

Ordinance _____

Amending Clallam County Code chapter 27.12 Critical Areas to add a new section regarding

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Section .xxx, Existing and ongoing required agricultural best management practices on agricultural lands, is created to read as follows:

(1) Purpose and Intent. The purpose of this section is to address two mandates under the Growth Management Act (GMA):

(a) to protect the existing functions and values in and adjacent to aquatic habitat conservation areas (AHCA) and wetlands, and

(b) to conserve and protect agricultural lands, specifically those lands with existing and ongoing agricultural activities that are located within 200 feet of AHCAs and wetlands regulated under this chapter.

(2) Applicability. As defined in CCC 27.12.900, existing and ongoing agricultural activities occurring on or within 200 feet of AHCAs and wetlands may deviate from the protection standards (including standard buffers) of this chapter by complying with the alternate standards presented in this section. The alternate standards from the AHCA and wetland standards of this chapter may only be applied to existing, ongoing agricultural activities related to the cultivating of crops, grazing of livestock, and the land preparation associated with those agricultural activities. Agricultural activities that do not meet the definition of existing and ongoing agriculture are required to comply with the other provisions of this Chapter, including but not limited to the applicable AHCA and wetland buffers and protection standards.

(3) No harm or degradation standard.

(a) All existing and ongoing agriculture activities must be conducted so as not to cause harm or degradation to the existing functions and values of AHCAs and wetlands (the “no harm or degradation standard”). For the purposes of this section, the phrase “no harm or degradation” means the following:

(i) Meeting documented water quality standards consistent with the Washington State Department of Ecology water pollution control laws.

(ii) Meeting all applicable Washington State Department of Fish and Wildlife requirements of Chapter 77.55 RCW (Hydraulics Code) and Chapter 220-110 WAC (Hydraulics Code Rules).

(iii) Conducting agricultural activities to avoid high-risk activities outlined in section 4 of this section.

(iv) Providing evidence of no significant harm or degradation to AHCAs or wetlands regulated under this chapter that can be directly attributed to adjacent existing and ongoing agricultural activities.

(b) An owner or operator is responsible only for those conditions caused by agricultural activities conducted by the owner or operator and is not responsible from the actions of others, natural conditions not related to the agricultural activities, or emergency actions described in CCC 27.12.035(2).

(4) Agricultural activities risk assessment criteria. The well-being of farms and ranches in Clallam County depends in part on good quality soil, water, air and other natural resources. Agricultural activities that incorporate protection of the environment, including critical areas as defined by this chapter, are essential to achieving this goal. Agricultural activities are expected to be conducted in a manner that protects against harm or degradation to the existing functions and values of AHCA and wetlands. Although the risk assessments are focused on agricultural activities located within the minor new development buffers outlined in Tables 5 of Section 27.12.215(1)(a) CCC and Table 6 of Section 27.12.315(1)(a) CCC associated with regulated wetlands and AHCA, they also

apply to some more intensive agricultural activities (i.e. manure storage or confinement areas) located within the 200 foot jurisdictional boundary of these critical areas. The risk assessment also includes other non-regulated ponds and open irrigation ditches that are connected to AHCA that may provide a means for pollution to enter water bodies and cause harm and degradation.

The following table provides a list of low, moderate, and high-risk assessments for agricultural activities for livestock waste management, livestock containment areas, pasture and crop management; and water features (streams, open irrigation ditches, ponds, and wetlands). An agricultural operation may have different risk assessment ratings for each of the 17 items found in the 4 categories.

(a) Agricultural operation environmental risk assessment tables.

