

November 5, 2008

Ellen Pickell
P O Box 736
Hoquiam, WA 98550

To: Brian Shea
Planning and Building Division
Public Services Department
Grays Harbor County
100 West Broadway, Suite 31
Montesano, WA 98563

bshea@co.grays-harbor.wa.us

Re: Grays Harbor County Code 18.02 Critical Area Protection Ordinance

Dear Mr. Shea:

Thank you for the work you and your staff have done on the CAO. It is good to see parts of Draft 2 Grays Harbor Count Code 18.02 are improved compared to Draft One. This must represent a tremendous amount of work on the part of your office.

Here are my comments on the second draft. I am e-mailing them in case you have time to give them to the Planning Commission today.

Please keep me informed as this process continues.

Sincerely,

Ellen Pickell
ptnew@techline.com
360 532 7294

Here are some concerns on Draft 2 of Grays Harbor County Code 18.02:

p. 11 (C) (2). Please delete. It is vague.

p. 12 (F) Needs to be clarified. What must be done before activities commence. This could be an impossible requirement.

p. 13 (C) (1) "the existing footprint and (add: previously existing structures).

p. 15 18.06.25 (B) Include: "Provided further, however, that new construction or related activity connected with an existing single family residence shall not be considered further intruding into a critical area so long as the footprint of the structure lying within the critical area is not increased by more than 1,000 square feet and no portion of the structure is located closer to the aquifer recharge area, the wetland area, the fish and wildlife habitat protection area, or the geologically hazardous area than the existing structure."

p. 17 18.06.25: Add (F) Forest practices conducted on or directly pertaining to growing, harvesting, or processing timber and forest products, including but not limited to: (a) Road and trail construction; (b) Harvesting: final and intermediate; (c) Precommercial thinning; (d) Reforestation; (e) Fertilization; (f) Prevention and suppression of diseases and insects; (g) Salvage; (h) Brush control; (i) Fire control.

(Comment: Additionally, forest practices are more than adequately controlled by the Forest Practices Act and the Forest and Fish Act of 1999. Essentially the county does not have to pick up this responsibility)

p. 18: After (a) and (b). Is forwarding the copy of the exemption request a requirement of law? Is the county giving itself extra work?

p. 18: 18.06.035 (A): delete "all reasonable". It should read: "If the application of this chapter would deny use of the property..."

p. 18: 18.06.035 (C) (1): delete "all reasonable". Should read: "Application of this chapter would deny use..."

p. 19: continuation of 18.06.035 (C). Delete all of (2) at top page: "There is no other...."

p. 19: 18.06.035 (E) Delete "all reasonable". Should read deny use...

p. 19: 18.06.040 (B) (3) Delete "all reasonable". Should read "would deprive applicant of economic...."

p. 20: (9) Insert "consideration of" to read "The decision to grant the variance includes consideration of the best available science..."

p. 20: (C) Insert "reasonably" to read "...safeguards as are reasonably necessary...."

p. 20: 18.06.045: Change to read "The purpose of the variance procedures provided in this section is to permit the construction and substantial improvement of structures where full compliance with the provisions of this chapter would cause an exceptional hardship, and where granting of a variance would not result in additional threats to the public safety. Upon consideration of the criteria contained....."

p. 21: "C) Delete

p. 21: (D) Change beginning to "Variances may be issued..."

p. 22: (A) Second paragraph. Delete: "It shall be the responsibility of the developer to verify the presence of any on site critical area."

p. 24: 18.06.075. Delete "Permanent" in Title. Delete all of (C). It would be sign pollution.

p. 24: Delete last paragraph: "Temporary marking...pursuant to Section 18.06.020"

p. 25: (2) Change to: "It is the goal of Grays Harbor County to achieve no...."

p. 25: 18.06.085: Delete last sentence: "Access to the monitored area.....seven calendar days prior to the inspection."

p. 27: 18.06.095: It would be wonderful to not have to deal with so many different source materials. I have a concern that they might not be consistent with each other.

p. 28: (B) (1): An 8 percent slope (an eight-foot rise over a 100-foot distance) is not very steep. Should not this be revisited and the requirements "kick-in" at a slope greater than 40 per cent?

p. 31: (IV) remove "as determined in writing by a professional arborist." This is costly and unnecessary. Besides, trees often contribute to erosion of slopes and banks.

p.34: (18.06.115) (A) (4) delete "but may be designated in the future" in first two lines. It is too ambiguous. Absolutely anything may be designated for something sometime in the future.

