EXHIBIT B

Chapter 17.02B
Island County Critical Areas Regulations

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GENERAL PROVISIONS

17.02B.010 Purpose and Intent

A. General: Reserved.

B. Fish and Wildlife Habitat Conservation Areas: The purposes of the Fish and Wildlife Habitat Conservation Areas regulations are to:

1. Maintain fish and wildlife populations, especially populations of anadromous fish species, by protecting and conserving valuable fish and wildlife habitat and protecting the ecological processes that sustain these resources.
2. Protect valuable terrestrial habitats, natural streams and their associated riparian areas, marine shorelines, and the ecosystem processes on which these areas depend.
3. Regulate Development so that isolated populations of species are not created and habitat degradation and fragmentation are avoided.
4. Maintain the natural geographic distribution, connectivity, and quality of fish and wildlife habitat.

C. Wetlands: Reserved.

D. Geologically Hazardous Areas: Reserved

17.02B.020 Authority

The ordinance is hereby adopted under the authority of Chapters 36.70 and 36.70A RCW.

17.02B.030 Applicability

A. General: Reserved

B. Fish and Wildlife Habitat Conservation Areas: This Chapter shall be consistently applied to Development within geographical areas of unincorporated Island County that meet the

definition and criteria for Fish and Wildlife Habitat Conservation Areas (FWHCA) and their buffers as set forth in this chapter. No Development shall occur without full compliance with this Chapter.

C. Wetlands: Reserved.

D. Geologically Hazardous Areas: Reserved

17.02B.040 Relationship to Other Regulations

A. Island County Code: All Island County Code requirements and Planning Policies shall apply in addition to this Chapter. If a conflict exists between this Chapter and another Chapter or Planning Policy, the more restrictive shall apply.

B. Relationship to Shoreline Master Program:

1. Until such time that the updated Island County Shoreline Master Program adopted by Resolution C-125-12 is approved by the Washington State Department of Ecology, and adopted by the Board of Island County Commissioners, Fish and Wildlife Habitat Conservation Areas within the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by Chapter 17.02 ICC. Upon approval by the Department of Ecology, and final adoption by the Board of Island County Commissioners, all Development occurring within the jurisdiction of the Island County Shoreline Master Program shall be regulated by the Island County Shoreline Master Program.

2. All Development occurring outside of the jurisdiction of the Island County Shoreline Master Program shall be regulated by this Chapter, including those Development activities which may be outside of Shoreline Jurisdiction, but impact FWHCA within Shoreline Jurisdiction.

C. Relationship to SEPA:

1. General: Reserved.

2. Fish and Wildlife Habitat Conservation Areas, and their associated buffers, have been identified by Island County as Critical Areas in which certain SEPA categorical exemptions do not apply pursuant to WAC 197-11-908. The specific categorical exemptions which are not applicable in Critical Areas are identified in ICC 16.14C.190.

3. Wetlands: Reserved.

4. Geological Hazards: Reserved.

D. Relationship to Forest Practices Act:

1. Forest practices regulated by, and conducted in full compliance with, Chapter 76.09 RCW and all applicable Washington State forest practices regulations shall not be subject to the requirements of this chapter.

2. Except as otherwise provided by Chapter 76.09 RCW, timber harvests conducted without permits, approvals, or notices required by Chapter 76.09 or other applicable forest practices regulations, shall be subject to the requirements of this Chapter.

3. Conversions of land to non-forestry use as described in Chapter 76.09 RCW shall be subject to the full requirements of this Chapter.

E. Relationship to other Federal, State, Tribal and Local Jurisdictional Agencies' Regulations: All applicable State, federal, tribal, and regional regulations apply to Development conducted within Critical Areas. County codes do not eliminate other agency regulatory requirements.

F. Overlapping Jurisdiction: In cases where other agencies possess jurisdiction over Critical Areas and it is determined by the Island County Planning Director that permit conditions of those agencies satisfy the requirements of this Chapter, those agency conditions may substitute or supplement Island County permit conditions for the requirements of this Chapter.

1. Such agencies may include, but are not limited to, the United States Army Corps of Engineers, Environmental Protection Agency, National Oceanic and Atmospheric Administration, and United States Fish and Wildlife Service; local Tribes, and the Washington State Department of Ecology, Department of Natural Resources and Department of Fish and Wildlife.

2. Such substitute or supplemental conditions may be attached to any permit or approval issued by the County which authorizes Development in a Critical Area or Critical Area Buffer, as determined by the Director, and in that event, be enforceable by the County.

3. The County shall notify the applicant in writing when any such substitution or supplement is made.

4. Any such supplemental conditions may be added to any permit or approval issued by the County which authorizes Development in a Critical Area or Critical Area buffer by reference.

G. In the event provisions of this Chapter conflict with provisions of applicable federal, Tribal, State, County or other applicable regulations, the provision that is most protective of Critical Areas shall prevail.

17.02B.050 General Interpretation and Definitions

A. Interpretation: The Island County Planning Director shall have the authority to issue interpretations in order to clarify ambiguities and effectively administer this Chapter. Interpretations shall be processed consistent with the standards, requirements and criteria identified in ICC 17.03.190. In all cases this Chapter shall be interpreted and applied in a manner which best implements those elements, goals, and Planning Policies of the Island County Comprehensive Plan pertaining to Critical Areas as well as all applicable Growth Management Act goals, policies, and requirements.

B. Conflicts: If any provision of this Chapter conflicts with a provision of another Chapter of Island County Code, or the Island County Comprehensive Plan, the more restrictive or protective provision shall apply.

C. Words and Terms: Whenever the words and terms set forth in this section appear in this Chapter, they shall be given the meaning attributed to them by this section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural and the plural the singular; the word "shall" is always mandatory and the words "may" and "should" indicate a use of discretion in making a decision. Except where specifically defined in this Chapter or in other Titles or Chapters of the Island County Code, all words used in this Chapter shall carry their customary meanings.

D. General Definitions: Unless modified by 17.02B.060 et seq. definitions in ICC 17.02A.030 Definitions shall apply. If a given term is not defined in ICC 17.02B.060 or ICC 17.02A.030, a definition from the most applicable Island County Code Chapter shall apply.

17.02B.060 Definitions – Fish and Wildlife Habitat Conservation Areas

A. **Adequate Building Site:** An area large enough to accommodate a reasonably sized home, driveway, utilities, septic system, and, if necessary, a well.

