

H2
5/3/22

An Ordinance amending Clallam County Code Title 35.01 Shoreline Management

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Table of Contents is added for Chapter 3, Section 3.13, Ocean Management:

3.13	Ocean Management	3-45
3.13.0	Applicability	3-45
3.13.1	Ocean use administration	3-45
3.13.2	General Ocean Management Policies	3-47
3.13.3	Ocean Management Regulations	3-49

Chapter 35.10, Section 35.10.050, Resource Conservancy designation (ReC), is amended to read as follows:

Ordinance 972, Section 2.5, Resource Conservancy designation (ReC) is amended to read as follows:

(2) Purpose. The purpose of the Resource Conservancy designation is to maintain resource lands in a predominantly forested condition for sustained timber production, habitat conservation, and/or low-intensity outdoor recreational use: while protecting existing ecological functions and processes.

Chapter 35.15, Section 35.15.660, General ocean management policies, is amended to read as follows:

Ordinance 972, Section 3.13.2 General ocean management policies, is amended to read as follows:

(2) These general ocean management policies are applicable to all shoreline permits for newly proposed ocean uses, their services, distribution, and supply activities and their associated facilities.

(a) Ocean uses and activities that will not adversely impact renewable resources shall be given priority over those that will. Correspondingly, ocean uses that will have less adverse impacts on renewable resources shall be given priority over uses that will have greater adverse impacts.

(b) Ocean uses that will have less adverse social and economic impacts on coastal uses and communities should be given priority over uses and activities that will have more such impacts. When the adverse impacts are generally equal, the ocean use that has less probable occurrence of a disaster should be given priority.

(c) The alternatives considered to meet a public need for a proposed use should be commensurate with the need for the proposed use. For example, if there is a demonstrated national need for a proposed use, then national alternatives should be considered.

(d) For ocean uses and activities, SEPA shall be applied consistent with WAC 197-11-060(4)(e) and 197-11-792(2)(c). The determination of significant adverse impacts should be consistent with WAC 197-11-330(3) and 197-11-794. The sequence of actions described in WAC 197-11-768 should be used as an order of preference in evaluating steps to avoid and minimize adverse impacts.

(e) Impacts on commercial resources, such as the crab fishery, on noncommercial resources, such as environmentally critical and sensitive habitats, and on coastal uses, such as loss of equipment or loss of a fishing season, should be considered in determining compensation to mitigate adverse environmental, social and economic impacts to coastal resources and uses.

(f) Allocation of compensation to mitigate adverse impacts to coastal resources or uses should be based on the magnitude and/or degree of impact on the resource, jurisdiction and use.

(g) Rehabilitation plans and bonds prepared for ocean uses should address the effects of planned and unanticipated closures, completion of the activity, reasonably anticipated disasters, inflation, new technology, and new information about the environmental impacts to ensure that state of the art technology and methods are used.

(h) Ocean uses and their associated coastal or upland facilities should be located, designed and operated to prevent, avoid, and minimize adverse impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands, and areas of high productivity for marine biota such as upwelling and estuaries.

(i) Ocean uses should be located to avoid adverse impacts on proposed or existing environmental and scientific preserves and sanctuaries, parks, and designated recreation areas.

(j) Ocean uses and their associated facilities should be located and designed to avoid and minimize adverse impacts on historic or culturally significant sites in compliance with Chapter 27.34 RCW. Permits in general should contain special provisions that require permittees to comply with Chapter 27.53 RCW if any archaeological sites or archaeological objects such as artifacts and shipwrecks are discovered.

(k) Ocean uses and their distribution, service, and supply vessels and aircraft should be located, designed, and operated in a manner that minimizes adverse impacts on fishing grounds, aquatic lands, or other renewable resource ocean use areas during the established, traditional, and recognized times they are used or when the resource could be adversely impacted.

(l) Ocean use service, supply, and distribution vessels and aircraft should be routed to avoid environmentally critical and sensitive habitats such as sea stacks and wetlands, preserves, sanctuaries, bird colonies, and migration routes, during critical times those areas or species could be affected.

(m) In locating and designing associated onshore facilities, special attention should be given to the environment, the characteristics of the use, and the impact of a probable disaster, in order to assure adjacent uses, habitats, and communities adequate protection from explosions, spills, and other disasters.

(n) Ocean uses and their associated facilities should be located and designed to minimize impacts on existing water-dependent businesses and existing land transportation routes to the maximum extent feasible.

(o) Onshore facilities associated with ocean uses should be located in communities where there is adequate sewer, water, power, and streets. Within those communities, if space is available at existing marine terminals, the onshore facilities should be located there.

(p) Attention should be given to the scheduling and method of constructing ocean use facilities and the location of temporary construction facilities to minimize impacts on tourism, recreation, commercial fishing, local communities, and the environment.

(q) Special attention should be given to the effect that ocean use facilities will have on recreational activities and experiences such as public access, aesthetics, and views.

