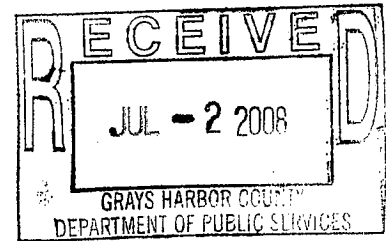




Quinault Indian Nation

POST OFFICE BOX 189 • TAHOLAH, WASHINGTON 98587 • TELEPHONE (360) 276-8211



June 30, 2008

Brian Shea
Planning and Building Division
Department of Public Services
Grays Harbor County
100 West Broadway Avenue, Suite 31
Montesano, Washington 98663-3614

Dear Mr. Shea:

The Quinault Indian Nation ("Nation") submits these comments regarding the draft Grays Harbor County Critical Protection Areas Code 18.06. In summary, the Nation asserts that economics played a more prominent role in drafting these protection measures than the use of best available science. Overall, the proposal does not provide for necessary ecological functions and is not based on best available science, which violates the requirements in RCW 36.70A.172.

More importantly, the Code needs to be providing meaningful interaction with affected Tribes. We request to meet with you on a Government-to-Government basis to discuss our proposal for a Lake Quinault Critical Area.

As you know, much of the Quinault Indian Reservation lies within Grays Harbor County. The Reservation was allotted (divided up and transferred to individual Indians) between 1911 and 1934 and some of the land was subsequently transferred to fee status. However, the Nation retains civil regulatory jurisdiction over **all** lands within the Reservation. Lake Quinault is within the boundaries of the Reservation. The bed of Lake Quinault (up to the ordinary high water mark) is owned in trust on behalf of the Nation. Any use of this land without authorization from the Nation constitutes a federal trespass. We urge you to address this in your Code in order to prevent future conflicts.

In addition to having civil regulatory jurisdiction within the Reservation, the Nation has federally-guaranteed treaty fishing, hunting and gathering rights on the Reservation and within the County. More particularly, the Quinault River and Lake Quinault provide habitat for fish and wildlife the Nation rely upon for exercising these treaty rights. The proposed Code does not adequately protect the Nation's treaty rights in these areas.

The Quinault River sockeye (blueback) population has seen a major decline in returns over the last several decades. This fish species is especially important to the Quinault people as a focal point of their culture as well as a major source of food and income. The Nation has launched a comprehensive Blueback Restoration Initiative to restore this very important fish stock. Lake Quinault plays an essential role in the life history of sockeye salmon. Accordingly, it is absolutely essential that Lake Quinault is maintained and protected as a rearing area by minimizing anthropogenic changes to the water quality and to the fish habitat. To accomplish this goal we propose that you add a Lake Quinault critical area, which includes lands within the current LQ zoning.

Specifically, the Nation proposes the following text to be added to Grays Harbor County Code 18.06:

18.06.xxx Critical Protection Area Standards for Lake Quinault Critical Area.

- (A) The bed of Lake Quinault up to the ordinary high water mark is within the exterior boundaries of the Quinault Indian Reservation and owned by the Quinault Indian Nation. Any activity below the ordinary high water mark of Lake Quinault must be approved by the Quinault Indian Nation.
- (B) Lake Quinault is an important fish habitat area and an irreplaceable component of local ecosystem attributes and processes. The Lake provides habitats for various life history stages of nine salmon (Genus *Oncorhynchus*) species/races, two species of char, and several other aquatic species. Lake Quinault provides important rearing habitats for a depressed stock of spring chinook salmon, a population of bull trout, a threatened species under the Endangered Species Act, and the only juvenile rearing habitat for the depressed Quinault sockeye salmon. In addition, water quality attributes of the Lake are carried downstream and affect salmon habitats the entire length of the lower Quinault River.
- (C) No net loss of habitat functions. Uses and activities carried out pursuant to this section shall result in equivalent or greater habitat functions, as determined by the approval authority consistent with best available science. All actions and uses shall be designed and constructed to avoid adverse impacts to the Lake Quinault Critical Area. No activity or use shall be allowed that results in a net loss of important habitat area functions; destroys, damages, or disrupts fish habitat; adversely affects water quality; creates unstable earth