(i) LIVESTOCK WASTE

RATING ITEM	LOW RISK	MEDIUM RISK	HIGH RISK
No on-farm storage	Manure collected from pasture and confinement areas for proper storage and use	Year-round pasturing or daily spreading of livestock wastes	Livestock wastes not collected or spread
On-farm storage	Manure pile covered (rainfall and runoff diverted) and stored on a solid base (preferably concrete)	Manure partially covered; on slightly permeable soils; runoff diverted to filter strip (grassy/vegetated areas)	Manure not covered; runoff not collected
Storage location	Manure pile located more than 200 feet from wetlands, streams or open irrigation ditches	Manure pile located 100 to 200 feet from wetlands, streams, or open irrigation ditches	Manure Pile located within 100 feet of wetlands, streams or open irrigation ditches

(ii) LIVESTOCK CONFINEMENT AREA MANAGEMENT

RATING ITEM	LOW RISK	MEDIUM RISK	HIGH RISK
Proximity of confinement area to surface water	Confinement Areas more than 200 feet from wetlands, streams, or open irrigation ditches	Confinement Areas 100 to 200 feet from wetlands, streams, or open irrigation ditches	Confinement Areas less than 100 feet from wetlands, streams, or open irrigation ditches
Livestock water source	Stock water in troughs (overflow from tanks kept clean, diverted into drywell, grassy area, etc.) on paved or protected areas	Controlled livestock access to streams, open irrigation ditches, wetlands, and ponds	Livestock use unrestricted access to wetlands, streams, or irrigation ditches for stock water
Surface water diversion	All surface water and roof runoff water is diverted away from confinement area; fully covered (roof) or runoff from surface area diverted to waste storage area	Most surface and roof run-off diverted around confinement areas; manure collected regularly; runoff directed to filter strip (grassy/vegetated areas)	Most surface and roof run-off runs through confinement areas; manure is not/rarely collected
Cleaning and scraping	Manure collected regularly (every 1-3 days) and stored in a dry, covered location	Manure cleaned at least quarterly, monthly during rainy season	Manure not/rarely cleaned
Footing in confinement area	Area is not/rarely muddy; proper footing allows year round access for regular cleaning and maintenance	Area has well-drained soils, but mud during winter months, makes manure removal/maintenance difficult	Poor footing (native soil) and area cannot be cleaned because of mud

(iii) PASTURE AND CROP MANAGEMENT

RATING ITEM	LOW RISK	MEDIUM RISK	HIGH RISK
Stocking rate	Stocking rate managed to balance forage availability with livestock needs	Stocking rate exceeds pasture production up to 50% of growing season	Stocking rate exceeds pasture production majority of growing season
Pasture and soil condition	3-4" minimum stubble height in pasture and adjacent to open water; greater than 100% grazable forage	2-3" minimum stubble height in pasture and adjacent to open water; at least 80% grazable forage; less than 20% bare ground; some soil compaction evident; no noxious weeds or poisonous plants	Less than 2" minimum stubble height in pasture and adjacent to open water; less than 80% grazable forage; greater than 20% bare ground with compacted soil; noxious weeds or poisonous plants present
Fertility management	Fertilizer or manure applications based on soil or plant tissue tests	Crop nutrients (both organic and inorganic) applied at agronomic rates and times recommended for each crop during growing season	Manure spread within 50 feet of streams or open ditches; liquid manure applied on bare, frozen or snow-covered ground, or saturated soil from October 31 to March 1
Farm chemicals – pesticides, insecticides, and herbicides	Farm chemicals used as part of an integrated management plan, including record keeping	Applied consistent with the chemical container labels and all applicable Federal and State laws and regulations	Measures rarely or never taken to control pests or weeds; chemicals used without following guidelines and within 50 feet of open water
Seasonal management	Livestock excluded from pastures while soils are saturated or forage is dormant	Livestock allowed on well-drained pasture in winter, but excluded from seasonally wet areas	Livestock allowed year-round free range throughout pasture

(iv) WATER FEATURES (STREAMS, OPEN IRRIGATION DITCHES, PONDS, AND WETLANDS)

RATING ITEM	LOW RISK	MEDIUM RISK	HIGH RISK
Livestock access	Livestock do not have access to above referenced water features. Vegetated buffers are 50 feet or greater in width	Livestock do not have access to the above referenced water features; vegetated buffers are 35 to 50 feet in width	Livestock have unrestricted access to the above referenced water features. Vegetated buffer width less than 35 feet in width
Stream crossings	Animals do not have to cross stream or open irrigation ditch, or livestock use crossings, such as a culvert or bridge, that does not impact the stream	Livestock infrequently cross streams or open irrigation ditch at one, controlled location; minimal damage to stream banks and stream channel	Livestock cross the stream and open irrigation ditch on a regular basis
Riparian areas	Healthy riparian buffer of native trees and shrubs at least 50 feet in	Buffer consisting of only grass or other herbaceous plants or riparian buffer of native trees	Riparian buffer less than 35 feet in width; above referenced water features