B. **Agricultural Activities, Existing and On-Going:** Those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock. These activities include the operation and normal maintenance of legally existing farm and stock ponds or drainage ditches, operation and normal maintenance of legally existing ~~non-regulated water courses~~Unregulated Streams, changes between agricultural activities, and normal maintenance, repair, or operation of legally existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be on-going when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than ~~six (6) years and six (6) months~~five (5) years, unless the idle land is registered in a federal or State soils conservation program other than Conservation

Comment [BJ1]: Code consistency change – term "non-regulated water course" was previously deleted from definitions section and replaced with the term "Unregulated Stream".

Comment [BJ2]: Changed to revert to five year period based on public testimony at 7/21 & 7/28 BOCC hearings and to address BOCC requested change #7

Reserve Enhancement Program (CREP) and other riparian buffer enhancements. Forest practices and maintenance of legally existing vegetation, landscaping and gardens are not included in this definition. This definition is limited to ~~those activities that were~~ legally Existing ~~on or before December 1, 1998~~uses and activities. The five year period specified above may be extended by an appropriately limited and reasonable amount of time in order to account for unavoidable and unintentional events which make active agricultural use impossible. Such events may include the death of an agricultural operator, difficulty selling the agricultural property, or securing a lease with an agricultural operator.

Comment [BJ3]: Replaced reference to 1998 with more general statement "legally existing" in response to BOCC requested change #9

Comment [BJ4]: Added to be consistent with the agricultural exemption in ICC 17.02B.300.A and to respond to BOCC requested change #2

C. **Best Available Science:** Scientific information that is consistent with the assessment criteria established by the Washington State Department of Commerce and described in WAC 365-195-905.

D. **Best Management Practices (BMPs):** Conservation practices, systems of practices and management, and mitigation measures intended to control soil loss, reduce water quality degradation, minimize adverse impacts to surface water and ground water flows, and minimize adverse impacts to the chemical, physical, and biological characteristics of critical areas. Island County Public Works maintains a BMPs manual which describes suitable and appropriate BMPs (Island County Best Management Practices Field Manual for Small Construction Sites). When Best Management Practices are required by this Chapter, or by a condition attached to a permit issued pursuant to the requirements of this Chapter, the BMPs described in this manual shall be used except that when BMPs are required for an activity related to a legally established Existing and On-Going Agricultural Activity, appropriate NRCS (Natural Resources Conservation Service) guidelines may also be used.

Comment [BJ5]: Added reference to NRCS guidelines for Existing and On-Going Agricultural Activities in response to BOCC requested change #4

E. **Chapter:** Island County Code 17.02B.

F. **Clearing:** Cutting, killing, grubbing or removing vegetation or other organic plant material by physical, mechanical, chemical or any other similar means. For the purpose of this definition of "clearing," "cutting" means the severing of the main trunk or stem of woody vegetation at any point.

G. **Critical Area:** For the purposes of this Chapter the term "Critical Area" shall refer to Fish and Wildlife Habitat Conservation Areas (FWHCA) and their buffers.

H. **Critical Area Permit:** A permit issued pursuant to the requirements of this Chapter. Critical Area Permits include: Exemption Authorizations, Permitted Alteration Permits, and Critical Area Variances.

I. **Deepwater Habitats or Ponds:** Any open freshwater area that has a mean annual water depth greater than 6.6 feet, lacks soil, and/or is either unvegetated or supports only floating or submersed macrophytes and is not a lake as defined in the Island County Shoreline Master Program or ICC 17.02A. Many such areas were partially or wholly

constructed within Wetlands and are regulated under ICC 17.02A. Rarely, some such areas were wholly constructed in upland soils (non-hydric) and would not be regulated as either Wetlands under ICC 17.02A or as Fish and Wildlife Habitat Areas.

J. **Department:** The Island County Department of Planning and Community Development.

K. **Development:** Any activity that results in a use or modification of land or its resources. Development activities include, but are not limited to: dredging, drilling, dumping, filling, earth movement, Grading, Clearing or removal of vegetation; storage of materials or equipment; building or construction; Land Division, Boundary Line Adjustments, lot segregations, Subdivision and Short subdivisions; binding site plans; site plan approvals; planned residential developments (PRDs); variances; shoreline development or substantial development; activity conditionally allowed; and septic approval.

Comment [BJ6]: Staff recommendation – needed to ensure consistency between 17.02B and 17.05A, development in this chapter covers things that are similar to both development and substantial development.

L. **Dike:** A manmade embankment or revetment normally set back from the river bank or channel in the floodplain for the purpose of keeping floodwaters from inundating adjacent land.

M. **Diking:** A system of levees or banks, usually constructed of earth to control or confine water and create a protection against tidal or floodwaters. Where coastal Dikes are located within Shoreline Jurisdiction, they are regulated in the Shoreline Master Program.

N. **Diking and Drainage System:** Any lawfully constructed combination of dike, levee, and drainage which actually does or is designed to prevent inundation and facilitate drainage of land upland of the Ordinary High Water Mark.

O. **Drainage Ditch:** An Unregulated Stream~~Non-Regulated Watercourse~~ constructed to drain surface or ground water. Ditches are graded (manmade) channels installed to collect and convey runoff from fields and roadways, except those that directly result from the modification of~~to~~ a natural ~~watercourse~~stream. Ditches that support salmonids are considered to be Regulated Streams.

Comment [BJ7]: Changes by LG for use of consistent terminology. The terms "regulated watercourse" and "unregulated water course" were previously deleted from the code and replaced with the terms "regulated stream" and "unregulated stream"

P. **Exempt Activity:** A Development or Development activity which either meets the precise terms of one of the Exempt Activities identified in this Chapter, or which is determined by the Director to be an Exempt Activity pursuant to the procedures and requirements identified in ICC 17.02B.300.

Q. **Exemption Authorization:** A Type I decision issued by the Director in those instances where a proposed Development does not meet the precise terms of the Exempt Activities identified in this Chapter but is otherwise consistent with the Standard Exemption Environmental Protection Criteria and Threshold Criteria identified in ICC 17.02B.300. An Exemption Authorization may also be voluntarily requested by an applicant in order to document that a proposed Development is an Exempt Activity, even if the proposed Development is specifically listed as being an Exempt Activity.

R. **Existing:** See definition in 17.03.040.

S. **Fish and Wildlife Habitat Conservation Areas (FWHCA):** FWHCA are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. In Island County FWHCA also include locally important and designated habitats and species (WAC 365-190-030(6)(a)).

T. **Grading:** Any excavating or filling or combination thereof.

U. **Hazard Tree:** Any tree that is susceptible to immediate fall due to its condition (damaged, diseased, or dead) or other factors, and which because of its location is at risk of damaging permanent physical improvements to property or causing personal injury.

