

**PACIFIC COUNTY CRITICAL AREAS
AND RESOURCE LANDS
ORDINANCE NO. 147B**

**AN ORDINANCE OF PACIFIC COUNTY, WASHINGTON WHICH AMENDS
PACIFIC COUNTY CRITICAL AREAS AND RESOURCE LANDS ORDINANCE
NO. 147A BY REPEALING PROVISIONS PERTAINING TO
DEMONSTRATION PROJECT WETLAND BANKS.**

WHEREAS, the Western Washington Growth Management Hearings Board entered an order on October 28, 1999, which requires Pacific County to modify Ordinance No. 147A by taking the following actions pertaining to Demonstration Project Wetland Mitigation Banks:

1. Adopt appropriate SEPA analysis concerning transfer of wetland mitigation credits; and
2. Adopt appropriate criteria and/or standards concerning transfer of credits from demonstration wetland mitigation banks as well as determining a finite number and size of such banks that comply with the GMA duty to protect critical areas;

WHEREAS, Pacific County has held a Planning Commission workshop and hearing on January 6, 2000, and February 3, 2000, respectively, to address these issues;

WHEREAS, the Pacific County Board of Commissioners held a hearing on these matters on February 28, 2000 before enacting Ordinance No. 147B;

WHEREAS, the time deadline imposed by the Growth Hearings Board to modify Ordinance No. 147 has not given the County sufficient time to perform a full blown analysis under the State Environmental Policy Act (SEPA).

WHEREAS, the shortness of time constitutes an emergency under WAC 197-11-880.

WHEREAS, Pacific County does not believe that the repeal of provisions pertaining to Demonstration Wetland Mitigation Banks will cause environmental harm.

WHEREAS, Pacific County has determined that Ordinance No. 147B is exempt from the requirements of SEPA under WAC 197-11-880.

WHEREAS, the consensus of opinion is that the issues pertaining to Demonstration Projects in particular and Wetland Mitigation Banks in general are of a sufficient complexity to merit additional inquiry;

WHEREAS, the harm that the Growth Management Hearings Board perceived regarding Pacific County's regulation of Demonstration Project Wetland Mitigation Banks can best be alleviated by repealing the relevant provisions of Ordinance No. 147A; and

WHEREAS, Pacific County should not take any final action on the topic of Wetland Mitigation Banks (other than repealing the language in Ordinance No. 147A relating to Demonstration Projects) until the Washington State Department of Ecology has promulgated rules pertaining to the creation and operation of Wetland Mitigation Banks; now therefore,

IN ACCORDANCE WITH CHAPTER 36.32 RCW, IT IS HEREBY ORDAINED BY THE BOARD OF COMMISSIONERS, PACIFIC COUNTY, WASHINGTON, THAT PACIFIC COUNTY ORDINANCE NO. 147A IS AMENDED AS FOLLOWS:

1. SECTION 3 of Ordinance No. 147A which amends Section 4 of Ordinance No. 147 is amended to read as follows:

SECTION 4 WETLANDS REGULATIONS

A. PURPOSE

The purpose of this section is to protect wetlands which serve a number of important beneficial functions.

B. IDENTIFICATION

1. Pacific County adopts the Washington State Department of Ecology Manual titled Washington State Wetlands Identification and Delineation Manual, March 1997, as the Pacific County wetland delineation manual for purposes of this Ordinance.
2. If Pacific County has reason to believe that a wetland may exist within one hundred (100) feet of a proposed development activity, a written determination regarding the existence or nonexistence of wetlands within one hundred (100) feet of a proposed development activity must be submitted to the Department of Community Development. Pacific County will only accept a written determination by the U.S. Army Corps of Engineers, the Washington State Department of Ecology, the Natural Resources Conservation Service, or a qualified critical areas professional as to whether wetlands exist on or within one hundred (100) feet of a specific parcel.
3. If it is determined under subsection 4.B.2 that wetlands exist, a wetland delineation must be obtained when an activity regulated under this Ordinance is proposed within one hundred (100) feet of the boundary of a wetland. Pacific

County will only accept a delineation performed by U.S. Army Corps of Engineers, Washington State Department of Ecology, Natural Resources Conservation Service, or a qualified critical areas professional who has been approved by the Department of Community Development. A wetland delineation report shall be prepared by one of the entities listed above and submitted to the Department of Community Development. The report at minimum shall include the following information:

- a. Description of the methods used to identify and delineate the wetland;
- b. Description of the hydrology, soils, and vegetative characteristics of the wetland;
- c. The wetland rating class (see below subsection 4.C. WETLANDS CLASSIFICATION);
- d. A professional survey of the wetland boundary flagging, including the locations of formal data plots; and
- e. Copies of all field data sheets.

