

Ordinance 767

Amends portions of sections 27.12.040, 27.12.315, and 27.12.900 of Chapter 27.12, Clallam County Critical Areas Code, to delete buffer exemption for Type 5 streams less than 500 feet in length; clarifies relationship between exemption and pre-existing uses, and amends definition of minor new development

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Chapter 27.12

CLALLAM COUNTY CRITICAL AREAS CODE

27.12.040 Pre-existing uses.

All uses or structures that were lawfully established prior to the effective date of this ordinance Chapter and are consistent with CCC 27.12.035, may be continued. However, any development regulated by this chapter to alter, expand, replace, or reconstruct, or otherwise increase the nonconformity of a pre-existing use or structure that is located within a critical area or its buffer and does not meet the standards set forth by this chapter shall be subject to the standards of this chapter, as provided for in this section, and in addition to other standards set forth by the County Code. Clallam County shall review such development proposals and determine if the proposed development conforms with the standards of this chapter, or if the proposal increases the nonconformity of the existing development.

(1) Expansions or Minor Changes. Expansions or minor changes to a pre-existing use or structure which does not conform to the standards of this chapter, may be allowed subject to the standards set forth by this subsection. Those proposals that cannot meet the provisions of this subsection shall not be permitted unless a variance or reasonable use exception approval is granted by the applicable review authority pursuant to this chapter.

(a) If a pre-existing use or structure is located within a buffer set forth by this chapter, the pre-existing use may be continued, maintained, remodeled, or reconstructed provided there is no material expansion of the use or structure within the buffer or increase of the nonconformity with this chapter. For the purposes of this subsection, a material expansion that results in an increase in nonconformity shall be determined to exist when:

(i) There is an increase in the footprint of the nonconforming use or structure, as defined by this chapter; or

(ii) For residential development, there is an increase in the number of bedrooms, bathrooms or kitchens, such that would have the effect of increasing the quantity of effluent generated by the use of the nonconforming structure.

(b) For wetland or aquatic habitat conservation area buffers, a habitat management plan pursuant to Part Eight of this chapter will be required if such activity results in material disturbance to the critical area buffer outside the original footprint.

(c) For landslide hazard buffers (includes channel meander hazards), a geotechnical report and habitat management plan in accordance with Part Eight of this chapter are required.

(d) Activities associated with pre-existing uses undertaken on previously disturbed areas (non-native soils or slopes which are the result of previous excavation, filling or grading) are

permitted; provided, the activities do not decrease slope stability, do not significantly alter surface or ground water flow, do not increase the size of the disturbed areas, and do not result in a permanent decrease in vegetated area.

(e) Any expansion or minor change to a preexisting use or structure which does not conform to the standards of this chapter and is allowed or conditionally allowed pursuant to this subsection shall require the issuance of a certificate of compliance prior to any such activity.

(2) Repair, reconstruction or minor improvements within landslide hazards or floodways. Repair, replacement or minor improvements of a pre-existing use or structure within a landslide hazard (includes channel meander hazards) or floodway shall comply with the following:

(a) Consistent with RCW 86.16.041(2)(a), Floodplain Management, which states: "restriction of land uses within designated floodways including the prohibition of construction or reconstruction of residential structures except for: 1) repairs, reconstruction or improvements to a structure which do not increase the ground floor area; and 2) repairs, reconstruction or improvements to a structure the cost of which does not exceed fifty (50) percent of the market value of the structure either: a) before the repair, reconstruction, or repair is started, or b) if the structure has been damaged and is being restored before the damage occurred. Work done on structures to comply with existing health, sanitary, or safety codes or to structures identified as historic places shall not be included in the fifty-percent determination."

(b) Pre-existing structures for human occupation located within a landslide hazard (includes meander hazards) may not be reconstructed or replaced without meeting the provisions of this chapter unless a variance or reasonable use exception approval is granted by the applicable review authority pursuant to this chapter.

#### **27.12.315 Protection standards for aquatic habitat conservation areas.**

Those regulated uses identified in this subsection within the jurisdiction of designated aquatic habitat conservation areas shall comply with the performance standards outlined in this section:

(1) Buffers.