(r) Detrimental effects on air and water quality, tourism, recreation, fishing, aquaculture, navigation, transportation, public infrastructure, public services, and community culture should be considered in avoiding and minimizing adverse social and economic impacts.

(s) Special attention should be given to designs and methods that prevent, avoid, and minimize adverse impacts such as noise, light, temperature changes, turbidity, water pollution and contaminated sediments on the marine, estuarine or upland environment. Such attention should be given particularly during critical migration periods and life stages of marine species and critical oceanographic processes.

(t) Preproject environmental baseline inventories and assessments and monitoring of ocean uses should be required when little is known about the effects on marine and estuarine ecosystems, renewable resource uses and coastal communities or the technology involved is likely to change.

(u) Oil or gas exploration, development, or production should be prohibited from Cape Flattery south to Cape Disappointment; in Grays Harbor, Willapa Bay, and the Columbia River downstream from the Longview bridge. For all other areas the following policies apply:

(i) Oil and gas, mining, disposal, and energy producing ocean uses should be designed, constructed, and operated in a manner that minimizes environmental impacts on the coastal waters environment, particularly the seabed communities, and minimizes impacts on recreation and existing renewable resource uses such as fishing.

(ii) To the extent feasible, the location of oil and gas, and mining facilities should be chosen to avoid and minimize impacts on shipping lanes or routes traditionally used by commercial and recreational fishermen to reach fishing areas.

(iii) Discontinuance or shutdown of oil and gas, mining or energy producing ocean uses should be done in a manner that minimizes impacts to renewable resource ocean uses such as fishing, and restores the seabed to a condition similar to its original state to the maximum extent feasible.

Chapter 35.30, Section 35.30.030, Regulations - General shoreline buffer and vegetation requirements, is amended to read as follows:

Ordinance 972, Section 6.3.6, Regulations – General shoreline buffer and vegetation requirements, is amended to read as follows:

(6) Lake Sutherland Buffer:

In the Shoreline Residential – Intensive designation, single-family residential use and development that qualifies as minor new development under subsection ~~(2)(a)~~ of this section shall be located at least 35 feet landward of the ordinary high water mark. The minimum 35-foot buffer is not eligible for further buffer reduction under CCC ~~35.30.040~~, ~~35.30.070~~, or ~~35.35.080~~. In addition to meeting the minimum 35-foot buffer, all minor new development shall avoid and minimize shoreline impacts consistent with the mitigation sequencing requirements of this Program. Furthermore, the landowner shall mitigate the impacts by selecting and implementing one of the following options (subsections ~~(6)(a)~~ and ~~(6)(b)~~ of this section) to maximize the ecological functions of the buffer zone:

(a) Plant woody cover to create a multitiered woody riparian area that meets all of the following criteria:

(i) Trees must be planted at 10-foot spacing (on center) and shrubs must be planted at six-foot spacing (on center) to create an average density of at least 150 woody stems per acre or 85 percent areal vegetative cover, whichever is greater; and

(ii) ~~(ii)~~—The planting plan shall be designed to optimize overhanging vegetation and woody debris recruitment; and

(iii) ~~(iii)~~—Trees and shrubs must be retained and maintained in perpetuity; and

(iv) Landowner must monitor and document plant establishment annually for at least five years and submit a written report of the buffer condition to the County Department of Community Development in October of each year; and

(v) Landowner must post a bond to cover all or a portion of the cost of the plant maintenance and annual monitoring; and

(vi) The County may require replanting or supplemental planting if the annual monitoring indicates that the plant density and cover standards are not being met.

(b) Implement a site-specific habitat management plan (HMP) for the property. The HMP need not necessarily involve planting to achieve the same plant cover and density standards required in subsection ~~(6)(a)~~ of this section, but shall otherwise ~~maximum-maximize~~ fish and wildlife habitat value and meet all of the following criteria:

(i) Describe the nature and intensity of the proposed development and the effect of the proposed development, activity or use on the wildlife species and habitats that occupy the lake and adjacent shoreline; and

(ii) Include a map prepared at a readable scale showing: the location of the proposed development site; the relationship of the site to surrounding topographic, water features, and existing and/or proposed building locations and arrangements; and a legend which includes a complete legal description, acreage of the parcel, scale, north arrows, and date; and

(iii) Identify the specific measures that will be implemented and maintained on the property to avoid, minimize and compensate for any adverse impacts to fish and wildlife habitats created by the proposed development (for example, this could include removing/reducing over-water structures or shoreline stabilization); and

(iv) Be prepared by a qualified professional who has been educated in fish or wildlife biology or a closely related field, and has professional experience as a biologist; and

(v) Use the most current, accurate, complete, available and applicable science in all facets of the analyses. The WDFW Priority Habitat and Species Management Recommendations, dated May 1991, and/or bald eagle protection rules outlined in WAC ~~232-12-292~~, as now or hereafter amended, and/or similar reference documents may serve as guidance for the plan; and

(vi) The plan must include performance standards and a program for annual monitoring for at least five years; and

(vii) The landowner must post a bond to cover all or a portion of the cost of the monitoring.