V. **Land Division:** For the purposes of this chapter, Land Division means the segregation of a parcel of land into smaller parcels or lots, including Land Divisions, Short Subdivisions, Long Subdivisions, lot segregations, or Boundary Line Adjustments as defined in ICC 16.06.040.

W. **Maintenance or Repair:** Usual acts to prevent a decline, lapse, or cessation from a lawfully established condition or restores a Development to a state comparable to its original condition, including but not limited to maintaining the same size, shape, configuration, location and appearance, provided such restoration is commenced within a reasonable period of time. Replacement of a structure is not considered normal maintenance or repair, except where specifically authorized by this Chapter or ICC 17.03.230. With respect to structures, repairs that exceed fifty percent (50%) of the value of the structure over any three-year period shall constitute replacement and shall not be considered Maintenance or Repair.

X. **Mitigation:** Any action, or combination of actions, that avoids or compensates for impacts to Critical Areas. Mitigation, or "to Mitigate," further means to completely maintain Critical Area functions and values.

Y. **Mitigation, Off-Site:** Mitigation that is located on another parcel or site from the Critical Area or Critical Area buffer impacts being Mitigated.

Z. **Mitigation, On-Site:** Mitigation that is located on the same parcel or site as the Critical Area or Critical Area buffer impacts being Mitigated.

AA. **Necessary Appurtenances:** Those improvements which are minimally necessary to establish a single family home. Such improvements shall include a septic system, well, driveway, and utility connections.

~~BB.~~ ~~**Non-regulated Watercourse:** Ditches and other water conveyance systems, not constructed from natural or modified stream channels, which are artificially constructed~~

~~and actively maintained for irrigation and drainage, are not used by salmonids or to convey water from an existing regulated wetland.~~

Comment [BJ8]: Correction by LG – deleted to be consistent with previous decision to delete the term "Regulated Watercourse"

~~CC~~BB. **Permitted Alteration Permit:** A Type II decision issued by the Director for those Development activities identified in ICC 17.02B.310 as being Permitted Alterations.

~~DD~~CC. **Perturbation:** Deviation of an ecological system or process from its regular or normal state of path, caused by an outside influence.

~~EE~~DD. **Planning Policies:** Policies contained in the Island County Comprehensive Plan.

~~FF~~EE. **Primary Association:** Use of an area by a protected species for rearing young, roosting, breeding, or foraging on a regular basis during the appropriate season, as well as habitats that are used less frequently or regularly but which provide for essential life cycle functions. Areas of Primary Association for listed salmonids shall include all aquatic environments in which they reside, as well as riparian environments necessary to support the formation and function of the aquatic environment. Areas of Primary Association for protected flora and fungi include both the immediate area where the species occurs and the contiguous habitat necessary for its long term persistence.

~~GG~~FF. **Protected Species:** Fish and wildlife species and their associated habitat that are regulated as FWHCA in this Chapter.

~~HH~~GG. **Qualified Professional:** A person with experience and training with expertise appropriate for the relevant Critical Area subject in accordance with WAC 365-195-905(4). A Qualified Professional must have a degree in wildlife biology, ecology, fisheries, or a closely related field and a minimum of three years of professional experience related to the subject species/habitat type. A Qualified Professional shall be selected by the Planning Director, or approved by the Planning Director if selected by the Applicant.

Field Code Changed

~~II~~HH. **Reasonable Use:** The minimum logical or rational use of a specific parcel of land which a person can be expected to conduct or maintain fairly and appropriately taking into account specific site characteristics.

~~JJ~~II. **Regulated Activities:** All Development occurring within designated FWHCA and their buffers that is not either listed as an Exempt Activity in ICC 17.02B.300 or been determined to be an Exempt Activity by the Director in accordance with Section 17.02B.300.

~~KK~~JJ. **Remodel:** To renew, renovate or make over a part of an existing building for the purpose of its appearance or layout. Remodel may include repair or relocation of interior walls but does not include repair, replacement or relocation of any of the exterior floors, walls or roof.

~~LL~~KK. **Serviceable:** Infrastructure that is currently usable and durable enough to perform its intended function according to Island County or other responsible agency design and construction standards.

~~MM~~LL. **Shoreline Jurisdiction:** Any area subject to the jurisdiction of the Island County Shoreline Master Program (SMP) or the Washington State Shoreline Management Act (SMA). The jurisdictional limits of the Island County SMP and the Washington State SMA are defined in ICC 17.05.040.WW, and RCW 90.58.040 and .030.

~~NN~~MM. **Stream, Regulated:** The following features are defined as streams and are regulated as Critical Areas under the provisions of this Chapter:

1. Natural Stream Channels: Those areas where naturally occurring surface waters produce a defined channel, bed, bank or side, and where there is clear evidence of the passage of water such as bedrock channels, gravel beds, sand and silt beds and defined channel swales. The channel or bed need not contain water year-round.
2. Modified Stream Channels: Those natural stream channels with or without headwaters that follow and/or replace historic natural watercourses that have been significantly channelized, relocated, and/or constrained. Modified stream channels include segments of a stream that have been legally modified, and are in compliance with all necessary permits in effect at the time of its approval.
3. Artificial Stream Channels: Artificial channels either used by salmonids of any life stage, or that convey water from or through an existing regulated wetland.
4. Artificially created channels that serve to connect other streams are regulated as streams. This definition excludes those areas which have no defined channel, bed, bank or side; see Wetlands definition in Chapter 17.02A.

~~OO~~NN. **Stream, Unregulated:** Ditches and other water conveyance systems, not constructed from natural or modified stream channels, which are artificially constructed and actively maintained for irrigation and drainage, are not used by salmonids or to convey water from an existing regulated wetland.

~~PP~~OO. **Variance, Critical Areas:** A Type III decision issued by the Hearing Examiner, upon a recommendation from the Director, authorizing a deviation from the dimensional or performance standards of this Chapter.

17.02B.070 Permit Required

A. Regulated Activities: All Development shall be subject to the requirements of this Chapter. An exemption from having to obtain a permit is not an exemption from compliance with this Chapter or other applicable regulatory requirements.

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B. Exempt Activities: No Critical Areas Permit is required for Development which meets the precise terms of the Exempt Activities listed in ICC 17.02B.300. For Development proposals which do not meet the precise terms of a listed Exempt Activity, the Director shall, through a Type I process, determine whether or not a Development should be Classified as an Exempt Activity.

C. Permitted Alterations: Prior to commencing any Development listed as a Permitted Alteration under ICC 17.02B.310, a Permitted Alteration Permit must be obtained. Permitted Alteration Permits shall be processed using a Type II process pursuant to ICC 16.19.

D. Variances: Requests for relief from the dimensional or performance standards of this Chapter shall require a Critical Areas Variance. Requests for a Critical Areas Variance shall be processed using a Type III process pursuant to ICC 16.19.