- conditions; or causes erosion.
- (D) Buffers. Applications for uses and activities within 200 feet of the ordinary high water mark of Lake Quinault shall include a report prepared by a qualified professional that evaluates the potential impacts of the proposed use or activity on the habitat and/or species, as applicable. The approval authority shall establish buffers for the habitat or species on a case-by-case basis, in consultation with the Quinault Indian Nation, based on the critical area report. The buffers shall reflect the sensitivity of the specific habitat(s) and/or species to be protected.
- (1) Buffer widths shall be measured on a horizontal plane, outward from the OHWM or, if the OHWM cannot be identified, from the top of the bank. These buffers shall be maintained in their existing condition, except as explicitly authorized by this chapter.
 - (2) The perimeter of the habitat area and associated buffer and those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field and inspected by the approval authority prior to the commencement of permitted activities. This temporary marking shall be maintained throughout the duration of the development activity.
- (E) Trees within 200 feet of Lake Quinault shall be retained. Limbs may be removed to maintain views.
- (F) Trees that fall into Lake Quinault shall be left where they fall.
- (G) Trees and logs that float onto the shore line between OHWM and summer low water shall be retained where they land.
- (H) Bank stabilization, if necessary, shall be accomplished with bioengineering or similar soft/nonstructural stabilization techniques. Materials used for soft/nonstructural stabilization include natural vegetation, submerged aquatic vegetation (SAV), sand fill, and biodegradable organic materials such as natural fiber logs (bio-logs) and organic matting. A professional engineer licensed in the State of Washington with demonstrated expertise regarding hydraulic actions along shorelines shall design stabilization projects along Lake Quinault in consultation with a qualified biologist. The stabilization shall be designed and installed to minimize adverse impacts on the habitat's functions. Approved stabilization shall only use materials that do not pose a risk to water quality, consistent with best available science. Stabilization must be installed above the ordinary high water mark of Lake Quinault. Bank stabilization measures shall be approved by the Quinault Indian Nation and Grays Harbor County.

In reviewing the Policy Statement it was clear that the intent of the proposal was to maximize economic gain by landowners. For example, on Page 21, #2, Paragraph 1: "Where conflicting interests have to be reconciled, the question **will always be decided in favor of maximum sustained economic benefits** if the basic social obligations have also been accomplished" (emphasis added). This approach does not follow the directions provided in RCW 36.70A.172 which states: "(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and

development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.” The Nation believes this RCW obligates Grays Harbor County to utilize best available science to design a buffer strategy that adequately protects watershed processes as needed to protect salmon and steelhead.

Based on the basic assumption of maximizing economic gain for the landowners, the proposed Code does not appear to utilize best available science. The Code presumes that no buffers are the preferred outcome and then combs the available literature to find justification for the narrowest buffer possible. The results are drastically different than adjacent counties’ critical areas codes using best available science to develop their stream buffers (See Table 1). The resulting buffer widths proposed in the County’s proposed Code appear to reflect the absolute minimum buffer widths that may provide proper function in some cases rather than buffers that will work in nearly all cases. The stream buffers must be reconsidered and must reflect best available science targeting ecological function rather than economics.

| Water Type | GH County | Lewis County | Jefferson County | Thurston County |
|-------------------|------------------|---------------------|-------------------------|------------------------|
| Type S | 68 feet | 150 feet | 150 feet | 250 feet |
| Type F >10 ft | 51 feet | 150 feet | 150 feet | 250 feet ¹ |
| Type F <10 ft | 51 feet | 100 feet | 150 feet | 200 feet ² |
| Type Np | 34 feet | 75 feet | 100 feet | 200 feet ³ |
| Type Ns | 17 feet | 75 feet | 50 feet | 100 feet ⁴ |

Following are specific examples of how the proposed Code deviates from the best

¹ Applies to Type F streams > 20 feet in width

² Applies to Type F streams < 20 feet in width

³ Applies to Type Np and Ns streams draining to Type S or F streams and within 500 feet of the Type S or F stream. 100 feet buffer elsewhere on Type Np and Ns streams.

⁴ Applies to Type Np and Ns streams draining to Puget Sound

available science:

- (1) The use of the cost benefit model developed in 1975 by the Washington Department of Natural Resources. The model is subjective in nature and can be adjusted to obtain the desired result. The lack of quantitative measures makes the results of little use. There are quantitative measures available that indicate the maintenance of habitat features necessary to maintain water quality and fish production. Without providing evidence to support the values used in this analysis, the result is an arbitrary and capricious cost/benefit analysis. The retention of 79% of the fishery value with no buffer compared to a 350 foot buffer does not match the reality we are seeing with salmon returns. Most of the landscape was developed or logged using no buffers and we are looking at severely limited fishing opportunities, and in some years, no fisheries at all.
- (2) The use of the Alsea River Studies without incorporating the more recent research and conclusions of this study. Much has been learned in the 30+ years since these studies were completed.
- (3) The use of Murphy and Koski 1989 was incorrect for Grays Harbor County. This study was conducted in an area where the maximum tree height was a little over 100 feet, thus nearly all of the ecological function was captured within 100 feet. This does not apply in Grays Harbor County where trees can exceed 200 feet on a regular basis.
- (4) On page 55 the document describes the use of a document prepared for Island County Board of Commissioners. This document does not constitute best available science. The Island County Board of Commissioners had specifically requested a review of best available science supporting a 25-foot wide riparian buffer. This approach reflects selecting an outcome and then looking for a justification, and does not reflect use of best available science.
- (5) Page 41 of the Policy Statement includes the statement "**The subjective probabilities of fishery population changes indicated that the fisheries would be severely damaged only a small percentage of the time when no buffer was left, and full recovery could usually be expected within 10-years**" (emphasis added). Given more current information on geomorphology and fish habitat preservation, and the state of salmon fish production in the northwest, the statement is false and does not utilize current information. It reflects the result of a subjective analysis using a 33-year old method. Again, this does not constitute using best available science.
- (6) The document acknowledges on page 61 of the Policy Statement that the ecological function of large woody debris was likely a dominant factor in establishing wide buffer requirements in forests, but claims that the need for LWD was not well demonstrated in the literature. The historical ecological function of LWD was likely the same in non-forest production lands. The geomorphic processes do not depend on the current land use. The fact that it is not well covered in the literature does not mean that the ecological function does (or did) not exist. Lack of data or studies does not imply lack of importance. The design of adequate buffers needs to address geomorphic processes.