(c) If the landowner chooses to locate their minor new development at least 50 feet from the OHWM on a parcel that is less than 200 feet deep or at least 75 feet from the OHWM on a parcel that is more than 200 feet deep, no planting or HMP is required.

(d) All major new development on the Lake Sutherland shoreline shall meet the buffer requirements outlined in Table 6-1.

Chapter 35.40, Section 35.40.020, Policies, is amended to read as follows:

Ordinance 972, Section 8.2, Policies, is amended to read as follows:

(3) The County should work cooperatively with shoreline property owners and with other local, State, federal, and Tribal resource management agencies to track new development and redevelopment subject to this Program, violations and remediation of violations of SMP permits issued under this Program, and collect information pertaining to environmental indicators. The following specific environmental indicators should be tracked at least once every five years and compared to previous baseline levels when data is reasonably obtainable and publicly available from either governmental sources, the scientific community or aerial imagery:

- (a) Percent of mapped feeder bluffs with armoring (percent classified as modified);
- (b) Status of salmon stocks;
- (c) Status of shellfish beds (frequency of closures);
- (d) Length of stream bordered by/confined by levees, excluding setback levees;
- (e) Number of over-water structures per mile of shore and number of over-water structures per mile of sediment transport zone;
- (f) Length of shoreline tidal barriers;
- (g) Percent of aquatic area supporting submerged aquatic vegetation (e.g., kelp, eelgrass);
- (h) Percent closed canopy forest within 200 feet of the ordinary high water mark;
- (i) Percent impervious surface within 200 feet of the ordinary high water mark; and
- (j) Area of ~~un~~developed floodplains/channel migration zone.

(4) The County should use ~~a the~~ checklist application form to track new development proposals against the list of indicators in Section 8.2.3. Changes in indicators should be tracked and monitored at the shoreline reach and watershed scales

Chapter 35.50, Section 35.50.070, Exemptions from shoreline substantial development permit, is amended to read as follows:

Ordinance 972, Section 10.2.5, Exemptions from shoreline substantial development permit, is amended to read as follows:

(1) Activities and uses that are exempt from the requirement to obtain a shoreline substantial development permit are listed in RCW 90.58.030(3)(e) and WAC 173-27-040.

(2) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions in RCW 90.58.030(3)(e) and WAC 173-27-040 may be granted exemptions from the substantial development permit process.

(3) An exemption from the substantial development permit process is not an exemption from compliance with Chapter 90.58 RCW or this Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this Program and Chapter 90.58 RCW.

(4) A use or development that is listed as a conditional use pursuant to this Program, or is an unlisted use or development, must obtain a conditional use permit even if the development or use does not require a substantial development permit.

(5) When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of the Program, such development or use shall only be authorized by approval of a shoreline variance even if the development or use does not require a substantial development permit. (6) The burden of proof that a development or use is exempt is on the applicant/proponent of the exempt development/use.

(7) If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.

(8) Exempt activities shall not be conducted until a statement of exemption has been obtained from the Administrator.

(9) All statements of exemption shall be in writing ~~on forms attached to this Program~~. As appropriate, statements of exemptions shall contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the Program and Chapter 90.58 RCW. The granting of a statement of exemption shall constitute a valid authorization to engage in the activity or development.

(10) The Administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to the appeal provisions listed in this chapter.

(11) No statement of exemption is required for emergency development pursuant to WAC 173-27-040(2)(d), but after the fact permitting and/or removal of temporary structure may be required once the emergency situation is over.

(12) Whenever the exempt activity also requires a U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899 or a Section 404 permit under the Federal Water Pollution Control Act of 1972, a copy of the written statement of exemption shall be sent to the applicant/proponent and Ecology pursuant to WAC 173-27-050.

**Chapter 35.55, Section 35.55.010, Definitions, is amended to read as follows:
Ordinance 972, Chapter 11, Definitions, is amended as follows:**

A

26. Aquatic Habitat Conservation Areas means the subset of fish and wildlife habitat conservation areas listed in WAC ~~365395-190-130(2)~~ 365-190-130(2) that occur in the water.

N

216. New Ocean Uses are uses and developments that have not occurred or were not permitted within Washington's Coastal waters prior to the completion of the Marine Spatial Plan for Washington's Pacific Coast, as revised June 2018. New uses, as defined by the MSP, are in-water uses, with potential adverse impacts to renewable resources or existing uses that have not been previously reviewed or authorized/permited within the MSP study area. The MSP anticipates new ocean use proposals for activities such as renewable energy, dredged material Clallam County SMP 11-25 disposal, mining, marine product harvesting, and offshore aquaculture operations. See also "Ocean Uses".

S

324. Single-family residence means a detached dwelling designed for and occupied by no more than one family, ~~including~~ those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield; and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.

ADOPTED this 3rd day of may 2022



ATTEST:

J. Gores
Loni Gores, CMC, Clerk of the Board

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Oxi
Mark Oxi, Chair

Randy Johnson
Randy Johnson

Excused
Bill Peach