

ORDINANCE NO. 449

AN ORDINANCE amending Ordinances 392,393, 400, 401, 402 repealing or modifying certain sections of Grays Harbor County Code Title 18 Definitions and adding new sections relating to definitions for Title 18.06 Critical Area Protection Ordinance

WHEREAS, Grays Harbor County finds, after consultation with affected interest groups, citizens, and state agencies, that there is a need to update certain sections of Title 18 relating to critical areas protection to ensure compliance with the 2018 Periodic Update to the Critical Areas Protection Ordinance mandated by the Growth Management Act;

NOW, THEREFORE, be it ordained by the Board of Commissioners of Grays Harbor County, Washington, that the following sections of Ordinances 392, 393, 400, 401 to Grays Harbor County Title 18 be amended or deleted:

Section 1: Ordinance 392, 393, 400 and 401 Section 18.02.010 is amended to *add* the following definitions:

“Adaptive management program” means a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. An adaptive management program shall:

- a. Address funding for the research component of the adaptive management program,
- b. Change course based on the results and interpretation of new information that resolve uncertainties; and,
- c. Commit to the appropriate timeframe and scale necessary to reliably evaluate regulatory and non-regulatory action affecting protection of critical areas and anadromous fisheries.

“Agricultural Activities, Existing and Ongoing” means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including but not limited to operation, maintenance and conservation measures of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and normal operation, maintenance or repair of existing serviceable structures, facilities or improved areas. Activities which bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area in which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer than five years, unless the idle land is registered in a federal or state soils conservation program.

“Alteration” means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing of vegetation, construction, compaction, excavation, or any other activity that changes the character of the critical area.

“Best Available Science” means the current scientific information used in the process to designate, protect, or restore critical areas; that is, derived from a valid scientific process as defined by WAC 365-195-900 through 925.

“Best Management Practices (BMPs)” are conservation practices or systems of practices and management measures that:

- (a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;
- (b) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- (c) Protect trees, vegetation, and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and
- (d) Provide standards for proper use of chemical herbicides within critical areas.

“Bog” means a low-nutrient, acidic wetland with organic soils and characteristic bog plants, as described in *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).

“Buffers or buffer area” means that area of land immediately adjacent to a critical protection area that maintains the functions and/or structural stability of the critical area. Buffers consist of undisturbed native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat.

“Critical areas” include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

“Development” means a land use consisting of the construction or exterior alteration of structures; grading, dredging, drilling, or dumping; filling; removal of sand, gravel, or minerals; bulk heading; driving of pilings; or any project of a temporary or permanent nature which modifies structures, land, wetlands, or shorelines and which does not fall within the allowable exemptions contained in the county code.

“Enhancement” means the manipulation of the physical, chemical, or biological characteristics of a wetland to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in wetland function(s) and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods.

“Essential public facilities” include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

“Estuarine Wetland” means a vegetated wetland with a water regime that is predominately tidal, as described in *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).

“Functions and Values” means the services provided by critical areas to society, including, but not limited to, improving and maintaining water quality, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains, reducing flooding and erosive flows, wave attenuation, historical or archaeological importance, educational opportunities, and recreation.

“Impervious Surface” means surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under pre-development or pre-developed conditions. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

“In-Kind Compensation” means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

“In-Lieu-Fee Program” means an agreement between a regulatory agency (state, federal, or local) and a single sponsor, generally a public natural resource agency or non-profit organization. Under an in-lieu-fee agreement, the mitigation sponsor collects funds from an individual or a number of individuals who are required to conduct compensatory mitigation required under a wetland regulatory program. The sponsor may use the funds pooled from multiple permittees to create one or a number of sites under the authority of the agreement to satisfy the permittees’ required mitigation.

“Infiltration” means the downward entry of water into the immediate surface of soil.

“Interdunal Wetland” means wetland that forms in the deflation plains and swales that are geomorphic features in areas of coastal dunes, as described in *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology

“Isolated Wetland” means wetland that is hydrologically isolated from other aquatic resources, as determined by the United States Army Corps of Engineers (USACE). Isolated wetlands may perform important functions and are protected by state law (RCW 90.48) whether or not they are protected by federal law.

“Mature and Old-Growth Forested Wetland” means a wetland having at least 1 contiguous acre of either old-growth forest or mature forest, as described in *Washington State Wetland Rating System for Western Washington: 2014 Update* (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).

“Mitigation” means avoiding, minimizing, or compensating for adverse critical areas impacts. Mitigation, in the following sequential order of preference, is:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- (c) Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;

- (d) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- (e) Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- (f) Monitoring the hazard or other required mitigation and taking remedial action when necessary. Mitigation for individual actions may include a combination of the above measures.

“Monitoring” means evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems, and assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features. Monitoring includes gathering baseline data.

“Native Vegetation” means plant species that occur naturally in a particular region or environment and were present before European colonization.

“Preservation” means the removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes the purchase of land or conservation easements, repairing water control structures or fences, or structural protection. Preservation does not result in a gain of wetland acres but may result in a gain in functions over the long term.

