94 activities in subsection (C)(1)(c)(1) of this section, including reconstruction of existing
95 agricultural structures, or construction of new agricultural structures, are exempt from
96 regulation under this chapter;

97 (3) Agricultural activities and structures in operation at the time of adoption of the ordinance
98 codified in this chapter that are affecting wetlands associated with riparian corridors shall be
99 regulated through Chapter 40.440, Habitat Conservation.

- 100 d. The removal or eradication of noxious weeds so designated in Title 7 of this code or other exotic
101 nuisance plants including non-native blackberries; provided, that ground disturbing heavy
102 machinery (scraping, ripping, etc.,) is not used. Cutting, mowing, and ground disturbance with hand
103 tools is allowed.
- 104 e. Site investigative work necessary for land use application submittals such as surveys, soil logs, and
105 percolation tests.
- 106 f. Emergency clearing to abate immediate danger to persons or property. For emergency clearing of
107 hazard trees, remove only that portion of the hazard tree as necessary to remediate the hazard.
- 108 g. Clearing necessary for the emergency repair of utility or public facilities. Notification of emergency
109 work that causes substantial degradation to functions and values must be reported in a timely
110 manner.
- 111 h. Clearing for operation, maintenance, or repair of existing utilities or public facilities that does not
112 further increase the impact to, or encroach further within, the wetland or wetland buffer.
- 113 i. Forest practices regulated by the State of Washington Department of Natural Resources (DNR)
114 under the Forest Practices Rules (WAC Title 222), or regulated under Clark County Code Section
115 40.260.080, Forest Practices, except forest conversions and conversion option harvest plans.
- 116 j. Clearing, as minimally necessary, for placement of fencing, private wells, septic systems or individual
117 lot sewer, water, electrical, or utility connections in wetland buffers, where practical alternatives do
118 not exist.
- 119 k. Clearing, as minimally necessary, for stream bank restoration, for native replanting or
120 enhancements in wetlands and wetland buffers.
- 121 l. Clearing, as minimally necessary, for soil, water, vegetation and resource conservation projects
122 having received an environmental permit from a public agency in wetlands and wetland buffers.
- 123 m. Clearing, as minimally necessary, for creating a four (4) foot or narrower path using natural, wood-
124 based or vegetated pervious surfacing in wetlands and wetland buffers.

125 n. Land disturbance in wetlands and wetland buffers cumulatively less than five (5) cubic yards in
126 volume and three hundred (300) square feet in area; provided, that the wetland hydroperiod is not
127 significantly affected.

128 2. Exempted Wetlands. This chapter shall not apply to the following wetlands:

129 a. Small. Isolated Category III wetlands less than two thousand five hundred (2,500) square feet in area
130 and isolated Category IV wetlands less than four thousand three hundred and fifty (4,350) square
131 feet in area;

132 b. Artificial. Wetlands created from non-wetland sites including, but not limited to, irrigation and
133 drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities,
134 stormwater facilities, farm ponds, landscape amenities and unintentionally created wetlands
135 created as a result of the construction of a public or private road, street, or highway after July 1,
136 1990; provided, that wetlands created as mitigation shall not be exempted;

137 c. Riparian. Wetlands fully within five (5) feet, measured horizontally, of bank-full width for streams
138 and the ordinary high water mark for lakes which are regulated under the State Shorelines
139 Management Act (Chapter 90.58 RCW) or under Chapter 40.440, Habitat Conservation, are exempt.

140 (Amended: Ord. 2007-06-05)

141 D. Interpretation.

142 1. This chapter shall apply in addition to zoning and other regulations adopted by the county.

143 2. When there is a conflict between any provisions of this chapter or any other regulations adopted by
144 Clark County, that providing the most protection to affected critical areas shall apply.

145 3. Compliance with this chapter does not constitute compliance with other federal, state and local
146 regulations and permit requirements (for example, shoreline substantial development permits, hydraulic
147 project approval (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of
148 Engineers Section 404 permits, National Pollutant Discharge Elimination System (NPDES) permits, or

149 DOE Section 401 Water Quality Certification). The applicant is responsible for complying with all
150 requirements, apart from the provisions of this chapter.

151 (Amended: Ord. 2006-05-27)

152 **40.450.020 Rating Systems**

153 A. General.

154 1. The wetland rating system is used in part to determine buffer widths pursuant to Section 40.450.030(E).
155 The wetland rating and buffer systems are also used for mitigation and enhancement options under
156 Section 40.450.040.

157 2. The determination of the specific category of wetland and buffer for each wetland shall be the
158 responsibility of the department.

159 B. Wetland Rating System.

160 Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system
161 found in the Washington State Wetland Rating System for Western Washington (~~Ecology Publication #04-06-~~
162 ~~025, August 2004~~)as revised. The rating system document contains the definitions and methods for
163 determining if the criteria below are met:

164 1. Wetland Rating Categories.

165 a. Category I. Category I wetlands are:

166 (1) Wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as
167 having high ~~high-quality wetlands~~conservation value;

168 (2) Bogs ~~larger than one-half (1/2) acre;~~

169 (3) Mature and old growth forested wetlands, as defined by WDFW priority habitat and species
170 provisions, larger than one (1) acre; or

171 (4) Wetlands that ~~perform many~~ function at high levels ~~well~~, as characterized by a ~~wetland~~ score of
172 ~~seventy~~twenty three (~~70~~23) or greater on the rating form.

173 Category I wetlands represent a unique or rare wetland type, are more sensitive to disturbance than
174 most wetlands, are relatively undisturbed and contain some ecological attributes that are impossible to
175 replace within a human lifetime, or provide a very high level of functions.

176 b. Category II. Category II wetlands are:

177 ~~(1) A wetland identified by the Washington State Department of Natural Resources as containing~~
178 ~~“sensitive” plant species;~~

179 ~~(2) A bog between one-quarter (1/4) and one-half (1/2) acre in size; or~~

180 ~~(3) Wetlands that perform with a moderately high level of functions well,~~ as characterized by a
181 ~~wetland~~ score of ~~fifty-one~~twenty (~~51~~20) through ~~sixty-nine~~twenty two (~~69~~22) on the rating
182 form.

183 Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some
184 functions. These wetlands occur more commonly than Category I wetlands, but they still need a
185 relatively high level of protection.

186 c. Category III. Category III wetlands are wetlands with a moderate level of functions, as characterized
187 by a score of ~~thirty~~sixteen (~~30~~16) through ~~fifty~~nineteen (~~50~~19) on the rating form. Generally,
188 wetlands in this category have been disturbed in some ways and are often less diverse or more
189 isolated from other natural resources in the landscape than Category II wetlands.

190 d. Category IV. Category IV wetlands have the lowest levels of functions and are often heavily
191 disturbed. They are characterized by a score of less than ~~thirty~~sixteen (~~30~~16) on the rating form.
192 These are wetlands that should be replaceable, and in some cases may be improved. However,
193 experience has shown that replacement cannot be guaranteed in any specific case. These wetlands
194 may provide some important functions, and ~~should be~~also need to be protected ~~to some degree~~.

195 2. Date of Wetland Rating. Wetland rating categories shall be applied as the wetland exists on the date of
196 adoption of the rating system by the local government, as the wetland naturally changes thereafter, or

197 as the wetland changes in accordance with permitted activities. Wetland rating categories shall not
198 change due to illegal modifications.

199 (Amended: Ord. 2006-05-27)

200 **40.450.030 Standards**

201 A. General. The standards apply whenever a nonexempt project (see Section 40.450.010(B)) is proposed on a
202 parcel of real property containing a nonexempt wetland or wetland buffer (see Section 40.450.010(C)). The
203 standard provisions shall be implemented in conjunction with the processing of the development permits
204 listed in Section 40.450.010(B).

