



State of Washington
DEPARTMENT OF FISH AND WILDLIFE
Mailing Address: 600 Capitol Way North, Olympia, WA 98501

June 23, 2008

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

SUBJECT: Comments regarding Draft amendments to Grays Harbor County Code 18.06, Proposed Grays Harbor County Critical Areas Ordinance

Dear Mr. Shea:

Thank you for providing the Washington Department of Fish and Wildlife (WDFW) the opportunity to review and comment on the Draft Grays Harbor County Critical Areas Ordinance dated April 2008. WDFW understands that this is the first Critical Areas Ordinance (CAO) the county has drafted and many sections of the ordinance will provide better protection to fish and wildlife resources. We do have suggestions for inserting additional protective language in the document and have outlined those in this letter, section by section. We recognize these are lengthy comments. Our intention is to provide enough detail to assist your process and provide clear recommendations for improving the ordinance. Additional comments may be provided as this project progresses through the public review and adoption process.

18.06.015 Applicability: We are pleased to see language in subsection (A) that provides more protections for critical areas when there is conflict with other code language. To clarify the relationship to other regulations, we suggest amending this subsection to read: "These regulations shall apply as an overlay and in addition to zoning, land use and other regulations. In the event of any conflict between these and any other regulations of Grays Harbor County, those regulations that provide greater protection of critical areas shall apply."

18.06.020 Critical Protection Area Special Studies: Critical area reports are an important tool to ensure sensitive areas are documented and appropriate protection standards can be applied. We are pleased to see that a report is required and must be prepared by a qualified professional. However, we cannot determine how you define a qualified professional as mentioned in subsection (D). Please include a definition for a qualified professional. For example, "a "qualified professional" means a professional biologist who specializes in fish and wildlife restoration and protection and who has training and experience in the field of fish and wildlife science. Professional training will include a bachelor's or higher degree in fisheries and wildlife

science, conservation biology or a related field from an institution accredited by the Society for Conservation Biology.”

In subsection (D)(8), the critical areas special study requires analysis of site development alternatives, including a “no-development” alternative. It is unclear when a “no-development” impact alternative would be required or if identified cumulative impacts (as required in subsection (D)(9)) are tied to mitigation measures. We recommend amending these subsections to include transparent language about how the information in a critical areas report will be used to approve critical area development permits.

We also recommend including a subsection that specifies a distance beyond the development site within which the presence of critical areas will trigger review under the CAO and application of mitigation measures, if necessary. WDFW recommends at least 300 feet as a reasonable trigger distance to capture potential offsite impacts to fish and wildlife resources.

18.06.030 Essential Public Facility Exception: Under subsection (B)(1); it is unclear how no other “practical alternative” will be determined. Under subsection (C)(1), we recommend replacing “Type S Streams or buffers” with “Waters of the State” to include freshwater as well as marine waters. Freshwater streams provide crucial fish and wildlife habitat functions, such as anadromous fish habitat, and feeding, breeding, and resting for riparian and upland priority wildlife species in Grays Harbor County.

18.06.040 Variances – Authority: The only variance criteria listed applies to frequently flooded areas. WDFW is concerned that a lack of clear criteria for granting variances may result in the erosion, over time, of critical area protection standards for fish and wildlife habitat. We strongly recommend consideration of the variance provisions found in Washington State Department of Community Trade and Economic Development (CTED)’s Example Code Provisions for Designating and Protecting Critical Areas (http://www.cted.wa.gov/portal/alias_CTED/lang_en/tabID_418/DesktopDefault.aspx).

18.06.065 Notice on Title: Under subsection (B), we are pleased to see that a notice of existence of critical areas runs with the title. This is important as property changes hands, so that new owners can be aware of stewardship responsibilities and opportunities for critical areas on their property.

18.06.080 Mitigation: Including the definition of mitigation sequencing in the CAO proposal is an important first step in ensuring no net loss of critical area functions. However, the mitigation requirements are not clearly defined. We recommend amending this section to include mitigation requirements consistent with the CTED Example Code Provisions for Designating and Protecting Critical Areas. In addition to mitigation sequencing, the guidelines suggest that the applicant shall first; A) avoid all impacts that degrade the values and functions of a critical area or areas, then apply sequencing that demonstrates no net loss; B) mitigation shall be in-kind and on-site, when possible; and C) mitigation shall be in accordance with the provisions of the critical area report. We recommend adding a section on bonds to ensure mitigation requirements

are satisfied. This will help to ensure that mitigation is sustainable over time, in order to meet the protection goals of the ordinance.

18.06.085 Monitoring: In addition to providing access for monitoring mitigation sites, we recommend amending this section to allow monitoring for the purpose of any inspections related to critical areas applications and potential development. By allowing monitoring, including reasonable access to the site by county staff, the County will better be able to assess the real impact of its regulations (what is working and what may not be working), enabling you to make adjustments to the code in the future, if necessary, that are supported by real data.

