

June 29, 2008

Mr. Brian Shea, Director
Planning and Building Division
Department of Public Services
Grays Harbor County
100 West Broadway Avenue, Suite 31
Montesano, Washington 98663-3614
Via Electronic Submission: bshea@co.grays-harbor.wa.us

Dear Mr. Shea:

Thank you for the opportunity to comment on the Critical Protection Area Code Draft. Wildlife Forever of Grays Harbor (WFOGH) is a local group formed for the purpose of protecting sensitive ecological resources along our coast, and educating people on the benefits of long term natural resource protection.

Summary of Comments and Recommendations

The Grays Harbor County should follow the lead of other counties that involve the public more in this CAO update process. Yakima County started in 2004 and passed their CAO in December of 2007. Multiple public hearings offer opportunities to understand what is being proposed and why, get staff and WA State agency recommendations, create drafts and attend public hearings. Instead, Grays Harbor County creates their first draft in a vacuum by unknown authors, then according to the schedule published in this draft, will create a second draft based on comments, again in a vacuum, before the next draft is presented to the Planning Commission for action. Something this important deserves more opportunity for public involvement and community discussion.

This CAO update process should be combined with the required SMP update to save money, both in terms of staff and the public's time, and because there is a link between CAO and SMP, so we have a better plan for our county.

I'm incorporating by reference the Western Washington Hearings Board Digest of Decisions for 2006. It is clear that the authors of the Grays Harbor Critical Protection Area Code draft went to great lengths to quote older sources for their references and Best Available Science, and to inject their personal opinions, so I'm providing the Hearings Board Digest of Decisions which offers guidance on the rules and regulations that should be followed. The web address is:
http://www.gmhb.wa.gov/western/WWGMHB_Digest.pdf

It should also be noted that while this draft CAO cites the United States Department of Agriculture Soil Conservation Service 1986 document Soil Survey of Grays Harbor Area, Pacific County, and Wakaikum County, Washington in determining the application of appropriate protection measures for geological hazardous areas, the Soil Conservation document states "Because of its small scale, the map is not suitable for planning the management of a farm or field or for selecting a

site for a road or building or other structure." The Soil Conservation realizes the limitations of the Survey Map they have produced, and GH County should recognize when it can be used, and where not. Defining "appropriate protection measures for geological hazardous areas" is not a topic in this 1986 document, and because of it's large scale soil maps cannot be used to make any final decisions.

The Draft CAO plan also includes references to the United States Federal Emergency Management Agency Flood Insurance Rate Maps (FIRM) for determining the application of appropriate measures for frequently flooded areas. This document is also being miss-used and is not intended for determining appropriate measures, only to identify "frequently flooded areas". The following is from FEMA's web site on the FIRM maps.

What is a FIRM?

It is the official map of a community on which FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community.

Why would I need to use a FIRM?

- **Private citizens and insurance and brokers** use the FIRM to locate properties and buildings in flood insurance risk areas.
- **Community officials** use the FIRM to administer floodplain management regulations and to mitigate flood damage.
- **Lending institutions and federal agencies** use the FIRM to locate properties and buildings in relation to mapped flood hazards, and to determine whether flood insurance is required when making loans or providing grants following a disaster for the purchase or construction of a building

It is unfortunate the authors spent time using older references to build this Draft CAO Plan when many of the county CAO ordinances listed in the Policy Discussion section have updated their CAO's, or have draft CAO's on their web site for easy access, such as:

King County CAO Updated 2005

Thurston County CAO Drafted 2004, not approved yet

Mason County CAO Draft 2006

I am incorporating by reference the meeting summary from the Technical Advisory Committee of Whatcom County, dated Oct, 2004. The meeting summary has good insight on CAO issues, includes a discussion about where regulations concerning tsunamis belong: Frequently flooded areas or geological hazardous areas, see web site:

http://www.co.whatcom.wa.us/pds/shorelines_critical_areas/pdf/CACsummary20060109.pdf

I am incorporating by reference the Yakima County staff CAO report. This has good information on their research to determine BAS, their recommendations, and because agriculture is a large

issue there, a focus on CAO recommendations related to the CAO update. We don't agree with all of it but it is a much better start than what GH County has offered for their first draft. See Yakima's draft at:

<http://www.co.yakima.wa.us/publicservices/cao/Drafts/CAOStaffReport.pdf>

I am incorporating by reference the comments to this Grays Harbor County Draft CAO Plan from Futurewise which has done a good job of laying out the concerns for what the County has offered, and recommendations the County must incorporate to make this CAO something that can be adopted.

18.06.010

Item (7) The County must first notify the members of the public of the need to protect Critical Areas, including what development may occur near a Critical Area. What method is the County using to alert or inform the public of this issue, and how often?