205 1. For the purpose of computing the processing limitation period applicable to a development permit
206 application, the application shall not be deemed fully complete until completion (if required) of the
207 wetland determination pursuant to Section 40.450.030(C), the wetland delineation pursuant to Section
208 40.450.030(D), and the buffer designation pursuant to Section 40.450.030(E)(1). This subsection shall
209 not be construed in any way to delay vesting under Washington law.

210 2. Administrative appeals of determinations made under this Section 40.450.030 must be filed in
211 conjunction with, and within the limitation period applicable to, an available administrative appeal of
212 the development permit application; provided, that an aggrieved party may appeal preliminary decisions
213 deciding an exemption, determining or delineating a wetland, determining a buffer, or otherwise finally
214 applying the provisions of this chapter in the same manner, and within the limitation period applicable
215 to, appeals from responsible official decisions under Chapter 40.510.

216 B. Pre-Determination.

217 Prior to submittal of a development permit application, a person may request from the responsible official a
218 written pre-determination of whether wetlands exist on any parcel less than forty (40) acres. An applicant
219 may also choose to submit a digital file of delineated wetland boundaries consistent with Section
220 40.450.030(D)(3) or request staff to digitize the information. The pre-determination shall be binding on the
221 responsible official for a period of three (3) years; provided, that such pre-determination shall be subject to

222 administrative appeal upon its application in conjunction with a triggering application. The fee for a pre-
223 determination is contained in Chapter 6.110A.

224 C. Wetland Determination.

225 In conjunction with the submittal of a development permit application, the responsible official shall
226 determine the probable existence of a wetland on the parcel involved in the development permit
227 application. If wetlands or wetland buffers are found to exist on a parcel, wetland delineation is required.

228 D. Wetland Delineation.

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

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

236 a. USGS quadrangle map with site clearly defined;

237 b. Topographic map of area;

238 c. National wetland inventory map showing site;

239 d. Soil Conservation Service soils map showing site;

240 e. Site map, at a scale no smaller than one (1) inch equals one hundred (100) feet (1" = 100', a scaling
241 ratio of 1:1,200), if practical, showing the following information:

242 (1) Wetland boundaries,

243 (2) Sample sites and sample transects,

244 (3) Boundaries of forested areas,

245 (4) Boundaries of wetland classes if multiple classes exist;

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

258

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

- 259
- 260 4. Responsibility. The wetland delineation is the responsibility of the applicant. The responsible official
 261 shall verify the accuracy of the boundary delineation within ten (10) working days of receiving the
 262 delineation report. This review period may be extended when excessively dry conditions prohibit the
 263 confirmation of the wetland delineation. If the delineation is found to not accurately reflect the

264 boundary of the wetland, the responsible official shall issue a report, within twenty (20) working days of
 265 receiving the applicant’s delineation report, citing evidence (for example, soil samples) that
 266 demonstrates where the delineation is in error. The applicant may then either revise the delineation and
 267 submit another report or administratively appeal.

268 E. Buffers. Wetland buffer widths shall be determined by the responsible official in accordance with the
 269 standards below:

- 270 1. All buffers shall be measured horizontally outward from the delineated wetland boundary or, in the case
 271 of a stream with no adjacent wetlands, the ordinary high water mark as surveyed in the field.
- 272 2. Buffer widths are established by comparing the wetland rating category and the intensity of land uses
 273 proposed on development sites per Tables 40.450.030-2, 40.450.030-3, 40.450.030-4 and 40.450.030-5.
 274 For Category IV wetlands, the required water quality buffers, per Table 40.450.030-2, are adequate to
 275 protect habitat functions.

276

Table 40.450.030-2. Buffers Required to Protect Water Quality Functions			
Wetland Rating	Low Intensity Use	Moderate Intensity Use	High Intensity Use
Category I	50 ft.	75 ft.	100 ft.
Category II	50 ft.	75 ft.	100 ft.
Category III	40 ft.	60 ft.	80 ft.
Category IV	25 ft.	40 ft.	50 ft.

Table 40.450.030-3. Buffers Required to Protect Habitat Functions in Category I and II Wetlands			
Habitat Score in the Rating Form	Low Intensity Use	Moderate Intensity Use	High Intensity Use
194 points or less	See Table 40.450.030-2	See Table 40.450.030-2	See Table 40.450.030-2

20 – 23 <u>5</u> points	6 <u>7</u> 0 ft.	9 <u>10</u> 5 ft.	12 <u>4</u> 0 ft.
24 – 27 <u>6</u> points	90 ft.	13 <u>0</u> 5 ft.	180 ft.
28 – 30 <u>7</u> points	13 <u>1</u> 0 ft.	19 <u>6</u> 5 ft.	26 <u>2</u> 0 ft.
31 <u>8</u> points or greater	15 <u>3</u> 0 ft.	22 <u>1</u> 95 ft.	30 <u>2</u> 60 ft.
<u>9</u> Points	<u>150</u> ft.	<u>225</u> ft.	<u>300</u> ft.

Table 40.450.030-4. Buffers Required to Protect Habitat Functions in Category III Wetlands

Habitat Score in the Rating Form	Low Intensity Use	Moderate Intensity Use	High Intensity Use
19 <u>4</u> points or less	See Table 40.450.030-2	See Table 40.450.030-2	See Table 40.450.030-2
20 – 23 <u>5</u> points	60 ft.	90 ft.	120 ft.
24 <u>6</u> points or greater	7 <u>6</u> 5 ft.	11 <u>1</u> 00 ft.	15 <u>3</u> 5 ft.
<u>7</u> Points	<u>75</u> ft.	<u>110</u> ft.	<u>150</u> ft.

Table 40.450.030-5. Land Use Intensity Matrix¹

	Parks and Recreation	Streets and Roads	Stormwater Facilities	Utilities	Commercial/Industrial	Residential ²
Low	Natural fields and grass areas, viewing areas, split rail fencing	NA	Outfalls, spreaders, constructed wetlands, bioswales, vegetated detention	Underground and overhead utility lines, manholes, power poles (without	NA	Density at or lower than 1 unit per 5 acres

Table 40.450.030-5. Land Use Intensity Matrix ¹						
			basins, overflows	footings)		
Moderate	Impervious trails, engineered fields, fairways	Residential driveways and access roads	Wet ponds	Maintenanc e access roads	NA	Density between 1 unit per acre and higher than 1 unit per 5 acres
High	Greens, tees, structures, parking, lighting, concrete or gravel pads, security fencing	Public and private streets, security fencing, retaining walls	Maintenance access roads, retaining walls, vaults, infiltration basins, sedimentation fore bays and structures, security fencing	Paved or concrete surfaces, structures, facilities, pump stations, towers, vaults, security fencing, etc.	All site development	Density higher than 1 unit per acre

280 ¹The responsible official shall determine the intensity categories applicable to proposals should characteristics
281 not be specifically listed in Table 40.450.030-5.

282 ²Measured as density averaged over a site, not individual lot sizes.