E. Finding of Conformance Required: Conformance with these Critical Area regulations shall be a finding in the approval of any permit issued by Island County which authorizes Development in a Critical Area or Critical Area buffer.

F. Conditions of Approval: The Director shall apply conditions to any permit or approval which authorizes Development in a Critical Area or Critical Area buffer and may prescribe such conditions and safeguards, including timelines and procedural requirements, necessary to implement any substantive conditions attached to a permit or approval as necessary to secure adequate protection of Critical Areas from adverse impacts, and to ensure conformity with this Chapter. In those instances where Development is proposed in a Critical Area or Critical Area buffer and no Critical Area Permit is required, such conditions, timelines, and procedural requirements may be attached to any other related permits or approvals (such as a building permit or septic approval).

17.02B.080 General Mitigation Requirements

A. Developments permitted pursuant to this chapter that adversely impact or alter a Critical Area or its buffer shall include Mitigation sufficient to maintain or replace Critical Areas functions and values or to minimize risks associated with geologic hazards. Mitigation shall ensure no loss of Critical Area functions or values. Any proposed Development that cannot mitigate Critical Area impacts as determined by the Director shall be denied.

B. When an impact to a Critical Area or Critical Area buffer is proposed, the applicant shall demonstrate that all reasonable efforts have been taken to Mitigate impacts in the following prioritized order (consistent with WAC 197-11-768):

1. Avoiding the impact by not taking a certain action or parts of an action;

2. Minimizing impacts by limiting the degree of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
6. Monitoring the impact and taking appropriate corrective measures.

C. Mitigation for individual projects may include a sequenced combination of the above measures as needed to achieve the most effective protection or compensatory Mitigation for Critical Area functions.

D. When a proposal will have an impact on a Critical Area or its buffer a Mitigation plan shall be prepared.

E. Mitigation plans shall be based on a scientifically valid assessment of habitat functions. Mitigation ratios shall be greater than 1:1 in spatial extent (area) when necessary to compensate for temporal losses, uncertainty of performance, and differences in functions and values. Mitigation may be On-Site or Off-Site. For Off-Site Mitigation to be accepted, the project proponent must demonstrate that greater habitat function and value can be achieved Off-Site than On-Site.

F. Out-of-kind Mitigation is not acceptable for impacts to priority habitats and species, with two exceptions:

1. Protected habitats and species that are at greater risk can be substituted for impacted protected habitats and species; and
2. In consultation with Washington Department of Fish and Wildlife and affected tribes, the Director may consider Off-Site and/or out-of-kind mitigation where equal or better biological functions and values are provided. Protected habitats, and habitats of protected species, may be replaced at a level greater than the impacts of the project on those habitats and species.

G. Mitigation that is implemented after project construction, or that requires more than three years to reach replacement value, shall include additional habitat value (over and above replacement value) equal to the loss through time.

H. Mitigation, monitoring, and adaptive management plans must be developed by a Qualified Professional, unless at the applicant’s request, the Director agrees that small

scale, easily implemented compensatory Mitigation can be prescribed by the Director. Such small scale compensatory Mitigation may be prescribed by the Director, where detailed plans are unnecessary for successful project implementation, and where ongoing monitoring in unnecessary. Mitigation, monitoring, and adaptive management plans shall be reviewed and approved by the Director.

I. Preparation of Mitigation, monitoring, and adaptive management plans, and their review by the County, shall be at the applicant's expense. If review by a third party is necessary because of the complexity of the plans or apparent error, the Director may require advance payment of fees for this review based on the estimated review time.

J. Mitigation plans must be appropriate for the scale and scope of the project, and include adequate information for the Director to determine that the project and application are in conformance with approval criteria. Potential components of an application should include, where appropriate, project application such as a Joint Aquatic Resource Permit Application, maps and diagrams showing the location of all Critical Areas, applicable Critical Areas reports, flood studies, Grading plans, planting plans, monitoring plans, and other documents supporting the proposal.

K. The Mitigation site shall be protected in perpetuity. This protection shall be through conservation easement, deed restriction, donation to an approved conservation organization, or other legally binding method.

L. Mitigation Plan Approval Criteria. Approval of Mitigation plans shall be based on conformance with the following criteria:

1. The application includes the applicable items listed in ICC 17.02B.080.
2. Mitigation is authorized or required by this code.
3. Proposed Development is designed and located in such a way as to avoid adversely impacting the functions and values of FWHCA, considering the Best Available Science (as defined in WAC 365-195-905). If adverse impacts cannot be avoided, then they must be fully Mitigated so that there will be no net loss of Critical Area functions and values, considering the Best Available Science.
4. Removal of noxious weeds or invasive species as part of a Mitigation plan shall be consistent with Chapter 8.28 ICC, as well as Chapter 17.10 RCW and Chapter 16-750 WAC.
5. Mitigation plans must clearly demonstrate that where habitat is being compensated or created, that:

   a) the habitat can be replaced;

   b) the proposed replacement is feasible;

c) the proposed habitat design plans are technically sound; and

d) the habitat is being replaced at a greater than 1:1 ratio where necessary to account for temporal losses or differences in habitat quality.

M. Recording of approved plan and notice to title. The County shall record a copy of the approved Mitigation plan, along with a notice to title referencing the plan, with the cost of recordation included in the application fee.

N. In order to prevent a loss of Critical Area functions and values due to the failure of a Mitigation plan, the Director may require the following additional actions or monitoring including:

1. Monitoring. Same as requirements set forth in 17.03.260.
2. Contingency plan. A plan which complies with the requirements of ICC 17.03.260.I.1 may be required by the Planning Director to outline restorative measures to be taken should the mitigation fail or only partially succeed.
3. Bonding. A performance bond or other security, if approved by the Planning Director, shall be required in an amount sufficient to enable the County to carry out the mitigation plan should the applicant fail to do so.

17.02B.090 Existing Uses

The application of this Chapter to Existing Uses shall be consistent with ICC 17.03.230 Existing Uses.

17.02B.100 Appeals

See Chapter16.19 Land Use Review Process.

17.02B.110 Penalties and Enforcement

Any violation of this Chapter shall be enforced by the Planning Director and shall be subject to the Penalties and Enforcement provisions of Chapter 17.03 ICC.

17.02B.120 Severability

If any provision or provisions of this Chapter or its/their application to any person or circumstances is held invalid, the remainder of this Chapter or the application of the provision or provisions to other persons or circumstances shall not be affected.

