HISTORY:

Clallam County adopted the interim Critical Areas Ordinance (CAO) on June 16, 1992. The interim CAO ordinance was scheduled to expire one year after the adoption of the Clallam County Comprehensive Plan. The Clallam County Comprehensive Plan was adopted on June 27, 1995. The county passed extensions of time for the interim CAO.

On December 28, 1999, Clallam adopted Critical Areas Ordnance (COA) regulations, as required by RCW 36. 70A.060, as part of the Growth Management Act (GMA).

Part of Clallam' s CAO regulations, Clallam County Code (CCC) 27.12.035(7), exempted pre-existing agricultural operations from the critical areas protection requirements. Protect Peninsula's Future (PPF) petitioned the Growth Management Hearing Board (GMHB) to invalidate the agricultural exemption and other parts of the ordinance. The GMHB found that the agricultural exemption did not comply with the GMA requirements and invalidated that exemption.

In response, Clallam amended CCC 27.12.035(7) in 2001 to state the following: "Existing and ongoing agriculture that was conducted prior to the effective date of this chapter on lands designated as critical areas or their associated buffers; provided, that such lands are classified as farm and agricultural land pursuant to Chapter 84.34 RCW; provided further, that all activities occurring on such lands employ best management practices (BMPs). For the purposes of this exemption, acceptable BMPs shall include: (a) activities carried out consistent with farm plans issued and authorized by the Natural Resources Conservation Service (NRCS); (b) activities that demonstrate consistency with total maximum daily loads (TMDL) established by the Department of Ecology for specific operations; and/or (c) activities that demonstrate consistency with standard BMPs published by the NRCS, as now or hereafter amended. Written confirmation by the administrating agency that applicable BMPs are being met will constitute evidence of eligibility for this exemption. (See also CCC 27.12.025(7))." This language is still in effect in Clallam County Critical Areas Code and is what is being appealed by PPF.

The amended ordinance limited the agricultural exemption to preexisting agricultural uses on land classified as farm and agricultural land under the open space tax program, chapter 84. 34 RCW, and required that exempt agricultural operations utilize best management practices. PPF again petitioned the GMHB for review. The GMHB held that the amended agricultural exemption was invalid, noting that it did not limit its application to designated agricultural resource areas. On appeal, the Court of Appeals held that the GMHB correctly ruled that Clallam could not exempt all pre-existing agricultural uses from critical areas regulations.

However, Court of Appeals also clarified that Clallam' s agricultural exemption need not be limited to designated agricultural resource lands. The Court of Appeals remanded to the GMHB for further proceedings, including re-determination of whether the agricultural exemption complied with the GMA.

Before the GMHB could determine on remand whether Clallam's agricultural exemption complied with the GMA, the legislature in 2007 enacted a moratorium on alteration of GMA critical areas regulations and initiated a policy study. Due to the moratorium, Clallam did not change its critical areas regulations. The moratorium lasted until 2011, when the legislature amended the GMA to add the Voluntary Stewardship Program (VSP). The VSP allows participating counties to comply with the GMA by implementing a watershed work plan that protects critical areas (See RCW 36. 70A.720). Participating county that is unable to implement a VSP work plan may achieve GMA compliance by, among other things, adopting the critical

areas regulations of one of four counties: Clallam, Clark, King, or Whatcom. RCW 36. 70A.735(1)(b).

In order to participate in the VSP, counties had to elect to participate in the program by January 22, 2012, six months after the effective date of the 2011 amendments. RCW 36. 70A.710(1)(b). - Counties that did not elect to participate remained subject to the original GMA provisions requiring regulations protecting critical areas per RCW 36. 70A. 710(6). Clallam did not elect to participate in the VSP.

In August 2012, PPF reinitiated the delayed compliance review before the GMHB. Clallam moved to dismiss the compliance action, claiming that by enacting RCW 36. 70A.735(1)(b) the legislature had validated Clallam' s 2001 critical areas regulations and superseded the GMHB's invalidation order. Therefore, Clallam argued that its regulations were now fully compliant with the GMA. The GMHB agreed with Clallam' s interpretation of RCW 36. 70A. 735(1)(b), stating that "clearly the legislature concluded the development regulations of those four counties were sufficiently protective of critical areas in areas used for agriculture."

As a result, the GMHB granted the motion to dismiss, which served to rescind its prior order of invalidity. PPF appealed the dismissal to the superior court, which affirmed the GMHB. PPF appealed the Superior Court decision to the Court of Appeals.

On February 18, 2015 The Court of Appeals determined that the GMHB erred by interpreting RCW 36.70A.735(1)(b) as a legislative validation of Clallam' s previously invalidated critical areas regulations for counties not participating in the VSP. The Court of Appeals reversed the GMHB motion to dismiss and remanded the issue back to the GMHB to address the issue of whether Clallam County's exemption for existing agriculture as amended in 2001 complies with the GMA.

On July 23, 2015 The GMHB issued a Compliance Schedule that provided the county six months to have the issue resolved. The GMHB have issued two 90 day extensions of time. A third extension of time will be sought. This would provide Clallam County until July 4, 2016 to have an update to the Critical Areas Code to address the issue of the current Critical Area Exemption for existing and on-going agriculture. After Clallam County updates the Critical Area Code this would provide our Prosecuting Attorneys and the lawyer for PPF to have until October 29, 2016 the GMHB make a determination of whether our new section on existing and on-going agriculture is compliant with the GMA.

Based on the above DCD started working to update the existing and on-going agricultural exemption section of the Critical Area Code.