283

- 284 3. In urban plats and subdivisions, wetlands and wetland buffers shall be placed within a nonbuildable
285 tract with the following exceptions:
- 286 a. Creation of a nonbuildable tract would result in violation of minimum lot depth standards; or
 - 287 b. The responsible official determines a tract is impractical.
 - 288 c. Where the responsible official determines the exceptions in Section 40.450.030(E)(3)(a) or (b) apply,
289 residential lots may extend into wetlands and wetland buffers; provided, that all the requirements
290 of Section 40.450.030(F) are met.
- 291 4. Adjusted Buffer Width.
- 292 a. Adjustments Authorized by Wetland Permits. Adjustments to the required buffer width are
293 authorized by Section 40.450.040(D) upon issuance of a wetland permit.
 - 294 b. Functionally Isolated Buffer Areas. Areas which are functionally separated from a wetland and do
295 not protect the wetland from adverse impacts shall be treated as follows:
 - 296 (1) Pre-existing roads, structures, or vertical separation shall be excluded from buffers otherwise
297 required by this chapter;
 - 298 (2) Distinct portions of wetlands with reduced habitat functions that are components of wetlands
299 with an overall habitat rating score greater than ~~twenty (20)~~ four (4) points shall not be subject
300 to the habitat function buffers designated in Tables 40.450.030-3 and 40.450.030-4 if all of the
301 following criteria are met:
 - 302 (a) The area of reduced habitat function is at least one (1) acre in size;
 - 303 (b) The area supports less than five (5) native plant species and does not contain special habitat
304 features listed in Section H1.5 of the rating form;
 - 305 (c) The area of reduced habitat function has low or no interspersion of habitats as defined in
306 Section H1.4 of the rating form;
 - 307 (d) The area does not meet any WDFW priority habitat or species criteria; and

308 (e) The required habitat function buffer is provided for all portions of the wetland that do not
309 have reduced habitat function.

310 c. Maximum Buffer Area. Except for streams, buffers shall be reduced as necessary so that total buffer
311 area (on- and off-site) does not exceed two (2) times the total wetland area (on- and off-site);
312 provided, the minimum buffer width at any point shall not be less than the water quality buffer
313 widths for low intensity uses contained in Table 40.450.030-2.

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

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

324 Wetland and Buffer –
325 Please retain in a natural state

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

332 G. Standard Requirements – Waivers. The responsible official shall waive the requirements of Sections
333 40.450.030(D) and (F) in certain cases described below if the applicant designates development envelopes
334 which are clearly outside of any wetland or buffer. The responsible official may require partial wetland
335 delineation to the extent necessary to ensure eligibility for this waiver:

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

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

347 **40.450.040 Wetland Permits**

- 348 A. General.
 - 349 1. A wetland permit is required for any development activity that is not exempt pursuant to Section
350 40.450.010(C) within wetlands and wetland buffers.
 - 351 2. Shoreline Master Program. Within shoreline jurisdiction, development may be allowed for those uses in
352 the Shoreline Master Program either through a statement of exemption pursuant to Section
353 40.460.230(C) or through an application for a shoreline permit (substantial development, conditional
354 use, or variance) to include a wetlands review pursuant to Section 40.460.530(G) and Sections
355 40.450.020, 40.450.030, and 40.450.040.
 - 356 3. Standards for wetland permits are provided in Sections 40.450.040(B), (C) and (D).

- 357 4. All wetland permits require approval of a preliminary and final enhancement/mitigation plan in
358 accordance with the provisions of Section 40.450.040(E) unless the preliminary enhancement/mitigation
359 plan requirement is waived under the provisions of Section 40.450.040(E)(2).
- 360 5. Wetland permit application, processing, preliminary approval, and final approval procedures are set out
361 in Sections 40.450.040(F) through (I).
- 362 6. Provisions for programmatic permits are provided by Section 40.450.040(K).
- 363 7. Provisions for emergency wetland permits are provided by Section 40.450.040(L).

364 (Amended: Ord. 2012-07-16)

365 B. Standards – General.

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

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

372 C. Buffer Standards and Authorized Activities. The following additional standards apply for regulated
373 activities in a wetland buffer:

- 374 1. Reduced Width Based on Modification of Land Use Intensity. The required buffer width shall be
375 decreased if design techniques are used that reduce the land use intensity category delineated in Table
376 40.450.030-5. Eligible design measures include the following:

- 377 a. General Site Design Measures. High intensity buffers may be reduced to moderate intensity buffers
378 if all of the following mitigation measures are applied to the greatest extent practicable:

- 379 (1) Buffer Enhancement. Improve the function of the buffer such that buffer areas with reduced
380 function can function properly. This could include the removal and management of noxious

381 weeds and/or invasive vegetation or specific measures to improve hydrologic or habitat
382 function.

383 (2) Shielding of High Intensity Uses.

384 (a) Lights. Direct all lights away from wetlands;

385 (b) Noise. Locate activity that generates noise away from wetlands;

386 (c) Pets and Human Disturbance. Use privacy fencing; plant dense vegetation to delineate
387 buffer edge and to discourage disturbance using vegetation appropriate for the eco-region;
388 place wetland and its buffer in a separate tract.

389 (3) Surface Water Management.

390 (a) Existing Runoff. Retrofit stormwater detention and treatment for roads and existing
391 development to the extent determined proportional by the responsible official, and disperse
392 direct discharge of channelized flows from lawns and landscaping;

393 (b) Change in Water Regime. Infiltrate and/or disperse stormwater runoff from impervious
394 surfaces and drainage from lawns and landscaping treated in accordance with Chapter
395 40.385 of the Clark County Code into the buffer at multiple locations.

396 b. Low Impact Development Design. High intensity buffers may be reduced to moderate or low
397 intensity buffers under the following circumstances:

398 (1) Limiting stormwater runoff volumes to avoid impacts to receiving waters and wetlands adjacent
399 to the site.

400 (a) Reduction to moderate intensity buffers, by:

401 (i) Meeting the standards for full dispersion in Chapter 40.385 over seventy-five percent
402 (75%) of the site; or

403 (ii) Infiltration of fifty percent (50%) of the stormwater runoff from the site; or

404 (iii) Using low impact development BMPs pursuant to Chapter 40.385 to reduce stormwater
405 runoff volume generated from the site to at least fifty percent (50%) the runoff volume
406 generated by using standard collection and treatment BMPs.

407 (b) Reduction to low intensity buffers, by:

408 (i) Meeting the standards for full dispersion in Chapter 40.385 for the entire site; or

409 (ii) Infiltration of all stormwater runoff from the site; or

410 (iii) Using low impact development BMPs pursuant to Chapter 40.385 to match the pre-
411 development stormwater runoff volume from the site.

412 (2) Enhanced Stormwater Management. Reduction of high land use intensity buffer to moderate
413 land use intensity buffer for implementation of stormwater treatment measures that exceed the
414 standards of Chapter 40.385. This could include measures such as pre-treatment or tertiary
415 treatment of runoff and limiting discharge from the site to pre-development runoff flow and
416 volume.

417 c. Habitat Corridors. Establishment of a minimum one hundred (100) feet wide functioning or
418 enhanced vegetated corridor between the wetland and any other priority habitat areas as defined
419 by the Washington State Department of Fish and Wildlife reduces a high land use intensity buffer to
420 a moderate land use intensity buffer provided both of the following conditions are met:

421 (1) Applies only to wetlands with habitat function scores higher than ~~twenty (20)~~ four (4) on the
422 rating system form;

423 (2) The habitat corridor must be protected for the entire distance between the wetland and the
424 priority habitat area by some type of permanent legal protection such as a covenant or
425 easement.

426 d. The responsible official may determine that proposed measures, other than those specifically listed
427 in Section 40.450.040(C)(1)(a) through (c), will effectively reduce land use intensity and protect or
428 enhance and values of wetlands and, therefore, allow buffer modifications where appropriate.