DESIGNATION, CLASSIFICATION AND MAPPING

17.02B.200 Fish and Wildlife Habitat Conservation Areas

A. Designation Criteria. FWHCA are those areas identified as being of critical importance to the maintenance of certain fish and wildlife species. FWHCA areas are typically identified either by known point locations of specific species (such as a nest or den) or by habitat areas or both. All areas within the County meeting these criteria are hereby designated Critical Areas and are subject to the provisions of Chapter 17.02B ICC. FWHCA shall include all of the following:

1. Areas with a primary association with endangered, threatened, and sensitive species;

   a) Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered.

   b) State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the State of Washington identified by the Washington State Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the State without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (State endangered species) and WAC 232-12-011 (State threatened and sensitive species).

2. Streams and Waters of the State.

   a) Stream types shall be classified according to WAC 222-16-030. Stream classifications shall include the following:

      (i) Type S streams are those streams inventoried as “shorelines of the state” under the Washington State Shoreline Management Act and the Island County Shoreline Master Program. Type S streams are regulated under the Island County Shoreline Master Program;

      (ii) Type F streams are those that are not Type S but still provide fish habitat;

      (iii) Type Np streams are perennial waters that do not contain fish habitat; and

      (iv) Type Ns streams are seasonal waters that do not contain fish habitat, but are physically connected by an above-ground channel system to Type S, F, or Np waters.

   b) In the case that available information on stream typing is unclear, the Director shall require that stream typing be performed by a Qualified Professional using a site visit, mapping, and all available information.

3. State Natural Area Preserves, Natural Resource Conservation Areas, and State Wildlife Areas.

4. All areas designated by the Department of Natural Resources (DNR) through the Washington Natural Heritage Program (NHP) as high quality terrestrial ecosystems and shown on the most recent NHP maps and data.

5. Habitats and Species of Local Importance. Designated habitats and species of local importance are listed in ICC 17.02B.510. Additional habitats and species of local importance may be nominated by individuals or organizations according to the process in ICC 17.02B.500. Habitats and species of local importance have the following characteristics:

   a) Habitats and species of local importance have recreational, cultural, and/or economic value to citizens of Island County.

   b) Habitats and species of local importance are not adequately protected, by other County, State, or federal policies, laws, regulations, or non-regulatory tools that prevent degradation of the habitat or species.

   c) Habitats and species of local importance represent either high-quality native habitat or habitat that has a high potential to recover to a suitable condition and which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape.

   d) Habitats and species of local importance, without protection, would be diminished locally over the long term.

B. The following habitats and species that are listed under WAC 365-190-130 shall be regulated under the Island County Shoreline Master Program (except where upland development activities outside jurisdiction would impact these habitats and species):

1. Areas where endangered, threatened and sensitive marine species have a primary association;

2. Commercial and recreational shellfish areas;

3. Kelp and eelgrass beds; herring smelt and other forage fish spawning areas.

C. Mapping: Map sources showing the approximate location and extent of FWHCA include, but are not limited to critical areas maps adopted or commissioned by the County, such as maps included in the Island County Comprehensive Plan, FWHCA Best Available Science and Existing Conditions Report (The Watershed Company and Parametrix, 2014), and WDFW Priority Habitats and Species (PHS) maps, as most recently updated. These maps are to be used as a guide for the County, project applicants, and/or property owners and will be periodically updated as new Critical Areas are identified. They are a

reference and do not provide a final Critical Areas designation. In the event of a conflict between FWHCA mapping and the designation criteria outlined above, the designation criteria shall control.

17.02B.210 Wetlands: Reserved

17.02B.220 Geologically Hazardous Areas: Reserved

EXEMPT ACTIVITIES, PERMITTED ALTERATIONS AND VARIANCES

17.02B.300 Exempt Activities

A. Except as otherwise noted, the following activities noted with an "E" as "Exempt Activities" are exempt from the buffer, Mitigation, and protection requirements of this Chapter ~~provided the standard Environmental Protection Criteria in Subsection B and Exemption Threshold Criteria of Subsection C are met as determined by the Director~~.

1. No permit is required under this Chapter for Development which meets the precise terms of the Exempt Activities listed below. In those instances where an Exempt Activity is associated with another activity which requires a permit from Island County, the proposal shall be reviewed in conjunction with the underlying permit for compliance with the provisions of this Chapter and shall be processed in accordance with the procedures outlined in Chapter ~~ICC~~ 16.19 ICC for the associated permit.

2 For D~~d~~evelopment proposals which do not meet the precise terms of an Exempt Activity listed below, the Director may, through a Type I process, determine whether or not a Development should be classified as an Exempt Activity. When such a determination is necessary it shall be reviewed using a Type I process in accordance with the procedures of ICC 16.19 and the criteria identified in ICC 17.02.B.300.B and C.

3. For purposes of documenting the exempt status of a listed activity, an applicant may voluntarily request an Exemption Authorization from the Director. When such a determination is requested, it shall be prepared using a Type I process in accordance with the procedures of ICC 16.19 and the criteria identified in ICC 17.02.B.300.B and C.

Comment [BJ9]: Deleted this sentence in response to BOCC requested changes #2 and #11

Comment [BJ10]: Typo corrections

Comment [BJ11]: Defined term, capitalized

Comment [BJ12]: Added additional language to further clarify the purpose of this code provision in response to BOCC requested change #2