“Prior Converted Croplands” (PCCs) are defined in federal law as wetlands that were drained, dredged, filled, leveled, or otherwise manipulated, including the removal of woody vegetation, before December 23, 1985, to enable production of an agricultural commodity, and that: 1) have had an agricultural commodity planted or produced at least once prior to December 23, 1985; 2) do not have standing water for more than 14 consecutive days during the growing season, and 3) have not since been abandoned.

“Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles.

“Repair or Maintenance” means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

“Restoration” means measures taken to restore an altered or damaged natural feature, including:

- (a) Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
- (b) Actions performed to re-establish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.

“Septage” means the mixture of solid wastes, scum, sludge, and liquids pumped from within septic tanks, pump chambers, holding tanks, and other On-site Septic System (OSS) components.

“Service Area (for critical area mitigation)” means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu-fee program, as designated in its instrument.

“Soil Survey” means the most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.

“Species” means any group of animals or plants classified as a species or subspecies as commonly accepted by the scientific community.

“Species of Local Importance” means those species of local concern designated by State Department of Fish & Wildlife, Priority Habitats and Species List, August 2008, as may hereafter may be revised due to their population status or their sensitivity to habitat manipulation.

“Species, Listed” means any species listed under the federal Endangered Species Act or state endangered, threatened, and sensitive, or priority lists (see WAC 232-12-297 or page 6 of “Priority Habitat and Species List,” Washington Department of Fish and Wildlife, 2008, Olympia, Washington. 177 pp.)

“Stream” means an area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

“Unavoidable Impacts” means adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

“Washington Administration Code (WAC)” means administrative rules implementing state laws.

“Wetland Creation” means the manipulation of the physical, chemical, or biological characteristics to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Creation results in a gain in wetland acreage and function. A typical action is the excavation of upland soils to elevations that will produce a wetland *hydroperiod* and hydric soils, and support the growth of hydrophytic plant species.

“Wetland of High Conservation Value” means a wetland that has been identified by scientists from the Washington Natural Heritage Program (WHNHP) as an important ecosystem for maintaining plant diversity in Washington State. See <http://www.dnr.wa.gov/data-information-natural-heritage-features> .

“Wetland Mitigation Bank” means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of unavoidable impacts to wetlands or other aquatic resources that typically are unknown at the time of certification to compensate for future, permitted impacts to similar resources.

“Wetland Mosaic” means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50% of the total area of the entire mosaic, including uplands and open water.

Section 2: Ordinances 392, 393, 400, 401 and 402 Section 18.02.010 is amended to *delete* the following definitions:

~~"Altered" means a human-induced action which requires a county development permit and which changes the existing condition of a critical protection area.~~

~~"Buffer or buffer area" means that vegetated area adjacent to critical protection area that can reduce impacts from adjacent land uses through various physical, chemical, and/or biological processes.~~

~~"Critical protection areas" are the values and functions of geologically hazardous areas, frequently flooded areas, wetland areas, fish and wildlife habitat conservation areas, and critical aquifer recharge areas as defined in this chapter.~~

~~"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or the outdoor storage of equipment or materials on property containing a critical protection area.~~

~~"Impervious surface" means a surface that impairs or prevents the recharge effect of surface water into the soil.~~

~~"Mitigation" means (1) avoiding the impact altogether by not taking a certain action or parts of an action, (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts, (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, (5) compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or (6) monitoring the impact and taking appropriate corrective measures.~~

Section 3: Ordinance 393 and Section 18.06.025, General Exemptions, is amended to read as follows:

"Fish and wildlife habitat conservation areas" means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long-term and isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Cooperative planning and coordination should occur to help assure long-term population viability.

Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designing these areas is an important part of land use planning and appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs.

Fish and wildlife habitat conservation areas include:

1. Areas where endangered, threatened, and sensitive species have a primary association;
2. Habitats and species of local importance, as determined locally;

3. Commercial and recreational shellfish areas;
4. Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;
5. Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat;
6. Waters of the state;
7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and
8. State natural area preserves, natural resource conservation areas, and state wildlife areas; however,
9. Fish and wildlife habitat conservation areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

"SEPA" means the Washington State Environmental Policy Act, 43.21C RCW State Environmental Policy Act. The "SEPA process" means all measures necessary for compliance with the act's requirements.

"Responsible official" means the planning and building director or his or her assign."

(Ord. No. 392, § 1, 6-7-2010; Ord. No. 400, § 2, 1-9-2012; Ord. No. 401, §§ 1, 2, 6-11-2012; Ord. No. 434, § 1, 1-30-2017)

APPROVED AND ADOPTED this 3rd day of September, 2019.

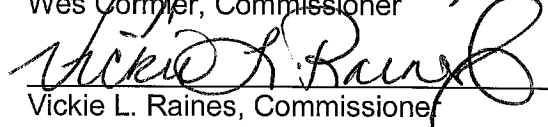
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Wes Cormier, Commissioner

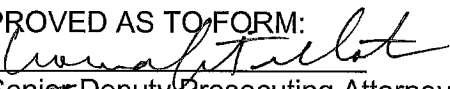


Vickie L. Raines, Commissioner

ATTEST:



Clerk of the Board

APPROVED AS TO FORM:
BY: 
chief Senior Deputy Prosecuting Attorney
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