- 429 2. Minimum Buffer. In the case of buffer averaging and buffer reduction via Section 40.450.040(C)(1), the
430 minimum buffer width at its narrowest point shall not be less than the low intensity land use water
431 quality buffer widths contained in Table 40.450.030-2.
- 432 3. Buffer Averaging. The boundary of the buffer zone may be modified by averaging buffer widths. If buffer
433 averaging is used, the following conditions must be met:
- 434 a. A maximum of twenty-five percent (25%) of the total required buffer area on the site (after all
435 reductions are applied) may be averaged; and
- 436 b. The total area contained in the buffer, after averaging, shall be at least functionally equivalent and
437 equal in size to the area contained within the buffer prior to averaging.
- 438 4. Stormwater Facilities.
- 439 a. Dispersion Facilities. Stormwater dispersion facilities that comply with the standards of Chapter
440 40.385 shall be allowed in all wetland buffers. Stormwater outfalls for dispersion facilities shall
441 comply with the standards in subsection (b) below. Enhancement of wetland buffer vegetation to
442 meet dispersion requirements may also be considered as buffer enhancement for the purpose of
443 meeting the buffer averaging or buffer reduction standards in this section.
- 444 b. Other stormwater facilities are only allowed in buffers of wetlands with low habitat function (less
445 than ~~twenty (20)~~five (5) points on the habitat section of the rating system form); provided, the
446 facilities shall be built on the outer edge of the buffer and not degrade the existing buffer function
447 and are designed to blend with the natural landscape. Unless determined otherwise by the
448 responsible official, the following activities shall be considered to degrade a wetland buffer when
449 they are associated with the construction of a stormwater facility:
- 450 (1) Removal of trees greater than four (4) inches diameter at four and one-half (4-1/2) feet above
451 the ground or greater than twenty (20) feet in height;
- 452 (2) Disturbance of plant species that are listed as rare, threatened or endangered by the county or
453 any state or federal management agency;

- 454 (3) The construction of concrete structures other than manholes, inlets, and outlets that are
455 exposed above the normal water surface elevation of the facility;
- 456 (4) The construction of maintenance and access roads;
- 457 (5) Slope grading steeper than four to one (4:1) horizontal to vertical above the normal water
458 surface elevation of the stormwater facility;
- 459 (6) The construction of pre-treatment facilities such as fore bays, sediment traps, and pollution
460 control manholes;
- 461 (7) The construction of trench drain collection and conveyance facilities;
- 462 (8) The placement of fencing; and
- 463 (9) The placement of rock and/or riprap, except for the construction of flow spreaders, or the
464 protection of pipe outfalls and overflow spillways; provided, that buffer functions for areas
465 covered in rock and/or riprap are replaced.

466 5. Road and Utility Crossings. Crossing buffers with new roads and utilities is allowed provided all the
467 following conditions are met:

- 468 a. Buffer functions, as they pertain to protection of the adjacent wetland and its functions, are
469 replaced; and
- 470 b. Impacts to the buffer and wetland are minimized.

471 6. Other Activities in a Buffer. Regulated activities not involving stormwater management, road and utility
472 crossings, or a buffer reduction via enhancement are allowed in the buffer if all the following conditions
473 are met:

- 474 a. The activity is temporary and will cease or be completed within three (3) months of the date the
475 activity begins;
- 476 b. The activity will not result in a permanent structure in or under the buffer;
- 477 c. The activity will not result in a reduction of buffer acreage or function;
- 478 d. The activity will not result in a reduction of wetland acreage or function.

479 (Amended: Ord. 2009-01-01)

480 D. Standards – Wetland Activities. The following additional standards apply to the approval of all activities
481 permitted within wetlands under this section:

482 1. Sequencing. Applicants shall demonstrate that a range of project alternatives have been given
483 substantive consideration with the intent to avoid or minimize impacts to wetlands. Documentation
484 must demonstrate that the following hierarchy of avoidance and minimization has been pursued:

485 a. Avoid impacts to wetlands unless the responsible official finds that:

486 (1) For Category I and II wetlands, avoiding all impact is not in the public interest or will deny all
487 reasonable economic use of the site;

488 (2) For Category III and IV wetlands, avoiding all impact will result in a project that is either:

489 (a) Inconsistent with the Clark County Comprehensive Growth Management Plan;

490 (b) Inconsistent with county-wide critical area conservation goals; or

491 (c) Not feasible to construct.

492 b. Minimize impacts to wetlands if complete avoidance is infeasible. The responsible official must find
493 that the applicant has limited the degree or magnitude of impact to wetlands by using appropriate
494 technology and by taking affirmative steps to reduce impact through efforts such as:

495 (1) Seeking easements or agreements with adjacent land owners or project proponents where
496 appropriate;

497 (2) Seeking reasonable relief that may be provided through application of other county zoning and
498 design standards;

499 (3) Site design; and

500 (4) Construction techniques and timing.

501 c. Compensate for wetland impacts that will occur, after efforts to minimize have been exhausted. The
502 responsible official must find that:

- 503 (1) The affected wetlands are restored to the conditions existing at the time of the initiation of the
504 project;
- 505 (2) Unavoidable impacts are mitigated in accordance with this subsection; and
- 506 (3) The required mitigation is monitored and remedial action is taken when necessary to ensure the
507 success of mitigation activities.
- 508 2. Location of Wetland Mitigation. Wetland mitigation for unavoidable impacts shall be located using the
509 following prioritization:
- 510 a. On-site. Locate mitigation according to the following priority:
- 511 (1) Within or adjacent to the same wetland as the impact;
- 512 (2) Within or adjacent to a different wetland on the same site;
- 513 b. Off-site. Locate mitigation within the same watershed, as shown on Figure 40.450.040-1, or use an
514 established wetland mitigation bank; the service area determined by the mitigation bank review
515 team and identified in the executed mitigation bank instrument;
- 516 c. In-kind. Locate or create wetlands with similar landscape position and the same hydro-geomorphic
517 (HGM) classification based on a reference to a naturally occurring wetland system; and
- 518 d. Out-of-kind. Mitigate in a different landscape position and/or HGM classification based on a
519 reference to a naturally occurring wetland system.
- 520 3. Types of Wetland Mitigation. The various types of wetland mitigation allowed are listed below in the
521 general order of preference.
- 522 a. Restoration. The manipulation of the physical, chemical, or biological characteristics of a site with
523 the goal of returning natural or historic functions to a former or degraded wetland. For the purpose
524 of tracking net gains in wetland acres, restoration is divided into:
- 525 (1) Re-establishment. The manipulation of the physical, chemical, or biological characteristics of a
526 site with the goal of returning natural or historic functions to a former wetland. Re-

527 establishment results in a gain in wetland acres (and functions). Activities could include
528 removing fill material, plugging ditches, or breaking drain tiles.

529 (2) Rehabilitation. The manipulation of the physical, chemical, or biological characteristics of a site
530 with the goal of returning natural or historic functions to a degraded wetland. Re-establishment
531 results in a gain in wetland function, but does not result in a gain in wetland acres. Activities
532 could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to
533 a wetland.

534 b. Creation (Establishment). The manipulation of the physical, chemical, or biological characteristics of
535 a site with the goal of developing a wetland on an upland or deepwater site where a wetland did not
536 previously exist. Establishment results in a gain in wetland acres. Activities typically involve
537 excavation of upland soils to elevations that will produce a wetland hydro-period, create hydric
538 soils, and support the growth of hydrophytic plant species.

539 c. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland
540 site to heighten, intensify, or improve the specific function(s) or to change the growth stage or
541 composition of the vegetation present. Enhancement is undertaken for specified purposes such as
542 water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a
543 change in some wetland functions and can lead to a decline in other wetland functions, but does not
544 result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling non-
545 native or invasive species, modifying site elevations or the proportion of open water to influence
546 hydro-periods, or some combination of these activities.