	Exemption	FWHCA	Wetlands: RESERVED	Geologically Hazardous RESERVED
1.	Existing and on-going agricultural activities as defined in this Chapter. • This exemption includes normal M~~m~~aintenance or Repair of existing drainage facilities and Unregulated Streams, when such features are related to a~~n~~ Legally E~~e~~xisting and O~~o~~n-G~~g~~oing A~~a~~gricultural A~~a~~ctivity. • This exemption does not include work in Regulated Streams. Work in Regulated Streams is addressed in ICC 17.02B.310.C.7. • An E~~e~~xisting and O~~o~~n-going A~~a~~gricultural A~~a~~ctivity or operation ceases to be on-going when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than ~~six (6) years and six (6) months~~five (5) years, unless the idle land is registered in a federal or State soils conservation program other than CREP and other riparian buffer enhancements. The five year period specified above may be extended by an appropriately limited and reasonable amount of time in order to account for unavoidable and unintentional events which make active agricultural use impossible. Such events may include, the death of an agricultural operator, difficulty selling the agricultural property, or difficulty securing a lease with an agricultural operator. • The E~~e~~xisting and O~~o~~n-G~~g~~oing A~~a~~griculture E~~e~~xemption and associated allowances for ~~maintenance~~ Maintenance or Repair of existing drainage facilities shall not continue or transfer when a new use is established and the E~~e~~xisting and O~~o~~n-G~~g~~oing A~~a~~griculture~~e~~al A~~a~~ctivity is discontinued. • ~~This exemption does not include work in Regulated Streams, even if previously, such work was considered normal maintenance under previous regulations.~~	E		
2.	Forest practices regulated and conducted in accordance with the provisions and requirements of Chapter 76.09 RCW as well as all applicable forest practice regulations, and which are exempt from Island County jurisdiction.	E		
3.	Normal Maintenance or Repair of existing serviceable public or private roads, paths, bicycle ways, trails, bridges, and associated storm drainage facilities. Where reconstruction is the normal method for Maintenance or Repair, it is considered exempt if it does not change the character, scope, or size of the original structure, facility, utility or improved area beyond the original design, unless such changes are intended to improve ecological conditions or habitat, such as fish passage.	E		
4.	Normal Maintenance ~~and~~ or Repair of existing serviceable drainage facilities or systems, including, but not limited to, ~~Non-Regulated watercourses~~Unregulated Streams, culverts, catch basins, and outfalls provided that there is no expansion of facilities or change in conveyance capacity. This exemption includes replacement where it is the normal method of Maintenance ~~and~~ or Repair and where such facilities are designed to provide improvement to FWHCA functions, e.g. replacement of a culvert to provide for fish passage.	E		
5.	Normal and routine Maintenance or Repair of existing utility facilities or rights-of-way.	E		
6.	Installation, construction, relocation, operation, Normal Maintenance or Repair, or alteration of all utility lines, equipment, or appurtenances, not including substations, in improved and maintained road rights-of-way. Replacement may be considered an Exempt Activity if it is the normal method of Repair, as determined by the Director. Relocation of utility lines, equipment, or appurtenances shall occur as far as feasible from the FWHCA or its buffer. This exemption does not include the installation of Throughput Transmission Facilities as defined in Chapter 17.03 ICC.	E		
7.	Reconstruction, Remodeling, or Maintenance or Repair of existing structures, provided	E		

Comment [BJ13]: Typo correction – changed to be consistent with definitions section

Comment [BJ14]: Changes made to this section to correct typos, ensure code constancy, respond to public testimony at 7/21 and 7/28 BOCC hearings and to address BOCC requested changes # 2, #7, and #3

Comment [BJ15]: Typo correction – changed to be consistent with definitions section

Comment [BJ16]: Change by LG to ensure consistent terminology. Term "Non-Regulated Watercourse" was previously deleted from code and replaced with "Unregulated Stream".

Comment [BJ17]: Typo correction – changed to be consistent with definitions section

Comment [BJ18]: Typo correction – changed to be consistent with definitions section

Comment [BJ19]: Added this provision to address BOCC requested change #8

Comment [BJ20]: Typo correction – changed to be consistent with definitions section

	Exemption	FWHCA	Wetlands: RESERVED	Geologically Hazardous RESERVED
	there is no further intrusion into a Critical Area or its buffer. This exemption excludes the intentional demolition of existing structures where the reconstructed structure can be accommodated outside of the C~~c~~ritical A~~a~~rea and its buffer.			
8.	Site investigative work necessary for permit submittals, or County-authorized monitoring activities, such as surveys, soil logs, and percolation tests provided there is no Clearing, fill or use of heavy equipment in a Critical Area or impacts to its buffer.	E		
9.	Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation. The Department shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken unless the nature of the emergency is such that it is not possible to first gain approval of the Department, in which case such review must occur within ten (10) days of the conclusion of the emergency work.	E		
10.	Provided such actions do not increase the size or capacity of such facilities operation, normal Maintenance ~~and~~ or Repair of E~~e~~xisting dikes, ~~Non-R~~Unregulated ~~Watercourse~~Streams, reservoirs, and other structures and facilities which were legally created or developed as part of normal flood control activities on or prior to December 31, 1984, except that this exemption does not extend to draining or alteration of any regulated wetland.	E		
11.	Provided such actions do not increase the size or capacity of such facilities, operation, normal Maintenance ~~and~~ or Repair of E~~e~~xisting ~~Non-R~~Unregulated ~~Watercourses~~Streams, reservoirs, ponds and other structures and facilities which were legally created or developed as part of normal irrigation activities on or prior to December 31, 1984. • Normal Maintenance or Repair of ~~Non-R~~Unregulated ~~Water Courses~~Streams is not considered exempt if Maintenance or Repair of such ~~watercourses~~Unregulated Streams is discontinued as per ICC 17.03.230.I Existing Uses.	E		
12.	Normal Maintenance ~~and~~ or Repair of legally existing yard or garden structures when such activities are part of normal Maintenance activities and no building permit is required. This exemption does not allow further intrusion into a Critical Area or its buffer.	E		
13.	Maintenance or Repair activities including, but not limited to, cutting, mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and planting of noninvasive ornamental vegetation or indigenous native species to maintain the general condition and extent of such areas; provided, that such M~~m~~aintenance or Repair activities are limited to existing landscaping improvements and do not further expand into Critical Areas or associated buffers, do not alter topography, do not destroy or clear native vegetation, do not remove non-Hazard Trees in the buffer or Critical Area, and do not diminish water quality or quantity. • Native growth protection areas, Mitigation sites, or other areas protected via permit conditions, conservation easements or similar restrictive covenants are not covered by this exception.	E		
14.	• The removal or control of noxious weeds listed in Chapter 16-750 WAC and consistent with ICC Chapter 8.28. • The removal or control of Invasive Species including, but not limited to, Himalayan Blackberry and Evergreen Blackberry shall be with hand labor, hand application of herbicides and/or hand-held mechanical tools. Use of heavy equipment may be allowed if approved by the Director subject to Subsections B and C of this section. All herbicide applications in aquatic environments shall conform to the rules of the	E		

Comment [BJ21]: Typo correction – this is a defined term and must be capitalized

Comment [BJ22]: Typo correction – changed to be consistent with definitions section

Comment [BJ23]: Typo corrected, "existing" is a defined term and must be capitalized.

Comment [BJ24]: Change by LG to use current terms

Comment [BJ25]: Added to ensure that such facilities are "legally existing"

Comment [BJ26]: Typo correction – changed to be consistent with definitions section

Comment [BJ27]: Typo, "existing" is a defined term and must be capitalized

Comment [BJ28]: Change by LG to use current tems

Comment [BJ29]: Change by LG (see comment above)

Comment [BJ30]: Typo correction – changed to use the word "or" in place of the word "and" to be consistent with definitions section.

Comment [BJ31]: Typo correction – changed to be consistent with definitions section

Comment [BJ32]: Added to ensure that areas required to be protected through permit conditions are not cleared.

