



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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November 3, 2008

Brian Shea, Director
Department of Community Development
Grays Harbor County
100 W Broadway
Montesano, WA 98563

RE: Comments on Grays Harbor County Draft #2 Critical Protection Area Code

Dear Mr. Shea:

Thank you for the continuing opportunity to comment on the proposed revision (Draft 2) of Grays Harbor's Critical Areas Ordinance (CAO).

We acknowledge and support many of the revisions made to Draft 1. They provide improved clarity and greater detail, especially in the areas of wetland rating, buffer averaging, and administrative procedures. However, the revisions to the draft CAO have fallen far short of what wetlands science indicates is necessary to effectively protect wetland functions and values.

The draft continues to be incomplete and inadequate in its standards and provisions necessary to meet the stated goal of the CAO. We continue to be very concerned that the proposed buffers and mitigation provisions do not adequately include the best available science, and the net result will be the significant degradation of wetland functions and values in the County. We reiterate many of our earlier suggestions for improvements that should be made to the draft to ensure that the best available science is included and wetlands are adequately protected.

Policy Discussion:

We repeat our concerns regarding the revised Policy Discussion, which the County continues to forward as justification for its regulatory approach to protecting wetlands. As we noted in our first comment letter, the scientific citations in the policy discussion do not support the prescriptive conclusions present in the ordinance.



The policy discussion has not been revised to address out-of-date references. It continues to cite the following references as “*additional supporting scientific and non-scientific information, including legal, social, cultural, economic, and political information, used as a basis for the critical area protection code.*”

- King County 1990 document entitled Sensitive Areas Ordinance
- Washington State Department of Community Development 1991 document entitled Approaches to Designating and Protecting Critical Areas
- The Mason County 1992 document entitled Mason County Resource Conservation and Critical Area Protection Ordinance
- The Whatcom County 1992 document entitled Whatcom County Critical Areas Temporary Ordinance

As previously noted, each of these references is outdated. All of these documents have been revised and updated to reflect and include current BAS. The prescriptive provisions in the current versions of those documents are significantly different from those proposed by Grays Harbor County. The County should revise its policy discussion to reference and reflect current and relevant documents.

We continue to note that much of the literature cited in the policy discussion is applicable to whatever approach the County eventually utilizes to address existing, ongoing agriculture. **We do not recommend imposing new regulatory buffers for existing, on-going agriculture.** As stated in Ecology’s guidance document *Wetlands in Washington State, Volume 2: Guidance for Protecting and Managing Wetlands* (Publication # 05-60-008, April 2005), p. 8-18, the Departments of Ecology and Fish and Wildlife recommend the use of best management practices (BMPs) and/or conservation plans for ongoing agricultural activities in wetlands.

We believe that the County makes a serious error in attempting to apply the cited literature, which is very limited in scope, to the broader issue of protecting wetland functions and values across the suite of land uses found in the County. The literature cited in the policy discussion does not apply to the overall protection of wetland functions and values from the impacts of commercial, industrial, and residential land uses. In fact, apart from Ecology’s guidance documents, none of the references cited evaluates the effects of these types of development on wetlands.

The policy discussion still includes an examination of a fixed-width buffer approach in great detail and claims that such an approach “failed to provide for many ecological functions.” The draft also asserts that most wetland or stream functions may be at some risk by only protecting wetlands or streams with standard, fixed-width buffers. Then, confusingly, the draft CAO prescribes a fixed-width approach.

Ecology does not recommend a fixed-width buffer approach. As we have commented earlier and will discuss in more detail below, best available science clearly recommends that appropriate buffer widths relate to the value of the resource, the intensity of the adjacent land use and the

quality of the existing buffer. These factors can contribute to variable buffer prescriptions that address site-specific conditions. This approach is similar to the County's policy discussion on page 29: *Combining the Fixed-Width Buffer Approach with Site-Specific Variables*.

In conclusion, we believe that the policy discussion continues to be a confusing, contradictory document that fails to support the prescriptive standards in the draft CAO. We acknowledge that it now includes Ecology's BAS documents, but it fails to substantively consider that information. There is no clear correlation between the County's cited literature and its proposed buffer recommendations and those protective provisions necessary to protect wetlands from more intensive land uses.

Section 18.06.135, Wetland Buffers:

The County's buffer strategy remains a fixed-width approach and continues to propose buffers that wetland science demonstrates are not large enough to protect habitat and water-quality functions [see Ecology's BAS document *Wetlands in Washington State - Volume 1: A Synthesis of the Science* (Ecology publication 05-06-006, March 2005), especially Chapter 5, Table 5-1 and Table 5-5].

Ecology's guidance on buffers is presented in terms of risk to the suite of wetland functions. The County's literature references fail to show how these small buffers would not jeopardize wetland functions. The scientific literature is clear in demonstrating that risk increases as buffer widths decrease. A 51-foot buffer for Category II wetlands, for example, is not nearly wide enough to protect habitat or water quality functions.

