

# Tim Hamilton & Mary Stalcup

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Via email, hardcopy to follow by mail

Brian Shea  
Grays Harbor County  
Planning and Building Division  
100 West Broadway Avenue, Suite 31  
Montesano, WA 98663-3614

Re: Draft for a Critical Area Ordinance

Dear Mr. Shea:

The fact that the county of Grays Harbor has steadfastly refused to pass a critical area ordinance for over a decade implies that management associated with the Planning and Building Division has historically placed little, if any emphasis on protection of wetlands, streams, and other critical areas. Forced by the Legislature, GHC is about to expire its last extension of time and must, whether Planning Management likes the idea or not, move forward in adopting a critical area ordinance.

I and others have reviewed the draft posted on the County's web site. The draft is simply one of the most flawed drafts of legislation that I have ever seen produced in any legislative or regulatory arena.

The first glaring flaw is the insertion of a incredulous amount of text that implies that critical area ordinances that actually accomplish the goals would somehow violate the constitutional rights of property owners. The inclusion of this entire line of commentary should be struck in its entirety as the constitutionality of the actions of the legislative bodies are not reviewable by your Department but left specifically to the realm of the judiciary. More importantly, it is hard to imagine that any person within the entire building that houses the Planning Department is qualified to make decisions about the constitutionality of the legislative mandate for critical area ordinances. Unless stricken, all this commentary will create an atmosphere of litigation, mistrust and confusion that certainly is not needed in Grays Harbor.

Additionally, any reasonable review of the draft as currently written would likely conclude the resulting county ordinance would:

- 1) Not comply with the legislative mandate requiring that each county pass a legitimate ordinance that protects critical areas such as wetlands, streams, potable ground water, etc.
- 2) Place the County planning process, including the staff, general public, and applicant in near total uncertainty due to the lack of specific rules and guidelines;
- 3) Deny citizens whom value the critical areas of Grays Harbor the protections that the Legislature has mandated Grays Harbor to provide for its citizens; and
- 4) Create an unprecedented public controversy that would see the creation of a litigative environment that regularly pitted the treasury of Grays Harbor county against the wallets of its own citizens.

I believe you are fully aware of each and every problem within this draft. The smoke and mirrors show of expressing fear that a critical area ordinance would breach the constitutional rights of property owners is one. The referencing to technical manuals standards that could never pass muster as "best available science" is another. The constant insertion of staff discretion into nearly every segment of the logistical operation of the regulatory standards under the guise of flexibility is really the utilization of the old legal trick of "...first give with the right....then take away with the left."

It is clear that the author(s) of this draft would prefer that Grays Harbor County continue to plan without any guidelines or protections being established by the Legislature or the Board of Commissioners. Fortunately, our democratic process does not grant any public employee within the county, whether elected or appointed, the power of a monarch to over ride the rights granted the citizens of Grays Harbor by the state Legislature.

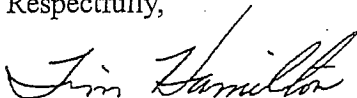
Having a desire to waste of my or your time as possible, I will finish with my recommendations. First, strike all the smoke and mirror show about constitutionality unless you are prepared to explain in detail how the critical area ordinances in neighboring counties such as Jefferson and Thurston violate the constitutional rights of of citizens. Ironically, adoption of the ordinance as written will undoubtedly result in litigation wherein the County has to defend itself for attempting to take away the rights and protections provided citizens of Grays Harbor when the Legislature mandated the County pass a critical area ordinance.

Secondly, you are in receipt of numerous sets of comments from state agencies including the Department of Fish and Wildlife and nonprofit organizations that spell out in detail the problems with the current draft. My recommendation is to merge them into a list of amendments and create a new draft that contains reasonable standards and criterias that comply with the standards set forth by the Legislature.

As you are aware, Mary and I have recently experienced the economic burdons of an "errounous interpetations<sup>1</sup>" of law by the Planning Department. Grays Harbor does not need to find itself constanly embroiled in further litigation and controversy due to actions taken by the Planning Department. Neither does it need to have the reputation as the county most difficult to work with one day and the one with the least effective environmental development standards within the state the following.

The draft as currently written forces the Commissioners to take one or the other of these troubled options. Adopting the changes requested by state agencies and other experts in the field will simply provide a reasonably balanced ordinace similar to those passed in neighboring counties that have delivered reliable, predictable, and balanced results that would help repair the ever-widening breach in confidence growing between the public and the Planning Department.

Respectfully,



Tim Hamilton

cc: The Honorable Members of the Grays Harbor Board Of Comissioners, via email

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<sup>1</sup>Ruling by Judge McCauley revoking Special Use Permit #2006-1322 issued by GHC Planning Depart.