RATING ITEM	LOW RISK	MEDIUM RISK	HIGH RISK
	width	and shrubs 35 to 50 feet in width; may include 15 foot wide hedgerows	have bare and exposed soil
Water quality	Above referenced water features appears clean and is not subject to frequent algae blooms	Above referenced water features sometimes appears murky, especially after storms, periodic algae blooms	Above referenced water features exhibits poor water quality, such as frequent algae growth and murkiness

(b) Low-risk agricultural activities shall be deemed compliant with this section if they meet the low risk assessment criteria.

(c) Moderate risk agricultural activities may be compliant with this section unless it is determined that they are causing harm or degradation to the existing functions and values in and adjacent to AHCA's and wetlands. If this occurs these agricultural operations would be required to prepare an agricultural best management practices (BMPs) plan to address the area of concern. The BMPs plan would be based on the USDA Natural Resources Conservation Service (NRCS) "Field Office Technical Guide" (FOTG) that contains a non-exclusive list of conservation practices (BMPs) to guide implementation of the expectations of this section. The BMP Plan would have to be submitted to the Clallam County Department of Community Development (DCD) for review and approval.

(d) High risk agricultural activities on any of the 17-risk assessment items are required to submit a Farm Conservation Plan to address the high-risk activities. The intent of the Farm Conservation Plan is, at a minimum, to lower the risk assessment item from high to medium. The farm conservation plan shall include the following: name of owner; parcel numbers, number of acres in agriculture; description of the agricultural operation; length of time the property has been in continual agriculture (no lapse greater than 5 years); number and type of animals being raised; types of crops being raised; general fertilizer (i.e. manure or commercial fertilizers), type and extent of existing vegetation, especially native vegetation; pesticides, insecticides, and herbicides being utilized; a site map showing the agricultural activities, access roads, and buffer and riparian areas in and adjacent to AHCA's and wetlands; existing fence locations; and proposed BMPs to protect the functions and values of AHCA's and wetlands. The site plan should focus on the areas within 200 feet of AHCA's and wetlands regulated under this Chapter. The Clallam Conservation District may be available to provide technical assistance in the development of a Farm Conservation Plan that shall be submitted to DCD for review and approval.

(e) Those portions of land upon which owners or farm operators have implemented a Dairy Nutrient Management Plan or a Resource Management System Plan or Conservation Reserve Enhancement Plan consistent with conservation practices and management standards that meet the FOTG quality criteria for each natural resource (soil, water, animals, plants, and air) and approved by the Clallam Conservation District or USDA Natural Resources Conservation Service are entitled to a presumption of compliance with the "no harm or degradation" standards described in subsection (3) of this section. The plan must address all AHCA's and wetlands on the property, as well as all upland areas within the owner's control that could potentially adversely impact the AHCA.

(f) Such presumption of compliance may be rebutted and enforcement commenced as described in subsection (5) below if the County obtains credible evidence that the agricultural activities are not meeting the "no harm" or degradation standards of subsection (3) of this section. To be entitled to this presumption, the owner or operator shall provide the County with documented evidence of implementation of those elements of the approved plan that are relevant to the resource impact at issue.

(5) Compliance. It is the policy of the County to emphasize compliance by education and voluntary compliance as a first step. The County will utilize the following methods for determining compliance with the performance and protection standards of this section:

(a) If DCD receives information through monitoring data or a complaint that agricultural operation regulated under this section are potentially causing harm or degradation to the functions or values of AHCA or wetlands, then DCD or the Clallam Conservation District will determine if the agricultural operation regulated under this section is the likely cause. If the agricultural activity is determined to be causing the harm or degradation to the functions or values of AHCA or wetlands then a risk assessment will be completed to address the specific issue of the monitoring data or complaint.