(a) Buffer Width. Except as otherwise allowed, buffers shall be maintained along all aquatic habitat conservation areas as noted in Table 6 below. The buffer shall not be altered except by a general exemption, certificate of compliance, variance, or reasonable use exception approval, as authorized by this chapter; provided, that such alterations meet all other standards for the protection of aquatic habitat conservation areas.

Buffer distances shall be measured from the ordinary high water mark (OHWM) or from the top of the bank where the OHWM cannot be identified unless otherwise specified by this chapter. The distance of the buffer shall be increased to include streamside wetlands which provide overflow storage for storm waters, feed water back to the stream during low flows or provide shelter and food for fish. In braided channels, the OHWM or top of bank shall be defined to include the entire stream feature.

**Table 6. Aquatic Habitat Conservation Area Buffers**

<b>Designation</b>	<b>Buffer Width for Major New Development and Land Divisions*</b>	<b>Buffer Width for Minor New Development**</b>
Aquatic Habitat Conservation Area		
Type 1 Waters – Marine, Streams and Lakes	150 feet	Equivalent to the setback set forth by the Shoreline Master Program, as it applies and as hereafter amended***
Type 2 Waters	150 feet	65 feet
Type 3 Waters	100 feet	60 feet
Type 4 Waters	50 feet	50 feet****
Type 5 Waters ( <del>500 feet in length or greater</del> )	50 feet	50 feet****

\* Buffers shall be measured from OHWM as specified above, and shall also extend to the outer edge of any associated, frequently flooded area.

\*\* Buffers shall be measured from the required measurement from the OHWM as specified above.

\*\*\* Except for the Dungeness River which shall be a minimum of ~~seventy-five (75)~~ feet.

\*\*\*\* Buffers may be reduced down to a minimum ~~twenty-five (25)~~ feet through the buffer averaging process set forth under CCC 27.12.730.

**27.12.900 Definitions**

(39) “Minor new development” means the following activities are considered minor new development:

(a) Construction or placement of a single-family dwelling and associated appurtenances, including a garage, deck, driveway, utilities, fence, ~~grading not exceeding 250 cubic yards, and clearing not exceeding 20,000 square feet in area; provided, that all structures combined on a given parcel have a total footprint of less than 4,000 square feet; provided further, that and an associated home enterprise as defined and approved under CCC Title 33, Clallam County Zoning Code, is also considered to be minor new development provided that all of the following criteria are met:-~~

~~(i) Grading shall not exceed 500 cubic yards; and~~

~~(ii) Land disturbing activities shall not exceed 20,000 square feet, except that on parcels less than 5 acres, land disturbing activities must not exceed 15 percent of the gross parcel size; and~~

~~(iii) The total cumulative footprint of all structures on a parcel must be less than 4,000 square feet; and~~

~~(iv) The total cumulative impervious surface area on the parcel must be less than 10 percent of the gross parcel size; and~~

~~(v) All land disturbing activities must be located on slopes less than 15 percent; and~~

(vi) All land disturbing activities must comply with any critical area buffer and other protection standards established for parcels created by land division.

(b) Construction and practices normal or necessary for agriculture, including agriculture service roads and utilities, construction of an agriculture building less than 4,000 square feet in size used exclusively for agriculture; provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of wetlands or streams by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary agriculture;

(c) Clearing, grading or filling less than one acre not associated with residential development or agriculture; provided, that mineral extraction is not involved; provided further, that no such activity shall occur within critical areas or their associated buffers inconsistent with this chapter.

ADOPTED this 25<sup>th</sup> day of January 2005

BOARD OF CLALLAM COUNTY COMMISSIONERS



Michael C. Chapman, Chair

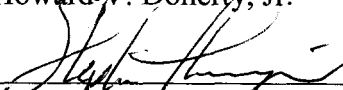


Howard V. Doherty, Jr.

ATTEST:



Trish Perrott, CMC, Clerk of the Board



Stephen P. Tharinger