



November 6, 2008

Brian Shea
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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

In Re: Second Draft of Grays Harbor County Code 18.06 (Critical Areas); First Draft of Grays Harbor County Code 18.02 Definitions

Dear Mr. Shea,

Thank you for this second opportunity to comment on the above referenced Draft Critical Areas Ordinance.

FOGH is a broad-based 100% volunteer tax-exempt 501(c)(3) citizens group made up of crabbers, fishers, oyster growers and caring citizens. The mission of FOGH is to foster and promote the economic, biological, and social uniqueness of Washington's estuaries and ocean coastal environments. The goal of FOGH is to protect the natural environment, human health and safety in Grays Harbor and vicinity through science, advocacy, law, activism and empowerment.

It is our understanding that you will be receiving and/or have received comments from Grays Harbor Audubon, Wildlife Forever Grays Harbor, Futurewise, Surfrider Foundation, Brady Engvall, Vickie and David Mascarenas, Catherine and Eric Goldman, Ginger Gamblin, Teri Franklin and Janet Strong. We again incorporate those comments and concerns by reference.

We appreciate that Grays Harbor County has recognized in principal the importance to public health, welfare and safety that our critical areas within Grays Harbor provide and hoped that the second draft of this document would significantly decrease the level of risk to critical areas. However we are concerned that the County still seems to be underestimating their function and value. Even though Grays Harbor does not organize under the Growth Management Act (GMA), protection of the functions and values of critical areas are still under the jurisdiction of GMA.

The First Draft Definitions and Second Draft Document has made some progress towards a Code that can be used for responsible land use and protections and we appreciate the Counties efforts on that behalf. The addition of the reference documents to the policy discussion is very helpful. Generally, we would suggest that throughout the documents, including 18.02 and 18.06 that the term "most current edition of..." be added so that it is clear that documents cited and/or relied upon would include the latest approved updates and modifications. Perhaps this could be globally handled by adding a definition of Documents or some such universal identifier.

We are still confused by the inclusion of the discussion of Oregon's Ballot measure and the use of the term "property rights" 18 times throughout the policy document.

Grays Harbor is defined by its estuary and that estuary is a critical area to the economic and environmental well-being of our County. However, the only mention of the estuary is a reference

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to the Grays Harbor Estuary Management Plan on page 9 of the Draft 2 Critical Protection Areas Code Policy Discussion. While shorelines may be treated separately, it is important to connect the wetland functions and values to the estuary and the open ocean beaches.

The inclusion and development of 18.02 Definitions is very helpful and we appreciate the addition of this important tool to understanding the proposed Code. We wonder if the following terms need to be added to the definitions section: agriculture; agricultural activities; agricultural products; aquaculture (including shellfish); anadromous fish; best available science; best management practices (BMP); channel migration zone; clearing (vegetation or plant cover); critical habitat; delimitation; estuarine wetland; estuarine area; emergency activities; feasible alternative; fill material; fish and wildlife habitat conservation area; fish habitat; function and value; ground water; Growth Management Act (RCW 36.708A and 36.70B, as amended); hazard tree; hazardous substance; impervious surface; infiltration; intertidal zone; monitoring; OHWM (Ordinary High Water Mark) should also refer to RCW 90.58.030 (2)(b); priority habitat; qualified professional or qualified consultant; recharge; resource lands; shellfish; shellfish habitat conservation areas; watershed.

It would be helpful if the definition *Base flood* were further defined so that the designations had a more detailed explanation. For example it could be re-written to read: "...is a flood event having a one percent (1%) chance of being equaled or exceeded in any given year, also referred to as the 100-year flood. Designations of base flood areas on flood insurance map(s) always include the letters A (zone subject to flooding during a 100-year flood, but less so than V zones) or V (zone subject to the highest flows, wave action, and erosion during a 100-year flood).

We would suggest that the definition of *Critical Facility* expand its definition to include not only danger of flood, but also wind, earthquakes or erosion.

18.06.010 Critical Protection Area – Purpose

(4) As climate changes and development increases in the Grays Harbor area, it is important to consider water quantity in addition to availability and quality.

(9) We suggest that the word "goals and policies" be added to the phrase "...Implement the policies..." This will provide the intent of the Legislature.

We suggest that it is important that the concept of "no net loss" is added to this section and could become number (11).

18.06.020 Critical Area Protection Special Studies

(D)(9) The concept and reality of cumulative impacts is important to critical areas and probable cumulative impacts should be part of the special studies.

18.06.025 General Exemptions

The discussion seems to exclude forestry, shellfish and aquaculture as an agricultural endeavour. Perhaps this is an oversight or a separate subsection needs to be added?

18.06.030 Essential Public Facility Exception

It doesn't appear that avoidance and alternative locations are adequately addressed.

18.06.035 Reasonable Use Exception

We suggest that a study of the cumulative effect to granting the use exception be required.

18.06.040 Variances - Authority

Again cumulative effects and degradation must be analyzed before granting a variance.



18.06.085 Monitoring and maintenance

The success rate of mitigation programs is dismal and should require a 10-year monitoring program that is consistent with recommendations by best available science. (4) Maintenance bonds. There may be a typo in the last sentence: "Any such maintenance bond shall being..." Perhaps that should be "be in."

Also, this is a good place to put in place a performance bond to insure that the critical area would be restored to its previous healthy condition should the development project decide not to go forward.

18.06.095 Critical Protection Area...

B(2)(vi)(I) Add the term "licensed geologist or licensed geotechnical engineer..."

18.06.110 Permits required for all Development...

(E) Please add consistency for 401 Certification (Coastal Zones Consistency Determination, Washington State Department of Ecology and the Coastal Zone Management Act

18.06.115

(C)(3) Certification should be implemented so that there will be no cumulative effects from the addition of structure. For example, there should be no end erosion caused by the location of the project in flood-prone area.

(H) It does not seem reasonable that a development should be allowed to raise the surface water elevation of the base flood one (1) foot. Each cubic foot of rise would equal 7.38 gallons of water. It wouldn't take a very large displacement to send significant effects to adjacent critical areas and/or properties.

18.06.135 Critical Protection Area Development Standards for Wetland Areas

It is unfortunate that Draft 2 continues to ignore and disregard the wise counsel of some of its commentors about the unacceptability of the wetland buffers and setbacks. We reject this section and ask that the County totally rewrite this based on best available science and at the least those from Futurewise in Draft One. Again there is no integration of the estuary or ocean in this section. Monitoring must be an integral part of wetland changes and alterations.

18.06.140 Critical Protection Area Development Standards for Fish and Wildlife...

(A)(2) Add the requirement for an NPDES permit from the Department of Ecology.

The discussion of buffers is again woefully inadequate and we reject them. Please consult with Washington Fish & Wildlife and Futurewise for guidance in this area. Also, there doesn't appear to be recognition of resident species or migratory species and their need for resting and foraging. Grays Harbor is an Internationally Important Bird Area and as such requires protection of those critical areas.

In summary FOGH is concerned that the Draft 2 Document will not protect water quality, wetlands, aquatic resources and critical areas of our County. It is important that Grays Harbor Count supports the purpose and intent of the law requiring CAO's protection by writing an ordinance that meets the highest expectations and standards. We look forward to reviewing the next edition of the Code.

Sincerely,



Arthur (R.D.) Grunbaum
Vice President