C. CLASSIFICATION

1. Wetland Rating Classes

- a. Class I Wetlands. All wetlands scoring a "Category I" rating under the Washington State Department of Ecology (WDOE) Washington State Wetlands Rating System for Western Washington, Second Edition, August 1993.
- b. Class II Wetlands. All wetlands scoring a "Category II" on the WDOE rating scale.
- c. Class III Wetlands. All wetlands scoring a "Category III" on the WDOE rating scale.
- d. Class IV Wetlands. All wetlands scoring a "Category IV" rating on the WDOE scale.

D. WETLAND BUFFERS

1. Standard Buffer Widths

Buffers are necessary to protect wetlands from impacts generated by nearby land uses. The following standard buffers shall be required for regulated wetlands:

Class I Wetlands	100 feet
Class II Wetlands	75 feet
Class III Wetlands	50 feet
Class IV Wetlands	25 feet

2. Buffer Width Averaging

The width of a buffer for Class I, Class II, or Class III wetlands may be averaged, thereby reducing the width of a portion of the buffer and increasing the width of another portion, if all of the following requirements are met:

- a. Buffer averaging is necessary to avoid hardship to the person seeking this option which is caused by circumstances peculiar to the property;
- b. The wetland contains variations in sensitivity due to existing physical characteristics;
- c. Buffer width averaging will not adversely impact wetland functions and values;
- d. The total area of the buffer is not less than the total area of the buffer which would have been required if buffer averaging was not allowed;
- e. No part of the buffer is reduced by more than fifty (50) percent of the standard buffer width; and
- f. The buffer area proposed to be designated in buffer width averaging shall be contiguous to the original buffer area and shall not include on-site septic systems, public or private roadways, structures, or above ground utilities. Existing disturbed areas may not be approved for use as a buffer width averaging area unless a buffer restoration or buffer enhancement plan has been submitted that conforms with the specifications of Subsections 4.B and 4.E.

3. Temporary Buffer Alterations

Where temporary buffer disturbance has or will occur in conjunction with approved permitted activities, revegetation of the buffer with native vegetation shall be required. Re-vegetation shall occur within thirty (30) days of project completion, unless explicitly extended by the Administrator.

4. Buffer Barrier Reduction

For development proposed to be located in a wetland buffer that is physically isolated from its corresponding wetland by a pre-existing barrier (bulkhead, paved public roadway, existing building, etc.) the standard buffer width as contained within Subsection 4.D.1. shall be reduced by one half if the applicant can demonstrate that the reduction will not have any negative impacts to the corresponding wetland functions and values.

5. Land-ward Residential Addition

For proposed development consisting of an expansion of an existing single family residential structure within a wetland buffer, for which the proposed expansion is on the land-ward side of the structure furthest from the wetland, no mitigation shall be required for such expansion, so long as the width of the expanded structure parallel to the wetland boundary is not increased.

E. MITIGATION

1. County Permits

Where a project requires the disruption of a wetlands, the wetland system, function, and values shall be maintained through mitigation as specified in this subsection.

a. Land Based Mitigation-Class I Wetlands

For Class I wetlands, any loss of wetlands shall be mitigated by creating or restoring new wetlands at an aerial ratio of 4 to 1 (wetlands created or restored to wetlands impacted). "In-kind" and "on-site" mitigation shall be required unless it can be demonstrated that an "off-site" alternative would be of greater value to the environment.

b. Land Based Mitigation-Class II Wetlands

For a Class II wetlands, any loss of wetlands shall be mitigated by creating or restoring new wetlands of like kind at an aerial ratio of 2 to 1 (wetlands created or restored to wetlands impacted). "In-kind" and "on-site" mitigation shall be required unless it can be

demonstrated that an "out-of-kind" and/or "off-site" alternative would be of greater value to the environment.

c. Land Based Mitigation - Class III and Class IV Wetlands

For a Class III and Class IV wetlands, any loss of wetlands shall be mitigated by creating or restoring new wetlands of a like kind at an aerial ratio of 1.5 to 1 (wetlands created or restored to wetlands impacted). "In-kind" and "on-site" mitigation shall be required unless it can be demonstrated that an "out-of-kind" and/or "off-site" alternative would be of greater value to the environment.

2. For the purposes of this subsection, an insufficient buffer under subsection 4.D WETLAND BUFFERS shall be treated as a loss of wetlands to the extent of the deficiency.
3. Any Class III or Class IV wetland which has an aggregate area of less than or equal to 2500 square feet shall be exempt from any mitigation requirements.
4. No additional wetland mitigation is required by this Ordinance for Class II, Class III, or Class IV wetlands converted to cranberry bogs provided that all existing Federal and State mitigation requirements are met.
5. An applicant proposing to construct new public or private roads and/or bridges within a wetland or its buffer shall submit an analysis of the cumulative wetland and buffer impacts that can reasonably be expected to occur as a result of approval of the proposed project. The Administrator shall consider the cumulative impacts of proposed projects and shall give preference to use and/or expansion of existing roadways over the construction of new roadway wetland crossings.

F. PROCESSING

1. For projects requiring environmental review:

Information demonstrating compliance with the standards of this section shall be submitted in connection with environmental documents for all applications requiring environmental review. Any environmental determination shall include a review of this material to determine whether the requirements of this section have been met.