	Exemption	FWHCA	Wetlands: RESERVED	Geologically Hazardous RESERVED
	Department of Ecology, Department of Agriculture and Department of Natural Resources, pursuant to Chapters 173-201A, 16-228, and 222 WAC. Provided that, noxious weeds or invasive species removed from a Critical Area or Critical Area buffer shall be removed using Best Management Practices and shall be taken away and disposed of appropriately. Revegetation with appropriate native plant species at natural densities is allowed in conjunction with the removal. Unless the Director determines that a larger acreage meets the criteria in Subsections B and C, or is proposed at federal, state, or county approved habitat mitigation bank, the Director shall limit the size of the noxious weeds removal or control of invasive species to an area equal to or less than 1 acre.			
15.	• Removal of Beaver. The control, trapping, and removal of Beaver from Critical Areas or Critical Area Buffers provided no alteration occurs except the removal of the Beaver dam and the control, trapping, or removal is authorized by the Washington State Department of Fish and Wildlife (WDFW) through the issuance of a Hydraulic Project Approval (HPA).	E		

Comment [BJ33]: Added by LG in response to public comment at 7/21 BOCC hearing and in response to BOCC requested change #5

B. Standard Exemption Environmental Protection Criteria: Proposed Exempt Activities shall comply with the following environmental protection criteria in addition to meeting any provisions contained in the exemption description in Subsection A:

1. Exempt Activities shall be undertaken pursuant to Best Management Practices to minimize impacts to Critical Areas. Island County's most current best management practices are adopted as Exhibit B to Ordinance C-151-99. The Director has the discretion to specify what Best Management Practices are appropriate to minimize impacts, and may refer to Natural Resources Conservation Services ("NRCS") conservation practices if such conservation practice applies more specifically than an Island County best management practices.

Comment [BJ34]: Added reference to NRCS guidelines to address BOCC requested change #4

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2. Subject to prior approval by the Director, Exempt Activities shall provide for the restoration of any disturbed Critical Area or its buffer. Restoration of a disturbed area requires revegetation of native species appropriate for the site and local environment. Revegetation may include planting, seeding, or relying on the existing soil seed bank. The Director may require monitoring to assure that the site is not reoccupied by invasive species. For Exempt Activities related to legally Existing and On-Going Agricultural Activities, this provision shall not be construed to require the establishment of a natural buffer within the legally established boundaries of an Existing and On-Going Agricultural Activity, except as Mitigation for a Development unrelated to the Existing and On-Going Agricultural Activity.

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3. Reserved: Drainage best management practices.

C. Threshold Criteria for Exempt Activities: In order to be classified as an Exempt Activity, a proposed Development must either be listed above in subsection A or consistent with all of the following criteria:

1. Where a proposed Development activity is unlisted or does not meet the precise terms of an Exempt Activity listed above and requires interpretation as to whether the proposed Development is fundamentally similar to the listed Exempt Activities, or where an applicant has requested an Exemption Authorization, the Director may require an applicant to provide a written description of the proposed Development describing how the proposal meets the description of an Exempt Activity in Subsection A and the Standard Environmental Protection Criteria in Subsection B. In such cases, the applicant shall provide a map identifying the location of the proposed Development and the applicable type of Critical Area and its buffer.

2. In order for a proposed Development to be considered an Exempt Activity it must be consistent with all of the following criteria:

   a) The proposed Development must either meet the precise terms of an Exempt Activity listed ICC 17.02B.300 or be consistent with the description of an Exempt Activity in Subsection A and the Standard Exemption Environmental Protection Criteria in Subsection B; and

   b) The proposed Development shall occur in the smallest practical area and be completed in the shortest amount of time possible; and

   c) The applicant shall demonstrate that the magnitude and duration of the proposed Development is unlikely to result in a measurable adverse impact to a Critical Area; and

   d) Where Maintenance, Repair, replacement, or reconstruction is proposed, the proposed Development shall not change the character, scope, or size of the original structure, facility, utility or improved area beyond the original design. Such changes are only permissible if it can be demonstrated that they are necessary to result in a measurable ecological improvement; and

   e) The potential impacts associated with the proposed Development must be minor, insignificant, clear, and easily understood in the absence of technical reports or professional evaluations.

   f) The proposed Development shall be fundamentally similar to, and no more intense than the Exempt Activities listed above in ICC 17.02B.300.A.

   g) Developments listed as Permitted Alterations shall not also be considered Exempt Activities.

Comment [BJ35]: These items added to clarify intent of Exemption Authorization process and to clearly differentiate between exempt activities and permitted alterations.

3. Where threshold criteria for a Development to be considered an Exempt Activity are not met, the proposal shall be considered a Regulated Activity and subject to the provisions of this Chapter.

17.02B.310 Permitted Alterations

A. The actions in Subsections B through E shall be considered Permitted Alterations, provided they are consistent with the general standards for Mitigation sequencing per ICC 17.02B.080.B and other applicable requirements established in this Chapter.

1. A Permitted Alteration Permit shall be required for all Permitted Alterations. Requests for such permits shall be reviewed using the procedures applicable to Type II permits outlined in Chapter 16.19 ICC. No permit shall be issued unless it can be shown that the proposed Development is fully consistent with the requirements of this Chapter.

2. Unless exempted under the provisions of ICC 17.02B.080.H, the Director shall require a Biological Site Assessment per Section 17.02B.410 to evaluate the Permitted Alteration. A Mitigation plan shall also be required by the Director consistent with Section 17.02B.080.

B. General Alterations: Reserved.

C. Fish and Wildlife Habitat Conservation Areas:

1. Limited public park or public recreational access; provided, that all of the following are satisfied:

a) The access is part of a public park that is dependent on the access for its location and recreational function; and

b) The access is limited to the minimum necessary to accomplish the recreational function; and

c) The removal of trees and native vegetation is minimized; and

d) The access and the balance of the Development are consistent with other requirements of Chapter 17.02B ICC; and

e) The proponent obtains written approval from the County for the limited access and associated Mitigation.

2. Low-impact uses and activities which are consistent with the purpose and function of the buffer when such improvements are limited to the minimum amount necessary and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved; provided, that such activity shall not result

in a decrease in FWHCA functions and values and shall not prevent or inhibit the buffer's recovery to at least pre-altered condition or function.