18.06.140 Critical Protection Area Development Standards for Fish and Wildlife Habitat Conservation Areas: Fish and Wildlife Habitat Conservation Areas are not designated in subsection (A) as defined in CTED's GMA rules in WAC 365-190-080. We recommend amending this section of the CAO consistent with the *Minimum Guidelines for Designating Critical Areas* to include the following fish and wildlife habitat conservation areas found in Grays Harbor County:

1. **Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association-** WDFW PHS Program lists several Endangered, Threatened, and Sensitive species in Grays Harbor County. We recommend designating these species and incorporating a reference to WDFW Management Recommendations for Priority Species (<http://wdfw.wa.gov/hab/phsrecs.htm>) for their protection:

ENDANGERED (means any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range):

- Northern Spotted Owl
- Sandhill Crane
- Snowy Plover
- Streaked Horn Lark
- Blue Whale
- Fisher
- Humpback Whale
- Sperm Whale
- Brown Pelican
- Killer Whale

THREATENED (means any wildlife species native to the state of Washington that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range within the state without cooperative management or removal of threats):

- Bald Eagle
- Western Pocket Gopher
- Marbled Murrelet

SENSITIVE (means any wildlife species native to the state of Washington that is vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range within the state without cooperative management or removal of threats):

- Peregrine Falcon
- Common Loon
- Gray Whale

2. **Habitats and species of local importance-** One of the important roles that critical areas ordinances can play is to prevent future, costly listings of vulnerable species by designating them as locally important, and therefore ensuring review of development projects that may impact these species. Avoidance and minimization of impacts will go a long way toward persistence of these species in the county and the region. A designation process (an example of which is described in CTED's Example Code Provisions for Designating and Protecting Critical Areas) allows Grays Harbor County citizens to nominate special places and species for protection under the CAO. In addition, WDFW PHS Program provides information on species and habitats we already know are locally vulnerable in the county. WDFW PHS Program indicates there are several Candidate species for future listing as Endangered, Threatened, or Sensitive. We recommend designating the following Candidate species as species of local importance:

- Bull Trout
- Chinook Salmon
- Chum Salmon
- Steelhead
- Columbia Torrent Salamander
- Dunn's Salamander
- Van Dyke's Salamander
- Western Toad
- Golden Eagle
- Merlin Falcon
- Northern Goshawk
- Pileated Woodpecker
- Purple Martin
- Vaux's Swift
- Brandt's Cormorant
- Cassin's Auklet
- Common Murre
- Western Grebe
- Harbor Porpoise
- Keen's Myotis
- Townsend's Big-eared Bat
- Tufted Puffin

There are also several habitats types in Grays Harbor County that are not covered in the county's wetland or riparian/stream protection regulations. Each of these habitat types supports one or more of the species listed above. In general, these habitat types support unique or dependent species that are highly vulnerable to habitat alteration, provide high fish and wildlife density, diversity, seasonal ranges and movement corridors.

- Herbaceous Balds
- Old Growth/Mature Forest
- Oregon White Oak Woodlands (WDFW Management Recommendations available - <http://wdfw.wa.gov/hab/phsrecs.htm>).
- Coastal Nearshore (estuary bay)
- Open Coast Nearshore (Protecting Nearshore Habitat and Functions in Puget Sound - http://wdfw.wa.gov/hab/nearshore_guidelines/)
- Caves (Important habitat for species such as Townsend's Big-eared bats)
- Cliffs
- Snags and Logs
- Talus
- Westside Prairie (Important habitat for species such as Mazama Pocket Gopher)

We also recommend designating Biodiversity areas and corridors. If the county is interested, WDFW can provide a Local Habitat Assessment to help identify land useful or essential for preserving connections between habitat blocks and open spaces. This assessment may be requested free of charge from WDFW.

3. Commercial and recreational shellfish areas.
4. Kelp and eelgrass beds; herring and smelt spawning areas.
5. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat.
6. Waters of the state (see WAC 222-16-030).
7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.
8. State natural area preserves and natural resource conservation areas. (DNR Natural Heritage Plan indicates there are natural area preserves and natural resource conservation areas located in Grays Harbor County.)

There are several Candidate species of anadromous fish living in the waters of Grays Harbor County. WDFW's computer mapping system, Salmonscape, displays the location and extent of anadromous streams in Grays Harbor County (<http://wdfw.wa.gov/mapping/salmonscape/index.html>). We recommend adding a section on anadromous fish to comply with GMA requirements that special consideration be provided to anadromous fisheries. Please see CTED's Example Code Provisions for Designating and Protecting Critical Areas for language.

In order to provide clarity to applicants and allow room for necessary on-site review of projects where critical areas are present or suspected, we recommend amending language in subsection (A)(5) regarding the use of maps (including the WDFW Priority Habitats and Species Map) to read; "these maps are to be used as a guide and do not provide a definitive critical area determination." Species move, and a site-level assessment is often necessary to gather up-to-date information about species and habitat presence.