547

Figure 40.450.040-1

548

Clark County Watershed Map



549

550 (Amended: Ord. 2007-06-05)

551 d. Protection/Maintenance (Preservation). Removing a threat to, or preventing the decline of, wetland
552 conditions by an action in or near a wetland. This includes the purchase of land or easements
553 repairing water control structures or fences, or structural protection such as repairing a barrier
554 island. This term also includes activities commonly associated with the term preservation.
555 Preservation does not result in a gain of wetland acres, but may result in improved wetland
556 functions.

557 4. Wetland Mitigation Ratios.

558 a. Standard Wetland Mitigation Ratios. The following mitigation ratios for each of the mitigation types
559 described in Section 40.450.040(D)(3)(a) through (c) apply:
560

Table 40.450.040-1. Standard Wetland Mitigation Ratios (In Area)					
Wetland to Be Replaced	Reestablishment or Creation	Rehabilitation	Reestablishment or Creation and Rehabilitation	Reestablishment or Creation and Enhancement	Enhancement
Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I, Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1
Category I, Based on Score for Functions	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1

Category I, Natural Heritage Site	Not Considered Possible	6:1 Rehabilitate a Natural Heritage Site	N/A	N/A	Case-by-Case
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561

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b. Preservation. The responsible official has the authority to approve preservation of existing wetlands as wetland mitigation under the following conditions:

563

564

(1) The wetland area being preserved is a Category I or II wetland or is within a WDFW priority habitat or species area;

565

566

(2) The preservation area is at least one (1) acre in size;

567

(3) The preservation area is protected in perpetuity by a covenant or easement that gives the county clear regulatory and enforcement authority to protect existing wetland and wetland buffer functions with standards that exceed the protection standards of this chapter;

568

569

(4) The preservation area is not an existing or proposed wetland mitigation site; and

570

571

(5) The following preservation/mitigation ratios apply:

572

Table 40.450.040-2. Wetland Preservation Ratios for Category I and II Wetlands (In Area)				
Habitat Function of Wetland to Be Replaced	In Addition to Standard Mitigation		As the Only Means of Mitigation	
	Full and Functioning Buffer	Reduced and/or Degraded Buffer	Full and Functioning Buffer	Reduced and/or Degraded Buffer
Low (< 20 <u>5</u> points)	10:1	14:1	20:1	30:1
Moderate (20 <u>5</u> – 30 <u>7</u> points)	13:1	17:1	30:1	40:1
High (> 30 <u>7</u> points)	16:1	20:1	40:1	50:1

573

- 574 c. The responsible official has the authority to reduce wetland mitigation ratios under the following
575 circumstances:
- 576 (1) Documentation by a qualified wetland specialist demonstrates that the proposed mitigation
577 actions have a very high likelihood of success based on prior experience;
- 578 (2) Documentation by a qualified wetland specialist demonstrates that the proposed actions for
579 compensation will provide functions and values that are significantly greater than the wetland
580 being affected;
- 581 (3) The proposed actions for compensation are conducted in advance of the impact and are shown
582 to be successful;
- 583 (4) In wetlands where several HGM classifications are found within one (1) delineated wetland
584 boundary, the areas of the wetlands within each HGM classification can be scored and rated
585 separately and the mitigation ratios adjusted accordingly, if all the following apply:
- 586 (a) The wetland does not meet any of the criteria for wetlands with “Special Characteristics,” as
587 defined in the rating system;
- 588 (b) The rating and score for the entire wetland is provided as well as the scores and ratings for
589 each area with a different HGM classification;
- 590 (c) Impacts to the wetland are all within an area that has a different HGM classification from
591 the one used to establish the initial category; and
- 592 (d) The proponents provide adequate hydrologic and geomorphic data to establish that the
593 boundary between HGM classifications lies at least fifty (50) feet outside of the footprint of
594 the impacts.
- 595 5. Indirect Wetland Impacts Due to Loss of Buffer Function or Stormwater Discharges. Wetland mitigation
596 shall be required in accordance with the wetland mitigation standards in this subsection for the
597 following indirect wetland impacts:
- 598 a. Buffer loss resulting from wetland fills permitted under this section;

- 599 b. Reduction of wetland buffers beyond the maximum reduction allowed under Section
600 40.450.040(C)(2); provided, that such reductions are limited as follows:
- 601 (1) Road and utility crossings in the wetland buffer approved in accordance with Section
602 40.450.040(C)(5); and
- 603 (2) The total indirect wetland impact from buffer reductions is less than one-quarter (1/4) acre.
- 604 c. Unavoidable loss of wetland function due to stormwater discharges that do not meet the wetland
605 protections standards in Chapter 40.385.
- 606 6. Wetland Buffers Required for Mitigation. Wetland mitigation shall be protected by the water quality
607 function wetland buffers required in Table 40.450.030-2:
- 608 a. Reductions to the required buffers may be applied in accordance with Sections 40.450.040(C) and
609 (D)(5);
- 610 b. All wetland buffers shall be included within the mitigation site and subject to the conservation
611 covenant required under Section 40.450.030(F)(3).
- 612 7. Alternate Wetland Mitigation.
- 613 a. Wetland Mitigation Banking.
- 614 (1) Construction, enhancement or restoration of wetlands to use as mitigation for future wetland
615 development impacts is permitted subject to the following:
- 616 (a) A wetland permit shall be obtained prior to any mitigation banking. If a wetland permit is
617 not obtained prior to mitigation bank construction, mitigation credit shall not be awarded.
- 618 On projects proposing off-site wetland banking in addition to required wetland mitigation, a
619 separate wetland permit shall be required for each activity. The performance and
620 maintenance bond requirements of Section 40.450.040(H)(3)(c) and (d) shall not be
621 applicable, provided there are no requests for mitigation credit prior to the county
622 determining the mitigation banking is successful. If mitigation banking is not fully

623 functioning, as defined in the wetland permit, at the time mitigation credit is requested,
624 Section 40.450.040(H)(3)(c) and (d) shall apply;

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

626 (2) The mitigation credit allowed will be determined by the county, based on the wetland category,
627 condition and mitigation ratios as specified in Section 40.450.040(D)(4). Prior to granting
628 mitigation banking credit, all wetland mitigation banking areas must comply with Section
629 40.450.030(E)(4)(b) and (c), and, if applicable, Section 40.450.040(H)(3);

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

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

635 (a) Documentation, in a form approved by the Prosecuting Attorney, adequate to verify the
636 transfer of wetland credit shall be submitted, and

637 (b) A plat note along with information on the title shall be recorded in a form approved by the
638 Prosecuting Attorney as adequate to give notice of the requirements of this section being
639 met by the purchase of banked wetland credits;

640 b. Cumulative Effects Fund. The county may accept payment of a voluntary contribution to an
641 established cumulative effects fund for off-site watershed scale habitat and wetland conservation in
642 lieu of wetland mitigation of unavoidable impacts in the following cases:

643 (1) Residential building and home business permits where on-site enhancement and/or
644 preservation is not adequate to meet the requirements of Section 40.450.040(D)(4);

645 (2) Approved reasonable use exceptions where sufficient on-site wetland and wetland buffer
646 mitigation is not practical;

- 647 (3) Small impacts affecting less than 0.10 acre of wetland where on-site enhancement and/or
648 preservation is not adequate to meet the requirements of Section 40.450.040(D)(4); or
649 (4) As an additional mitigation measure when all other mitigation options have been applied to the
650 greatest extent practicable.
- 651 8. Stormwater Facilities. Stormwater facilities are allowed in wetlands with habitat scores less than ~~twenty~~
652 ~~(20)~~five (5) on the rating form, in compliance with the following requirements:
- 653 a. Stormwater detention and retention necessary to maintain wetland hydrology is authorized;
654 provided, that the responsible official determines that wetland functions will not be degraded; and
655 b. Stormwater runoff is treated for water quality in accordance with the requirements of Chapter
656 40.385 prior to discharge into the wetland.
- 657 9. Utility Crossings. Crossing wetlands by utilities is allowed, provided the activity is not prohibited by
658 Section 40.450.040(D)(1), and provided all the following conditions are met:
- 659 a. The activity does not result in a decrease in wetland acreage or classification;
660 b. The activity results in no more than a short-term six (6) month decrease in wetland functions; and
661 c. Impacts to the wetland are minimized.
- 662 10. Other Activities in a Wetland. Activities not involving stormwater management, utility crossings, or
663 wetland mitigation are allowed in a wetland, provided the activity is not prohibited by Section
664 40.450.040(D)(1), and provided all the following conditions are met:
- 665 a. The activity shall not result in a reduction of wetland acreage or function; and
666 b. The activity is temporary and shall cease or be completed within three (3) months of the date the
667 activity begins.