18.06.020

This section provides the ability to modify Critical Areas without the review needed to protect Critical Areas. In one sentence it says "evaluate probable significant adverse impacts" yet later they evaluate only "alterations of the critical protection area". Impacts to Critical Areas must be evaluated for any possible harm.

Item D. The special study provides applicants with the ability to determine how they follow the mitigation sequence review, and how they evaluate possible harm to Critical Areas. Following the mitigation sequence must be a requirement, and the County must demonstrate they evaluate all development requests appropriately for impacts to Critical Areas.

18.06.025

Add "non-anticipated" to item (A). Lack of action for years does not constitute an emergency and a reason to bypass Critical Area regulations and procedures.

Item B. There should be no grandfathering-in for any project, or development, or current harm to Critical Areas. Just as we do not grandfather-in a lack of public safety regulations, fire alarms in older buildings are required, we should not grandfather-in damaging impacts to Critical Areas without closer examination to resolving these over time.

Item C. Best Management Practices in agriculture does not meet Best Available Science, so let's discuss how we can improve wetlands and stream protection in agriculture areas without undue financial harm to property owners. We should not allow agriculture practices that harm Critical Areas.

18.06.030

Item (A) Public facilities must also make an effort to protect Critical Areas, which means they must follow the mitigation sequence review and offer mitigation when negatively impacting Critical Areas.

Item (B). Again a review is needed, plus a public meeting, and if Critical Areas are harmed, then

mitigation must be required.

Item (C) No exceptions are granted without following the mitigation sequence review, a public hearing, and mitigation if Critical Areas are harmed.

18.06.035

Remove this section. If a property can not be developed without harming Critical Areas, or meeting health standards like septic and well head protection, then the properties highest and best use is not development.

18.06.045

The County should not allow any development in frequently flooded areas. This only causes problems for property owner and other property owners in the area, and puts law enforcement at risk when required to rescue people and animals who live in frequently flooded areas.

18.06.060

The maps maintained by Grays Harbor County should not be considered the official records of where Critical Areas are located unless the County puts a lot more effort into collecting this information, and has a regular update cycle. Updates can come from: tribes, federal and state agencies, farmers, forest owners, and other groups. This verification also includes ground truthing Critical Areas to verify where they exit and which are critical for isolated wetlands. Using these maps would not remove the responsibility of any applicant or property owner to verify they aren't impacting Critical Areas.

18.06.070

The legal protection suggested by this item is very weak. The owner of a property can remove any covenant or conservation easement on their deed unless a third party is involved. Conservation easements granted to a third party would provide the protection of Critical Areas this section appears to have a goal for.

18.06.080

The mitigation sequence review must be "required" not a "preference". Any applicant can say they can't avoid the impacts so they compensate by not disturbing another Critical Area. This method allows continued loss of Critical Areas, without any real protection of what is being proposed as mitigation.

By reference, I am incorporating the study of long-term mitigation recovery efforts by King County that demonstrates mitigating for wetland impacts is a very difficult and almost never succeeds. Avoidance is the best option in the mitigation sequence. See web site at:
<http://www.aswm.org/science/mitigation/mockler98.pdf>

18.06.085

To consider this section, Grays Harbor County must demonstrate they have a monitoring program in place for all projects that impact Critical Areas, and any mitigation or variance they approve. Can they produce reports for projects impacting Critical Areas in January of 1995? What mitigation was approved in December of 2001? Who has reviewed any mitigation or

variance approved since the County approved their CAO regulations back in 1992, and who will be monitoring CAO impacts in the coming years? This information should be easily accessed and reviewable by the public which will allow GH citizens to help the County monitor projects that impact Critical Areas and any approved mitigation.

18.06.095

The Soil Conservation Service soil map for Grays Harbor does not document what development standards can be used in geological hazardous areas. First, the County must document where we have geological hazardous areas and then propose development options for those areas. We would guess these areas would include: our coastal shoreline, the harbor shoreline, major rivers and streams, steep hillsides, etc.. We discourage development in geological hazardous areas, and so should the County because of the potential for property owner loss of life, risk of injury and loss or damage to real and/or personal property; and higher cost to our community for infrastructure and services.

18.06.100

The County should not allow any development in frequently flooded areas. The cost to our community and environment is too high, and we cannot control Mother Nature.

18.06.105

The County must accept liability for any approved project in our county, which is why it is better to be conservative. We must take responsibility for our actions.

18.06.110

Permits and development, should not be allowed in frequently flooded areas.

18.06.125

No project should be allowed in any floodway. This only causes to reduce the benefits of the floodway to function properly, and we put others at risk by doing this. No one can anticipate the power of Mother Nature, so do not allow any development or fill in a floodway.