There are several sections throughout this section where fish and wildlife are separated. For example, subsection (A)(6) provides stream buffer protection standards for fish habitat, but wildlife habitat is excluded. However, riparian areas provide habitat for many priority fish and wildlife species. Please reconsider the wording in these sections because one habitat almost always benefits fish and wildlife. We recommend removing subsection (B) and incorporating this text in subsection (A).

Under subsection (B)(3) please include language that provides an opportunity for WDFW to review habitat management plans such as, "The habitat management plan includes a request for consultation with the Washington Department of Fish and Wildlife." Our agency can provide expertise to help avoid impacts to fish and wildlife resources.

We also recommend adding a section on subdivision to prevent the creation of parcels entirely encumbered by critical areas. Please review CTED's Example Code Provisions for Designating and Protecting Critical Areas for language. The County might choose to allow such parcels for conservation or open space tract purposes, however.

18.06.140(A)(6)(a) Stream Buffers:

The Growth Management Act requires jurisdictions to "include the best available science in developing policies and development regulations to protect the functions and values of critical areas" (RCW 36.70A.172). WDFW is concerned the information contained in the Policy Discussion (pages 5 through 75) may not be "best available science" (BAS). For example, on page 41, Buffers, the cited literature is *Efficacy and Economics of Riparian Buffers of Agricultural Lands*. This report was produced for the Washington Hop Growers Association, Agriculture Caucus, and the Multi-Agricultural Caucus to review whether fixed-width buffers are necessary on agricultural land to protect listed salmon. This report does not consider the multitude of functions that riparian buffers provide for fish and wildlife species and habitats within the context of a variety of land uses. As you consider sources of best available science for riparian buffers, we recommend you review *WDFW's Management Recommendations for Washington's Priority Habitats: Riparian* (<http://wdfw.wa.gov/hab/ripsum.htm>). WDFW's riparian management recommendations are a recognized source of best available science. Our agency was also involved in the publication of a guidance document, based on best available science, for nearshore management. *Protecting Nearshore Habitat and Functions in Puget Sound: An Interim Guide* (http://wdfw.wa.gov/hab/nearshore_guidelines/), mentioned earlier. These management recommendations provide a comprehensive review of the scientific literature regarding the extent of buffers needed to protect water quality and habitat for fish and wildlife.

Based on BAS, we feel that the small fixed-width buffers recommended in the Grays Harbor County CAO, subsection (A)(6)(ii), will not provide adequate protection for fish and wildlife habitat. Considering variances allowed from even the standard buffer widths, a stream buffer will fall below what the science says is needed for maintaining most riparian area functions, including large woody debris inputs, food supply of benthic invertebrates, protection against fecal coliform contamination, and many other functions summarized in our management recommendations. Below, we've provided a summary table comparing our riparian management recommendations and the proposed Grays Harbor CAO buffers. We recommend the proposed CAO buffers be reconsidered in light of WDFW management recommendations.

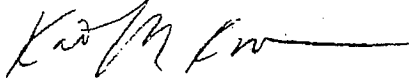
Stream Type	WDFW Buffer*	GHCCAO Proposed Buffer
Type S (Shorelines of the state)	250'	68'
Type F (fish bearing, >5' wide)	200'	51'
Type F (fish bearing, <5' wide or less)	150'	51'
Type NP (non-fish, perennial flow)	150'-225', width dependent on slope stability	34'
Type NS (non-fish, seasonal flow)	150'-225', width dependent on slope stability	17'

*Knutson, K.C. and V.L. Naef. 1997. Management Recommendations for Washington's Priority Habitats: Riparian. Washington Department of Fish and Wildlife, Olympia, Washington.

We are pleased that more restrictive buffers apply when any stream is adjoining another critical area as stated in subsection (A)(6)(a)(ii)(F).

The Washington Department of Fish and Wildlife wishes to thank you again for the opportunity to provide comments on the proposed draft Critical Areas Ordinance dated April 2008. We sincerely hope that you will find these comments constructive in your deliberations. If you have questions or need for additional technical assistance, please contact Katie Knight at the contact information listed below. Again, we look forward to providing you further input on the first Grays Harbor County CAO.

Sincerely,



Katie Knight
 Land Use and Environmental Planner
 Washington Department of Fish and Wildlife
 600 Capitol Way North
 Olympia, WA 98501-1091

Phone: 360.902.2618

E-mail: knighkmk@dfw.wa.gov

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cc: Steve Kalinowski, Regional Habitat Program Manager, WDFW
Jennifer Hayes, Technical Assistance Section Manager, WDFW
Dave Kloempken, Assistant Regional Habitat Program Manager, WDFW
Gloria Rogers, Area Habitat Biologist, WDFW
Bill Rehe, Area Habitat Biologist, WDFW
Max Zahn, Wildlife Biologist, WDFW
Rick Mraz, Wetland Specialist, DOE
Tim Gates, GMA Planner, CTED