If the risk assessment rating is medium, the agricultural operation is required to prepare an agricultural BMP to address the specific issue of concern. The BMP Plan would have to be submitted to DCD for review and approval.

If the risk assessment rating is high risk activity, a Farm Conservation Plan would be required to address the specific high risk activities.

The BMP Plan and Farm Conservation Plan are both encouraged to be developed by the Clallam Conservation District. While voluntary compliance is desirable, failure to implement the required BMP Plan or Farm Conservation Plan in compliance with this section is subject to CCC 27.12.055, Enforcement, and Title 20 CCC, Code Compliance, as appropriate.

(b) Clallam County has regulatory authority for critical areas code enforcement and the Department of Ecology has regulatory authority for enforcement of state water quality protection laws. The mechanisms for responding to alleged water quality violations of agricultural origin and the role of the Clallam Conservation District in providing assistance to agricultural owners and operators to correct water quality violations is described in a 1987 Memorandum of Agreement with Ecology and a 1998 Memorandum of Understanding with the County.

(c) The County will implement the Pollution Identification & Correction Plan for the Sequim Bay-Dungeness Watershed Clean Water District (December 2014 or as later amended), to strategically and systematically identify and address agricultural sources of pollution.

(6) Baseline Conditions and Monitoring and Adaptive Management. The implementation of the intent of this Section shall be subject to establish baseline conditions, to establish monitoring indicators, and to utilize adaptive management.

(a) The County will use the following to establish the baseline of existing functions and values for AHCAs and wetlands:

(i) Streamkeepers Biological Integrity Scale (B-IBI) stream rating system dated December 2011.

(ii) Washington State Department of Ecology Water Quality Assessment 305 Report dated December 2012.

(iii) Washington State Department of Ecology 303(d) dated December 21, 2012.

(iv) Clallam County Shoreline Inventory and Characterization Report for Portions of Clallam County Draining to the Strait of Juan de Fuca dated March 2012.

(v) Revised Draft WRIA 20 Inventory and Characterization Report dated May 2012.

(b) The County will use the following indicators to monitor trends in the baseline:

(i) Stream reach classification changes based on the Streamkeepers Biological Integrity Scale (B-IBI) stream rating system of healthy, compromised; impaired, highly impaired, and critically impaired.

(ii) Change in stream reach or AHCA water quality documented by Streamkeepers of Clallam County.

(iii) Removal or addition of a stream reach or AHCA from the Washington State Department of Ecology 303 (d) list.

(iv) Change in stream reach or AHCA water quality documented in the Washington State Department of Ecology, Washington State Water Quality Assessment 305 Report.

(v) Water quality monitoring performed under the Pollution Identification and Correction (PIC) Plan for the Sequim Bay-Dungeness Watershed Clean Water District.

(vi) A downgrade to the wetland classification of wetlands adjacent to or hydrologically connected to existing and ongoing agricultural activities.

(vii) *Other Data Sources - Reserved*

(c) Adaptive Management. The Administrator will review the above monitoring indicators to determine trends in the baseline functions and values in Section 6(a) above. If there is a downward trend, the Administrator will assess whether existing and ongoing agriculture activities subject to this Section are likely contributing to this downward trend and, if so, implement the following steps:

(i) Contact landowners of existing and ongoing agriculture and provide information to make them aware of the issue of concern (e.g., monitoring results).

(ii) If the baseline functions and values do not improve in subsequent monitoring results, the Administrator will seek to determine whether there is an identifiable cause to the problem through site visits, consultations with other agencies, or other means of investigating the cause.

(iii) If there is an identifiable issue related to existing and ongoing agriculture, the Administrator will seek compliance under Section 5 above.

(iv) If the agricultural operations regulated under CCC 27.12.037 have implemented agricultural BMPs to achieve a low or medium risk assessment, but the functions and values of the AHCA and wetlands still degrade, this may necessitate a revision to the required a modification to the risk assessment performance standards or the enactment of protective measures in this Section to address the problem.

ADOPTED this _____ day of _____ 2016

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mike Chapman, Chair

Mark Ozias

ATTEST:

Trish Holden, CMC, Clerk of the Board

Bill Peach