668 (Amended: Ord. 2009-01-01)

669 E. Mitigation Plans.

- 670 1. General. Mitigation plans are required for activities in a buffer or wetland. Content requirements which
671 are inappropriate and inapplicable to a project may be waived by the responsible official upon request

672 of the applicant at or subsequent to the pre-application consultation provided for in Section
673 40.450.040(F)(1).

674 2. Preliminary Mitigation Plan. The purpose of the preliminary plan is to determine the feasibility of the
675 project before extensive resources are devoted to the project. The responsible official may waive the
676 requirement for a preliminary mitigation plan when a wetland permit is not associated with a
677 development permit application (listed in Section 40.450.010(B)). The preliminary mitigation plan
678 consists of two (2) parts: baseline information for the site and a conceptual plan. If off-site wetland
679 mitigation is proposed, baseline information for both the project site and mitigation site is required.

680 a. Baseline information shall include:

681 (1) Wetland delineation report as described in Section 40.450.030(D)(2);

682 (2) Copies of relevant wetland jurisdiction determination letters, if available, such as
683 determinations of prior converted crop lands, correspondence from state and federal agencies
684 regarding prior wetland delineations, etc.;

685 (3) Description and maps of vegetative conditions at the site;

686 (4) Description and maps of hydrological conditions at the site;

687 (5) Description of soil conditions at the site based on a preliminary on-site analysis;

688 (6) A topographic map of the site; and

689 (7) A functional assessment of the existing wetland and buffer.

690 (a) Application of the rating system in Section 40.450.020(B) will generally be considered
691 sufficient for functional assessment;

692 (b) The responsible official may accept or request an alternate functional assessment
693 methodology when the applicant's proposal requires detailed consideration of specific
694 wetland functions;

695 (c) Alternate functional assessment methodologies used shall be scientifically valid and reliable.

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

- 697 (1) Goals and objectives of the proposed project;
- 698 (2) A wetland buffer width reduction plan, if width reductions are proposed, that includes:
- 699 (a) The land use intensity, per Table 40.450.030-5, of the various elements of the development
- 700 adjacent to the wetlands;
- 701 (b) The wetland buffer width(s) required by Tables 40.450.030-2, 40.450.030-3 and 40.450.030-
- 702 4;
- 703 (c) The proposed buffer width reductions, including documentation that proposed buffer width
- 704 reductions fully protect the functions of the wetland in compliance with Section
- 705 40.450.040(C);
- 706 (3) A wetland mitigation plan that includes:
- 707 (a) A sequencing analysis for all wetland impacts;
- 708 (b) A description of all wetland impacts that require mitigation under this chapter; and
- 709 (c) Proposed mitigation measures and mitigation ratios;
- 710 (4) Map showing proposed wetland and buffer. This map should include the existing and proposed
- 711 buffers and all proposed wetland impacts regulated under this chapter;
- 712 (5) Site plan;
- 713 (6) Discussion and map of plant material to be planted and planting densities;
- 714 (7) Preliminary drainage plan identifying location of proposed drainage facilities including detention
- 715 structures and water quality features (e.g., swales);
- 716 (8) Discussion of water sources for all wetlands on the site;
- 717 (9) Project schedule;
- 718 (10) Discussion of how the completed project will be managed and monitored; and
- 719 (11) A discussion of contingency plans in case the project does not meet the goals initially set for the
- 720 project.
- 721 3. Final Mitigation Plan. The contents of the final mitigation plan shall include:

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

- 746 (c) Sampling surface and subsurface waters to determine pollutant loading, and changes from
747 the natural variability of background conditions (pH, nutrients, heavy metals);
- 748 (d) Measuring base flow rates and stormwater runoff to model and evaluate water quality
749 predictions, if appropriate;
- 750 (e) Measuring sedimentation rates, if applicable; and
- 751 (f) Sampling fish and wildlife populations to determine habitat utilization, species abundance
752 and diversity;
- 753 (3) A monitoring protocol shall be included outlining how the monitoring data will be evaluated by
754 agencies that are tracking the progress of the project;
- 755 (4) Monitoring reports shall be submitted annually, or on a pre-arranged alternate schedule, for the
756 duration of monitoring period;
- 757 (5) Monitoring reports shall analyze the results of monitoring, documenting milestones, successes,
758 problems, and recommendations for corrective and/or contingency actions to ensure success of
759 the mitigation project.
- 760 e. Associated Plans and Other Permits. To ensure consistency with the final mitigation plan, associated
761 plans and permits shall be submitted, including, but not limited to:
- 762 (1) Engineering construction plans;
- 763 (2) Final site plan or proposed plat;
- 764 (3) Final landscaping plan;
- 765 (4) Habitat permit;
- 766 (5) WDFW HPA;
- 767 (6) USACE Section 404 permit; and
- 768 (7) WDOE Administrative Order or Section 401 certification.
- 769 f. Evidence of Financial and Scientific Proficiency. A description of how the mitigation project will be
770 managed during construction and the scientific capability of the designer to successfully implement

771 the proposed project. In addition, a demonstration of the financial capability of the applicant to
772 successfully complete the project and ensure it functions properly at the end of the specific
773 monitoring period.

774 g. Contingency Plan. Identification of potential courses of action, and any corrective measures to be
775 taken when monitoring or evaluation indicates project performance standards are not being met.

776 F. Wetland Permit – Application.

777 1. Pre-Permit Consultation. Any person intending to apply for a wetland permit is encouraged, but not
778 required, to meet with the department during the earliest possible stages of project planning in order to
779 discuss wetland impact avoidance, minimization, compensatory mitigation, and the required contents of
780 a mitigation plan before significant commitments have been made to a particular project design. Effort
781 put into pre-permit consultations and planning will help applicants create projects which will be more
782 quickly and easily processed.

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

786 a. Wetland delineations and buffer width designations pursuant to Sections 40.450.020 and
787 40.450.030;

788 b. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than one
789 (1) inch equals one hundred (100) feet (1" = 100', a scaling ratio of 1:1,200) showing the location,
790 width, depth and length of all existing and proposed structures, roads, stormwater facilities, sewage
791 treatment, and installations within the wetland and its buffer;

792 c. The exact sites and specifications for all development activities proposed within wetlands and
793 wetland buffers, including the amounts and methods;

794 d. A proposed preliminary mitigation plan meeting the requirements of Section 40.450.040(E). If the
795 preliminary plan requirement has been waived, a final mitigation plan shall be required in its place.

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

797 (Amended: Ord. 2004-06-11)

798 G. Wetland Permit – Processing.

799 1. Procedures. Wetland permit applications shall be processed using the application procedures in Chapter
800 40.510 unless specifically modified herein:

801 a. Type I Wetland Permit. The following wetland permits shall be reviewed under the Type I review
802 process described in Section 40.510.010:

803 (1) Buffer modification only;

804 (2) Wetland impacts resulting in less than 0.10 acre of direct wetland impact;

805 (3) Wetland permits associated with residential building permits, regardless of impact;

806 (4) Wetland permits associated with home business permits, regardless of impact;

807 (5) Re-authorization of approved wetland permits;

808 (6) Programmatic wetland permits that are SEPA exempt.