Change "anticipated" to "currently permitted" in next to last line to read: "...where combined with all other existing and currently permitted development will not...." Again, anything can be "anticipated"

p. 35: 18.06.115 (C) (3). Delete "certification shall be obtained from a professional engineer or architect licensed to practice in the State of Washington that".

p. 36: (5). Why is this here? Why is it necessary?

p. 36: (6) what is "shallow flooding"?

p. 39: (2) Read: Change to read: "...New sanitary sewer systems.... " instead of "New and replacement..."

p. 39: (4): Change to: "Water wells shall be designed to minimize or eliminate infiltration of flood water..."

p. 42: 18.06.135. (A) Six resources? I wonder how many of them conflict with each other.

p. 43: 18.06.134 (4) Add "deliberate" to read: "There shall be no deliberate introductions of any...." No one can be responsible for seeds the wind and water bring or that birds drop.

p. 43 (5) (5) Wetland Classifications.

Again reference is to six documents. It should be easier to define. What is the definition of "replace within a human lifetime"? Sixty years? Seventy? One hundred?

p. 45: 18.06.135 (6) Wetland Area Protection Standards. Please note that Dr. Pizzimenti's work shows 80% to 90% of all benefits are in the first 10 meters of the buffers. Larger buffers go beyond protection. See Swinomish ruling. In Grays Harbor we can have overlapping buffers on overlapping buffers. This is unreasonable.

p. 46: (b) Please delete. This is subjective.

p.47: ii (A) Suggest adding at the end "unless the utility would do no permanent harm. For instance: There are numerous cases of raptors nesting on urban buildings, port cranes and utility poles. Perhaps the utilities and buildings are enhancements?"

p. 48. Top line. Delete "surrounding upland area"

p. 48. Second full paragraph. It could be beneficial to average the buffers and also use other provisions for the reduction.

p. 48. (i) (4) buffer averaging at narrowest could be one quarter of the required width Especially important if it is one of the wider buffers.

p. 49 (ii) (4) same as above.

p. 49 (h) (4) Surface water retention or detention facilities should work for regional AND smaller and private projects.

p. 50 (i) (1) include private, single purpose trails as well as "public multi-purpose"

The public would also benefit on public lands from some "single" purpose trails.

p. 50 (L) this should be put back at least on private land!

p. 50 (7) (i) Change to read: "...The following minimum performance standards should be met...."

p. 51 (7) (i) (1) (2) (3) (4) (5) Change all "shall" to "should". Exact replication may be impossible to guarantee.

p. 51: (ii) (3) (A) is it possible to comply with so many different sources which may conflict?

p. 53: 18.06.140 (c) (1) Critical Protection Area Development Standards for Fish and Wildlife Habitat. Herring and smelt are likely to be threatened and endangered? Suggest eliminating these species at this time.

p. 53 and 54: (6) (a) Stream Buffers: Dr. Pizzimenti concludes 80% to 90% of the buffer benefits are derived in the first 10 meters. Larger buffers than 10 meters that are indicated here are up to FIVE TIMES the area that would bring most benefits.

p. 54: (E) (ii) Change "additional" to "equal"; i.e., "...will provide equal resource protection..."

p. 56: Top line. Please delete "declared" to read "...periods when use is critical to salmonids, except in the case of emergency." Sometimes a problem can be fixed better and faster if one does not have to wait for a "declared" emergency. Couldn't the county commissioners give permission?

p. 57: (iv) Trails. Please delete (2) regarding expansion of buffers.

p. 58: (vi) Please include (2) and (3).

p. 59: (x) Please include this.

p. 59 (h) (i) if this is not law, let's leave it out.

p. 60: (iii) (E) Change "shall" to "should". The subsections may be impossible and cause paralysis.

p. 61: (3) Monitoring may rather than "shall".

p. 61-63: (B) Wildlife habitat. It would be hard to justify full-blown, expensive studies for anything but the largest projects.

p. 65: 18.06.145 (A) Seven sources to check? Again, these seem fraught with potential conflicts.

p. 66: (5) Please change "shall" to "may". The January 2005 Puget Sound Action Team ... document entitled "Low Impact Development: Technical Guidance Manual for Puget Sound" may not be appropriate for Grays Harbor.

p. 66: (6) Fuel and gas dispensing and storage: Users who have current facilities properly built during existing regulations at the time should not be required to make changes unless they are expanding.

p. 67: Violations – Penalties. There should be a first step and maybe a second and third step before penalties are assessed. Penalties should not be assessed until after an action has had an opportunity to be rectified and it has not been accomplished. One thousand dollars (\$1000.00) per violation per day with each day being a separate and separately punishable offence could be excessive for a family or family-owned business. Is it the county's goal to ruin people and businesses or to see that good management practices are used? Unintentional actions should not be punished. Everyone is NOT the Exxon Valdez. Suggest a paragraph to this effect before the listing of penalties in (A) (B) (C) (D).

p. 68: (F) (2). Why is there a public hearing if "Only the person on whom the penalty is imposed may appeal the civil penalty." (p 67, 18.06.155 (B))

p. 69: (6). Suggest adding following underlined words: "The Secretary shall transmit all written comments received before the public hearing to the Board and the appellant no later than the public hearing.