18.06.130

Have you heard of Global Warming? We need to step back from the high water mark and no building should be allowed within 300 feet of the high water mark. Also to protect human life, any building near coastal high hazard areas must be multistory, with no livable space on the first floor.

18.06.135

This section needs a major rewrite. The County apparently believes that some wetlands, even if degraded, serve a valuable function and can be treated with less respect. All wetlands are important and isolated wetlands which have been improperly ignored, deserve even greater protection. A wetland in a frequently flooded area is no different than any other wetland and the same procedures for any possible impacts must be reviewed. The wetland classification standards that were detailed are incorrect and need to be updated. The wetland buffers are too small and need to be increased. For example, a Category 1 wetland should have a buffer 300 feet in width. Buffering averaging is generally a bad thing but might be allowed if the County

includes a minimum size, and better monitoring is in place to verify this protection is maintained. Livestock has no greater rights than any other living being, and they need to respect wetlands, too, or at least their owners do. I love the Grays Harbor Conservation District and the work they do, but they don't have the funding or expertise to protect wetlands on agriculture lands. As a former Grays Harbor Conservation District Supervisor, I know this to be true. There also isn't any wetland classification called "grazed wet meadows". Remove this.

Item (g) Any negative impacts to wetlands must follow the mitigation sequence review, and if utilities are allowed to harm wetlands, mitigation must be included. The County should consider setting up a mitigation fund that can be offered as grants to local groups that will restore, protect, monitor and conserve Critical Areas in our County. This fund could get money from approved mitigation projects and penalties on harmed Critical Areas especially wetlands.

Surface water has no right to be directed into a wetland without following the mitigation sequence review, a public hearing and an approved mitigation plan. Trails should not be allowed in a wetland buffer. Remove this wording. Docks may be approved in wetlands once they have followed the mitigation sequence review, and mitigation is approved for their impacts. The wording in the Isolated Wetlands sections must be rewritten. Isolated wetlands are some of the most important wetlands because of the high ecological value they provide and must have clear protection standards, and any mitigation must be well planned and better designed than what the County offers.

Item (7) This is a hot one, Wetland Area Mitigation Standards. As we have noted, mitigation for wetland impacts must be carefully considered in this CAO update because the goal is "no net loss", and when someone offers to restore a wetland as mitigation for a disturbed or filled wetland, usually the mitigation effort will fail (see King County study offered as a reference). Protecting a wetland, or promising to not disturb an intact wetland as mitigation for wetland impacts should be a last option for mitigation, refer back to mitigation sequence, and it is only allowed when the wetlands being preserved are in serious danger of development. Again "no net loss".

18.06.140

The county must map and publish for the public where Fish Habitat Conservation areas are in Grays Harbor County. It is the County that must be responsible for protecting these important fish habitat areas, and applicants must provide the details of any development or modification that might impact, either directly or over time, these habitat areas.

Item (6) The stream buffers being proposed are too small, and exemptions from these buffers must be very carefully considered for their impacts to wildlife and water quality. Buffer averaging should not be allowed without a minimum being required, and monitoring included for buffer averaging.

Item (iv) Trails must not be allowed in stream buffers because of their negative impact to the buffers, and the reduced function the buffer provides to streams. An exception may be to allow a trail to be closer to a stream at certain points over a trails entire length, but this exception must be well designed to provide greatest protection to the stream buffer, and some increase in stream

buffer size must be included for mitigation.

Item (v) Stream channel stabilization should be removed from this draft, unless a stream mitigation sequence review is proposed, mitigation is included and a public hearing is held.

Item (vi) This Surface Water Management Needs Section needs improvement to better protect stream water quality. Again, a stream mitigation review should be used, with consideration for built wetlands as a first filter before surface water flows to a natural stream. Type F streams are not less important to water quality and wildlife and require a stream mitigation review before being approved as a regional retention or detention facility.

Item (viii) Remove this section unless greater details are provided including more protection of existing streams, and mitigation.

Item (x) Remove this. There are better places to cut wood, and this action harms stream buffers. Use BAS.

Item (h) Mitigation for stream impacts must follow a review, a public process, be based on Best Available Science, and include mitigation.

18.06.145

The County must map all Critical Aquifer Recharge areas in the county if it hasn't done so already, and once mapped, inform the public of the need to protect these aquifers. If this hasn't been done, those requirements must be in this draft CAO.

18.06.150

Under Violations we request the County include monetary penalties for CAO violations be placed in a grant fund that will be used to protect Critical Areas in Grays Harbor County. We also suggest the monetary penalty be increased, from \$1,000.00 to \$3,000.00.

Thanks for this opportunity to comment,

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