809 b. Type II Wetland Permit. The following wetland permits shall be reviewed under the Type II review
810 process described in Section 40.510.020:

811 (1) Wetland impacts resulting in 0.10 acre, or more, of direct wetland impact, other than residential
812 building and home business permits;

813 (2) Programmatic wetland permits that require SEPA review;

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

- 820 c. Type III Wetland Permit. Reasonable use exceptions, other than residential and home business
821 permits, made under Section 40.450.010(B)(4), shall be reviewed under the Type III review process
822 described in Section 40.510.030.
- 823 d. Modifications to conservation covenants required under Section 40.450.030(F)(3) shall be consistent
824 with the standards of this chapter and will be processed subject to the following:
- 825 (1) Modification to a covenant approved by a Type I decision shall be subject to a Type I review
826 process.
- 827 (2) Modification to a covenant approved by a Type II decision shall be subject to a Type I review
828 process if the responsible official finds the requested change:
- 829 (a) Does not increase the potential adverse impact to wetlands or buffers; and
830 (b) Does not involve an issue of broad public interest, based on the record of the decision; and
831 (c) Does not require further SEPA review.
- 832 (3) Modification to a covenant approved by a Type II decision shall be subject to a Type II review
833 process if it is not subject to Type I review.
- 834 (4) Modification to a covenant approved by a Type III decision shall be subject to a Type I review
835 process if the responsible official finds the modification:
- 836 (a) Provides an increased benefit to wetlands or wetland buffers; and
837 (b) Does not involve an issue of broad public interest, based on the record of the decision; and
838 (c) Does not require further SEPA review.
- 839 (5) Modification to a covenant approved by a Type III decision shall be subject to a Type II review
840 process if the responsible official finds the requested change in the decision:
- 841 (a) Does not increase the potential adverse impact to wetlands or wetland buffers allowed by
842 the covenant or SEPA determination; and
843 (b) Does not involve an issue of broad public interest, based on the record of the decision.

844 (6) Modification to a covenant approved by a Type III decision shall be subject to a Type III review
845 process if it is not subject to Type I or II review.

846 (7) Modification requests submitted with other applications will be processed as specified in
847 Section 40.500.010(D)(2).

848 e. Removal of wetland covenants shall be approved by the Board of County Commissioners.

849 2. Consolidation. The department shall, to the extent practicable and feasible, consolidate the processing
850 of wetland permits with other county regulatory programs which affect activities in wetlands, such as
851 SEPA review, subdivision, grading, and site plan approval, so as to provide a timely and coordinated
852 permit process. Where no other county permit or approval is required for the wetland activity, the
853 wetland permit shall be processed in accordance with Section 40.450.040(G)(1).

854 3. Notification. In addition to notices otherwise required pursuant to Section 40.450.040(G)(1), notice of
855 Type II and Type III wetland permit applications shall be given to federal and state agencies that have
856 jurisdiction over, or an interest in, the affected wetlands.

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

858 H. Wetland Permit – Preliminary Approval.

859 1. Decision Maker. A wetland permit application which has been consolidated with another permit or
860 approval request which requires a public hearing (e.g., preliminary plat) shall be heard and decided in
861 accordance with the procedures applicable to such other request. Any other wetland permit application
862 shall be acted on by the responsible official within the timeline specified in Chapter 40.510 for the
863 required permit type.

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

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

868 a. The approved preliminary mitigation plan;

- 869 b. Applicable conditions provided for in Section 40.450.030(E)(4);
- 870 c. Posting of a performance assurance pursuant to Section 40.450.040(J); and
- 871 d. Posting of a maintenance assurance pursuant to Section 40.450.040(J).
- 872 4. Administrative Appeal. A consolidated wetland permit decision may be administratively appealed in
- 873 conjunction with, and within the same limitation period, applicable to the other county permit or
- 874 approval; provided, that wetland permits preliminarily issued or denied by the responsible official may
- 875 be appealed in the same manner, and within the same limitation period, applicable to a Type II process
- 876 under Section 40.510.020.
- 877 5. Duration. Wetland permit preliminary approval shall be valid for a period of three (3) years from the
- 878 date of issuance or termination of administrative appeals or court challenges, whichever occurs later,
- 879 unless:
- 880 a. A longer period is specified in the permit; or
- 881 b. The applicant demonstrates good cause to the responsible official's satisfaction for an extension not
- 882 to exceed an additional one (1) year.
- 883 I. Wetland Permit – Final Approval.
- 884 1. Issuance. The responsible official shall issue final approval of the wetland permit authorizing
- 885 commencement of the activity permitted thereby upon:
- 886 a. Submittal and approval of a final mitigation plan pursuant to Section 40.450.040(E)(3);
- 887 b. Installation and approval of field markings as required by Section 40.450.030(F)(2);
- 888 c. The recording of a conservation covenant as required by Section 40.450.030(F)(3);
- 889 d. The posting of a performance assurance as required by Section 40.450.040(H)(3);
- 890 2. Duration.
- 891 a. Wetland or Wetland Buffer Impacts. Final approval shall be valid for the period specified in the final
- 892 wetland permit, or the associated development approval. Extension of the permit shall only be
- 893 granted in conjunction with extension of an associated permit;

894 b. Compensatory Mitigation. The compensatory mitigation requirements of the permit shall remain in
895 effect for the duration of the monitoring and maintenance period specified in the approval.

896 (Amended: Ord. 2007-11-13)

897 J. Wetland Permit Financial Assurances.

898 1. Types of Financial Assurances. The responsible official shall accept the following forms of financial
899 assurances:

- 900 a. An escrow account secured with an agreement approved by the responsible official;
- 901 b. A bond provided by a surety for estimates that exceed five thousand dollars (\$5,000);
- 902 c. A deposit account with a financial institution secured with an agreement approved by the
903 responsible official;
- 904 d. A letter of commitment from a public agency; and
- 905 e. Other forms of financial assurance determined to be acceptable by the responsible official.

906 2. Financial Assurance Estimates. The applicant shall submit itemized cost estimates for the required
907 financial assurances. The responsible official may adjust the estimates to ensure that adequate funds
908 will be available to complete the specified compensatory mitigation upon forfeiture. In addition the cost
909 estimates must include a contingency as follows:

- 910 a. Estimates for bonds shall be multiplied by one hundred fifty percent (150%);
- 911 b. All other estimates shall be multiplied by one hundred ten percent (110%).

912 3. Waiver of Financial Assurances. For Type I wetland permits, the responsible official may waive the
913 requirement for one or both financial assurances if the applicant can demonstrate to the responsible
914 official's satisfaction that posting the required financial assurances will constitute a significant hardship.

915 4. Acceptance of Work and Release of Financial Assurances.