2. For projects exempt from environmental review:

Information demonstrating compliance with the standards of this section shall be submitted in connection with the application documents for any development permit exempt from environmental review.

3. Other Agency Permits and Standards

Activities in and around wetlands often require review and permitting by State and Federal agencies. The requirements of this Ordinance are additional to any and all State and Federal review and/or permit responsibilities.

G. MAPS AND REFERENCES.

The following references may provide an indication of wetland locations. However, these and other similar resources were not prepared at a level of detail sufficient to accurately portray the exact location and extent of wetlands in Pacific County, and cannot be used in place of an on-site field determination of wetlands. Many wetlands in Pacific County will not appear on these resources.

1. National Wetland Inventory.
2. Natural Resources Conservation Service (formerly the Soil Conservation Service), soils map for Pacific County, hydric soils designations.

H. WETLAND BANKING

1. Loss of Class I, Class II, Class III or Class IV wetland buffer, and loss of Class II, Class III, or Class IV wetland may be mitigated for via purchasing of rights in an approved wetland mitigation bank. Loss of Class I wetland may only be mitigated for via purchasing of rights in an approved wetland mitigation bank to mitigate for impacts from public infrastructure projects. Development proposals for which wetland mitigation banking is proposed as mitigation must first demonstrate compliance with the preferred wetland mitigation sequence within Subsection 1.D.2. of this Ordinance.
2. A wetland mitigation bank may only be approved by the Administrator following a Type II public review process as specified within Pacific County Ordinance 145, or any amendments thereto. A Wetland Mitigation Bank must comply with Chapter 90.84 RCW and administrative rules promulgated by the Washington State Department of Ecology. No Wetland Mitigation Bank may be approved until the Washington State Department of Ecology adopts a rule in the Washington Administrative Code that implements the mandates in Chapter 90.84 RCW.

3. An applicant proposing development of a Wetland Mitigation Bank shall submit a detailed plan proposal to the Administrator that includes the following:

- a. A completed environmental checklist under the State Environmental Policy Act (SEPA);
- b. A site map drawn to scale;
- c. A declaration of ownership interest for the proposed mitigation banking site;
- d. A wetland delineation report prepared by a qualified critical area professional;
- e. A description of the existing site wetlands, wetland buffers and uplands, environmental functions and values, hydrology, vegetation, soils, and wildlife populations and habitat;
- f. An inventory of Threatened, Endangered, and Sensitive plant and other wildlife species on the site;
- g. A detailed description of the wetland creation, enhancement, or restoration to be achieved, proposed timeline for creation / enhancement / restoration, description of necessary materials, and a listing of permits and agency approvals required to complete the project;
- h. A physical description of the site including pre and post construction topography, hydrology, vegetation, soils, and habitat;
- i. A proposal for perpetual ownership and management of the site, and for on-going monitoring of the site for a minimum of ten (10) years following construction;
- j. A proposed credit release schedule;
- k. A chart of proposed mitigation ratios for enhancement, restoration and/or creation components of the project;
- l. A proposed contingency plan to respond to failure to achieve planned hydraulic, soil, vegetation, and/or habitat benefits; and
- m. A proposed wetland banking credit tracking and reporting system.

2. SECTION 5 of Ordinance No. 147A which amends Section 15 of Ordinance No. 147 is amended to read as follows:

**SECTION 15
EFFECTIVE DATE**

Pacific County Ordinance No. 147 if effective as of April 11, 1997. The amendments and additions to Ordinance No. 147 that are contained within Ordinance No. 147A are effective as of April 13, 1999. The amendments and

additions to Ordinance No. 147A that are contained within Ordinance No. 147B are effective as of February 28, 2000.

3. This Ordinance shall not affect the vested rights of any Demonstration Project Wetland Mitigation Bank that was approved by Pacific County prior to the effective date of the Ordinance No. 147B.
4. The sections of Ordinance No. 147A that are not modified by Ordinance No. 147B remain in full force and effect.
5. If any provision or portions thereof, contained in Ordinance No. 147B is held to be unconstitutional, invalid, or unenforceable, said provisions, or portion(s) thereof, shall be deemed severed and the remainder of the Ordinance shall not be affected and shall remain in full force and effect.
6. Ordinance No. 147B shall take effect as of February 28, 2000.

PASSED BY THE BOARD OF PACIFIC COUNTY COMMISSIONERS meeting in regular session at South Bend, Washington, by the following vote, then signed by its membership and attested to by its Clerk in authorization of such passage this 28th day of February, 2000.

 3 AYE; 0 NAY; 0 ABSTAIN; 0 ABSENT

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY WASHINGTON

/s/Jon C. Kaino

Jon C. Kaino, Chairman

/s/Pat Hamilton

Pat Hamilton, Commissioner

/s/Norman Cuffel

Norman "Bud" Cuffel, Commissioner

ATTEST:

/s/Kathy Noren

Kathy Noren, Clerk of the Board