Ecology's guidance, which also considers land use intensity, wetland functions and buffer conditions, recommends a variable-width approach with the following ranges based on site specific conditions:

- Category I – 100-300 feet
- Category II – 100 to 300 feet
- Category III – 40 to 150 feet
- Category IV – 25 to 50 feet

Ecology's guidance on buffer widths and compensation ratios is based on the level of protection or compensation required for particular functions. Our recommended buffer widths take into account not only the functions that need to be protected, but also the impact of adjacent land use. Low-intensity adjacent land uses allow for narrower buffers around wetlands than those needed to protect from the impacts of high-intensity uses.

We encourage you to adopt standards recommended in Appendix 8-C of Volume 2, which provide for appropriate buffers to protect wetland functions. Our recommendations are contained in Buffer Alternative 3 (Tables 4 through 7) described in this appendix. They offer the

most flexibility, basing buffer widths on the wetland category, adjacent land use, and the specific wetland functions that require protection.

The advantages of using this approach include the following:

1. It provides for specific buffer widths based on the more detailed information provided by the new wetland rating system that the County is proposing to adopt.
2. It is based on the best available science regarding wetland buffers and provides for wider buffers around the more valuable and sensitive wetlands and narrower buffers around the wetlands that are less valuable and sensitive.
3. It will generally result in smaller buffers around wetlands in highly urbanized areas because many of the wetlands in developed areas are not providing the habitat functions that require larger buffers.
4. It provides incentives to landowners and developers to incorporate low-impact site-development measures to reduce runoff, noise, light, etc. Using such measures allows for reduced buffers.
5. It provides incentives to landowners and developers to provide connectivity between wetlands on their property and other habitat areas in exchange for reduced buffers.

Many jurisdictions have adopted this approach, including several of those referenced by the Grays Harbor Policy Discussion (Mason County, King County, and Whatcom County). We find that it is a very flexible system, especially when used with the 2004 ratings system. It produces buffers that are appropriate for wetland protection since these buffers are based on wetland function, existing buffer condition and proposed level of impact.

Section 18.06.080 and 18.06.135 (7) Wetland Area Mitigation Standards:

We appreciate that the draft ordinance now references Ecology's Best Available Science documents regarding compensatory mitigation: *Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance* (Version 1, Publication #06-06-011a, March 2006) and *Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans* (Version 1, Publication #06-06-011b, March 2006), hereafter Part 1 and Part 2. We also support the inclusion of the concepts of monitoring and maintenance and requirements that define these concepts. However, the draft contains no specific provisions identifying compensatory ratios for the various approaches to mitigation.

The failure to clearly identify prescriptive standards establishes a high level of uncertainty for proponents of development. It remains unclear how an applicant will infer their mitigation requirements. Simply referencing Part 1 and Part 2 does not necessarily result in the appropriate application of mitigation requirements. Such analysis could be complex and burdensome for a property owner. We also note that the County does not employ a wetland specialist who would provide technical expertise in such a determination. We do not believe this approach would be more desirable to landowners and developers than a relatively easy-to-use mitigation table.

Current scientific information on wetland mitigation makes it clear that mitigating for wetland impacts is a difficult and risky proposition requiring considerable attention to the complexities involved in trying to restore, create or enhance wetlands. Detailed compensatory mitigation strategies, including identified, adequate mitigation ratios, are necessary to ensure that wetland mitigation compensates for losses to functions and values that occur due to wetland impacts. Replacement ratios are used to determine the amount of required wetland mitigation necessary to compensate for wetland impacts. Frequently, mitigation projects fail to fully compensate for the losses to wetland functions and values, and many studies have shown that creating or restoring new wetlands can take decades to be successful. The reasons for this are complex. Part 1 concludes that studies of wetland mitigation in the state of Washington, and across the nation, continue to show a high failure rate for wetland mitigation activities.

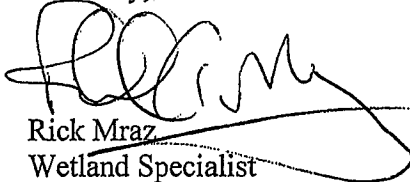
We recommend that you adopt the mitigation approach detailed in Part 1 of *Wetland Mitigation in Washington State*, specifically Table 1a on page 73. This guidance is consistent with what state and federal agencies require for mitigation. By adopting this guidance, the city will help applicants by providing consistency with state and federal requirements, which will streamline the approval process for mitigation projects.

Unless the County has conducted an independent evaluation of mitigation in Grays Harbor County and found a much higher rate of success, we see no rationale for the lack of any mitigation ratios in the draft CAO. As with buffers, this section is inconsistent with the Purpose section of the draft CAO.

We again express our appreciation for the changes made thus far. However, as detailed in this letter, we believe that the proposed CAO does not adequately include the best available science and will not protect wetland functions and values. We urge you again to consider our suggestions for improvement. We remain available to discuss our comments with you and provide additional assistance.

Please call or e-mail me with any questions or for further discussion. I can be reached at (360) 407-6221 or rmra461@ecy.wa.gov.

Sincerely,



Rick Mraz
Wetland Specialist

RM:dn

cc: Tim Gates, Department of Community, Trade and Economic Development
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