- 916 a. Release of Performance Assurance. Upon request, the responsible official shall release the
917 performance assurance when the following conditions are met:

- 918 (1) Completion of construction and planting specified in the approved compensatory mitigation
919 plan;
- 920 (2) Submittal of an as-built report documenting changes to the compensatory mitigation plan that
921 occurred during construction;
- 922 (3) Field inspection of the completed site(s); and
- 923 (4) Provision of the required maintenance assurance.
- 924 b. Release of Maintenance Assurance. Upon request, the responsible official shall release the
925 maintenance assurance when the following conditions are met:
- 926 (1) Completion of the specified monitoring and maintenance program;
- 927 (2) Submittal of a final monitoring report demonstrating that the goals and objectives of the
928 compensatory mitigation plan have been met as demonstrated through:
- 929 (a) Compliance with the specific performance standards established in the wetland permit; or
930 (b) Functional assessment of the mitigation site(s); and
931 (c) Field inspection of the mitigations site(s).
- 932 c. Incremental Release of Financial Assurances. The responsible official may release financial
933 assurances incrementally only if specific milestones and associated costs are specified in the
934 compensatory mitigation plan and the document legally establishing the financial assurance.
- 935 5. Transfer of Financial Assurances. The responsible official may release financial assurances at any time if
936 equivalent assurances are provided by the original or a new permit holder.
- 937 6. Forfeiture. If the permit holder fails to perform or maintain compensatory mitigation in accordance with
938 the approved wetland permit, the responsible official may declare the corresponding financial assurance
939 forfeit pursuant to the following process:
- 940 a. The responsible official shall, by registered mail, notify the wetland permit holder/agent that is
941 signatory to the financial assurance and the financial assurance holder of nonperformance with the
942 terms of the approved wetlands permit;

- 943 b. The written notification shall cite a reasonable time for the permit holder, or legal successor, to
944 comply with provisions of the permit and state the county's intent to forfeit the financial assurance
945 should the required work not be completed in a timely manner;
- 946 c. Should the required work not be completed timely, the county shall declare the assurance forfeit;
- 947 d. Upon forfeiture of a financial assurance, the proceeds thereof shall be utilized either to correct the
948 deficiencies which resulted in forfeiture or, if such correction is deemed by the responsible official to
949 be impractical or ineffective, to enhance other wetlands in the same watershed or contribute to an
950 established cumulative effects fund for watershed scale habitat and wetland conservation.
- 951 K. Programmatic Permits for Routine Maintenance and Operations of Utilities and Public Facilities. The
952 responsible official may issue programmatic wetland permits for routine maintenance and operations of
953 utilities and public facilities within wetlands and wetland buffers, and for wetland enhancement programs. It
954 is not the intent of the programmatic permit process to deny or unreasonably restrict a public agency or
955 utility's ability to provide services to the public. Programmatic permits only authorize activities specifically
956 identified in and limited to the permit approval and conditions.
- 957 1. Application Submittal Requirements. Unless waived by the responsible official with specific findings in
958 the approval document in accordance with Section 40.450.040(K)(2), applications for programmatic
959 wetland permits shall include a programmatic permit plan that includes the following:
- 960 a. A discussion of the purpose and need for the permit;
- 961 b. A description of the scope of activities in wetlands and wetland buffers;
- 962 c. Identification of the geographical area to be covered by the permit;
- 963 d. The range of functions and values of wetlands potentially affected by the permit;
- 964 e. Specific measures and performance standards to be taken to avoid, minimize and mitigate impacts
965 on wetland functions and values including:
- 966 (1) Procedures for identification of wetlands and wetland buffers;
- 967 (2) Maintenance practices proposed to be used;

- 968 (3) Restoration measures;
- 969 (4) Mitigation measures and assurances;
- 970 (5) Annual reporting to the responsible official that documents compliance with permit conditions
971 and proposes any additional measures or adjustments to the approved programmatic permit
972 plan;
- 973 (6) Reporting to the responsible official any specific wetland or wetland buffer degradations
974 resulting from maintenance activities when the degradation occurs or within a timely manner;
- 975 (7) Responding to any department requests for information about specific work or projects;
- 976 (8) Procedures for reporting and/or addressing activities outside the scope of the approved permit;
977 and
- 978 (9) Training all employees, contractors and individuals under the supervision of the applicant who
979 are involved in permitted work.
- 980 2. Findings. A decision preliminarily approving or denying a programmatic wetland permit shall be
981 supported by findings of fact relating to the standards and requirements of this chapter.
- 982 3. Approval Conditions. Approval of a programmatic wetland permit shall incorporate at least the following
983 as conditions:
- 984 a. The approved programmatic permit plan;
- 985 b. Annual reporting requirements; and
- 986 c. A provision stating that duration of the permit.
- 987 4. Duration and Re-authorization.
- 988 a. The duration of a programmatic permit is for five (5) years, unless:
- 989 (1) An annual performance based re-authorization program is approved within the permit; or
990 (2) A shorter duration is supported by findings.
- 991 b. Requests for re-authorization of a programmatic permit must be received prior to the expiration of
992 the original permit.

993 (1) Re-authorization is reviewed and approved through the process described in Section
994 40.450.040(K)(1).

995 (2) Permit conditions and performance standards may be modified through the re-authorization
996 process.

997 (3) The responsible official may temporarily extend the original permit if the review of the re-
998 authorization request extends beyond the expiration date.

999 L. Wetland Permit – Emergency.

1000 1. Authorization. Notwithstanding the provisions of this chapter or any other laws to the contrary, the
1001 responsible official may issue prospectively or, in the case of imminent threats, retroactively a
1002 temporary emergency wetlands permit if:

1003 a. The responsible official determines that an unacceptable threat to life or loss of property will occur
1004 if an emergency permit is not granted; and

1005 b. The anticipated threat or loss may occur before a permit can be issued or modified under the
1006 procedures otherwise required by this act and other applicable laws.

1007 2. Conditions. Any emergency permit granted shall incorporate, to the greatest extent practicable and
1008 feasible but not inconsistent with the emergency situation, the standards and criteria required for
1009 nonemergency activities under this act and shall:

1010 a. Be limited in duration to the time required to complete the authorized emergency activity, not to
1011 exceed ninety (90) days; and

1012 b. Require, within this ninety (90) day period, the restoration of any wetland altered as a result of the
1013 emergency activity, except that if more than the ninety (90) days from the issuance of the
1014 emergency permit is required to complete restoration, the emergency permit may be extended to
1015 complete this restoration.

1016 3. Notice. Notice of issuance of an emergency permit shall be published in a newspaper having general
1017 circulation in Clark County not later than ten (10) days after issuance of such permit.

1018 4. Termination. The emergency permit may be terminated at any time without process upon a
1019 determination by the responsible official that the action was not or is no longer necessary to protect
1020 human health or the environment.

1021 M. Revocation. In addition to other remedies provided for elsewhere in this chapter, the responsible official
1022 may suspend or revoke wetland permit(s) issued in accordance with this chapter and associated
1023 development permits, pursuant to the provisions of Title 32 of the Clark County Code, if the applicant or
1024 permittee has not complied with any or all of the conditions or limitations set forth in the permit, has
1025 exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set
1026 forth in the permit.

1027 N. Enforcement. At such time as a violation of this chapter has been determined, enforcement action shall be
1028 commenced in accordance with the enforcement provisions of Title 32 of this code, and may also include
1029 the following:

1030 1. Applications for county land use permits on sites that have been cited or issued an administrative notice
1031 and order under Title 32 of this code, or have been otherwise documented by the responsible official for
1032 activities in violation of this chapter, shall not be processed for a period of six (6) years provided:

- 1033 a. The county has the authority to apply the permit moratorium to the property; and
- 1034 b. The county records the permit moratorium;
- 1035 c. The responsible official may reduce or wave the permit moratorium duration upon approval of a
1036 wetland permit under Section 40.450.040.

1037 2. Compensatory mitigation requirements under Sections 40.450.040(C) and (D) may be increased by the
1038 responsible official as follows:

- 1039 a. All or some portion of the wetland or wetland buffer impact cannot be permitted or restored in
1040 place; and
- 1041 b. Compensatory mitigation for the impact is delayed more than one year from the time of the original
1042 citation or documentation of the violation.

1043 (Amended: Ord. 2006-05-27)