- (7) The process did not use any of the research from Carnation Creek; a much more recent case study of logging effects.
- (8) The process did not use any geomorphology to design buffers to maintain geomorphic processes.
- (9) The process admitted that large woody debris recruitment necessitated larger buffers, but then dismissed the importance of large woody debris rejecting best available science on what is needed for fish habitat formation and retention.

In addition, the Nation provides the following comments and suggestions for changes to the proposed Code:

- (1) Page 15: 18.06.095 Critical Protection Area Development Standards for Geologically Hazardous Areas. The section should be amended to require evaluation of the land for the presence of unstable landforms. It should also utilize the information from the Department of Natural Resources Landslide Hazard Zonation Project.
- (2) Page 20: 18.06.100 Critical Protection Area Development Standards for Frequently Flooded Areas. The Code should include a method to determine flood-prone areas where the NFIP has not been completed. Also, there needs to be some method of addressing actual flood frequencies since further development should not be allowed in areas that are frequently flooded.
- (3) Page 22: (D) Alteration of Watercourses. This section indicates that watercourses can be changed with only a notification to the DOE and adjacent communities. This outcome is unacceptable. State law requires that alteration of watercourses requires much more than this simple notification.
- (4) Page 39: #5 addressing water typing. The text needs to incorporate both WAC 222.16.030 and 222.16.031 to utilize the current DNR Water Typing. The text also needs to address streams that are misidentified on the maps.
- (5) Page 41: Item (V) addressing crossings needs to be edited to state "...not diminish the natural channel..." rather than just addressing flood capacity. Flood capacity could be maintained in a narrower deeper channel and this is harmful to fish habitat.
- (6) Page 42: Item (v) addressing stream channel stabilization needs to be edited to consider relocation of the item at risk, and to emphasize the use of softer technology (e.g. bioengineering, engineered logjams). It is the policy of the Nation to oppose bank hardening through methods such as riprap. Riprap reduces instream complexity, increases water velocity, and results in a narrower, faster channel that is harmful to fish habitat.
- (7) Page 44: item (ix) addressing drainage ditch maintenance. Drainage ditches where storm water and other surface water flows result in direct input of agricultural waste or other pollutants to fish bearing waters need to be separated from fish bearing waters.
- (8) Page 44: item (x) allows the cutting of firewood within streamside buffers. This is inconsistent with the purpose of the buffers and is inconsistent with the best

available science. Such practices will eventually remove the buffer and will eliminate the intended function of the buffers through tree removal. This section also allows brush removal, which is in conflict with earlier statements about the need for underbrush to filter overland flow. Again, the activities proposed in this section do not follow best available science.

- (9) The entire section on building in flood zones should be rewritten to limit or exclude dikes, riprap and other measures from flooding. These actions increase flooding elsewhere. Overall, additional development within the flood zone should be discouraged since this type of development simply guarantees that flood damage will occur. It is likely that catastrophic damage could occur as it did throughout much of the flood zone in December 2007.

In summary, the Nation believes that economics were favored over the use of best available science in the development of the proposed Critical Protection Areas Code. The proposal does not provide for necessary ecological function. The lack of a literature cited section precluded us from reviewing the original documents; a list of the cited literature needs to be added. The Code must address the Nation's interests, including its land ownership, civil regulatory jurisdiction, and treaty rights. We look forward to discussing our proposal for doing so in a Government-to-Government meeting with you and appropriate staff.

Thank you for your consideration of these comments. Please contact Mark Mobbs (360-276-8211, mmobbs@quinault.org) if you have any questions.

Sincerely,



Fawn R. Sharp, President
Quinault Indian Nation

cc: Files
Dave Bingaman
Mark Mobbs