3. Roads or utilities may be allowed to alter a Fish and Wildlife Habitat Conservation Area or its buffer when there is no feasible alternative that is less environmentally damaging and provided the following conditions are met:

   a) Roads and utilities shall be located as far as feasible from Fish and Wildlife Habitat Conservation Areas and associated buffers. Where avoidance is not feasible, roads and utilities shall, to the extent possible, be located so as to minimize impacts to Critical Area functions and values.

   b) Roads and utilities shall not be located over habitat used for salmonid rearing or spawning or by a species listed as endangered or threatened by the State or federal government unless the Director determines that there is no other feasible crossing site.

   c) Paralleling the stream or following a down-valley route near the stream shall be avoided when possible.

   d) The width of fill and construction activities shall be minimized.

   e) Culverts may be installed when necessary to maintain hydrology and fish passage on Type F streams.

   f) Best Management Practices shall be employed during construction.

   g) Mitigation shall be proportionate to the impacts and provided pursuant to ICC 17.02B.080.B.

   h) For purposes of interpreting this section, the term "utilities" does not include septic system components or wells serving individual home sites, except as provided for below in subsection 6.

   i) For purposes of interpreting this section, the term "utilities" does not include Throughput Transmission Facilities as defined in Chapter 17.03 ICC.

   j) Roads and utilities shall only be permitted to alter a Fish and Wildlife Habitat Conservation Area or its buffer when the project is needed to serve Island County residents. A project shall be presumed needed if it is included in the Capital Facilities Element of the Comprehensive Plan.

4. Installation of underground utilities or moderate impact stormwater facilities, such as grass-lined swales, may be allowed to alter Fish and Wildlife Habitat Conservation Areas, and associated buffers, when no feasible alternative exists, and where such facilities are constructed in a manner which minimizes impacts to Critical Area functions and values. For purposes of interpreting this section, the term "utilities"

Comment [BJ36]: Added to address BOCC requested change #8

Comment [BJ37]: Added to address BOCC requested change #8 and to be consistent with ICC 17.02A.050.C.1

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does not include Throughput Transmission Facilities as defined in Chapter 17.03 ICC.

Comment [BJ38]: Added to address BOCC requested change #8

5. Conservation, preservation, or enhancement projects. The Director shall require a Biological Site Assessment per Section 17.02B.410 in order to determine whether the proposed Development would conserve, preserve, or enhance Critical Area functions in the long-term and is designed to minimize temporary environmental impacts.

6. New single family residences and Necessary Appurtenances on existing legal lots may intrude into Critical Areas or their buffers when all of the following conditions are met:

   a) It is demonstrated that it is not feasible to avoid the Critical Area or its buffer. If an applicant or owner owns or controls multiple contiguous lots, and if considering such lots as a single, combined development site would allow the home or Necessary Appurtenances to be constructed outside of the Critical Area or Critical Area buffer, or farther away from the Critical Area or Critical Area buffer, such lots shall be considered a single development site and the proposed development shall be located as far as possible from the Critical Area or Critical Area buffer.

   b) Alteration of the Critical Area and its buffer including all Clearing, Grading and structures, has not and will not exceed cumulatively 2,800 square feet.

   c) Proposed alterations are the minimum necessary and located so as to have the least impact on the Critical Area and its buffer.

   d) The proposal does not degrade the functions and values of Fish and Wildlife Habitat Conservation Areas and associated buffers beyond those needed to achieve a Reasonable Use as determined by the Director.

   e) Adverse impacts resulting from alterations of steep or geologically hazardous slopes are minimized.

   f) The proposal includes On-Site Mitigation required by this Chapter to the extent feasible as determined by the Director.

   g) Disturbed Critical Areas and their buffers will be immediately restored consistent with an approved Mitigation plan.

   h) This action does not allow Critical Areas or their buffers to be converted to lawn or residential landscaping beyond a minimal area needed to maintain an approved structure.

i) The inability to place the home or Necessary Appurtenances outside of a Critical Area or a Critical Area buffer is not the result of a previous Land Division or boundary line adjustment which occurred after October 1, 1998.

7. Normal Maintenance or~~and~~ Repair of drainage facilities related to Existing and Ongoing Agricultural Activities within Regulated Streams. The Director may approve a Type II Permitted Alteration Permit for a multi-year period to address recurring work in Regulated Streams that are also drainage facilities associated with Existing and On-Going Agricultural Activities, consistent with ICC 17.02B.310.A.1 and~~&~~ 2.

Comment [BJ39]: Added in response to public testimony at 7/21/2014 and 7/28/2014 BOCC hearings and to address BOCC requested change #6.

D. Wetlands: Reserved

E. Geologically Hazardous Areas: Reserved

17.02B.320 Variances

Variances from the standards of this Chapter may be authorized by Island County in accordance with the procedures set forth in Chapter 16.19 ICC for Type III decisions. In order to approve a Critical Areas Variance request, the Hearing Examiner must determine that the requested Variance is consistent with all of the following criteria.

A. Variance Criteria. A Variance may be granted from standards of this Chapter, only if the applicant demonstrates that the requested action is consistent with the Variance approval criteria enumerated in ICC 17.03.210 as well as all of the criteria set forth as below:

1. Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands subject to the provisions of this Chapter; and

2. The special conditions and circumstances do not result from the actions of the applicant or owner; and

3. The inability to derive Reasonable Use of the property is not the result of a Land Division or a Boundary Line, which created the undevelopable condition after October 1, 1998; and

4. A literal interpretation of the provisions of this Chapter would deprive the applicant of all Reasonable Use of the subject property, and the Variance requested is the minimum necessary to provide the applicant with such rights; and

5. Granting the Variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, structures, or buildings under similar circumstances; and

6. The granting of the Variance is consistent with the general purpose and intent of this Chapter, and will not further degrade the functions or values of the subject Critical Areas; and

7. The proposed Development does not pose a threat to public health, safety and welfare on or off the subject property; and
8. Any alterations permitted pursuant to the requirements of this Chapter shall be the minimum necessary to allow for Reasonable Use of the property; and
9. The decision to grant the Variance considers Best Available Science for the Critical Area and gives special consideration to conservation and protection measures necessary to preserve or enhance anadromous fish habitat;
10. The Mitigation sequencing provisions of ICC 17.02B.080.B have been applied; and
11. The proposal mitigates the impacts on the Critical Area to the maximum extent possible, while still allowing Reasonable Use of the lot; and
12. The granting of the Variance is consistent with the general purpose and intent of the Island County Comprehensive Plan, and Planning Policies.

B. Conditions May Be Required. In granting any Variance, the Hearing Examiner shall prescribe such conditions and safeguards as are necessary to secure adequate protection of Critical Areas from adverse impacts, and to ensure conformity with this Chapter.

C. Time Limit. The Hearing Examiner shall prescribe a time limit within which the action for which the Variance is required shall be begun, completed, or both.

D. A report prepared by a Qualified Professional shall accompany a Variance request to provide information on the functions and values of the Critical Area or Critical Area buffer proposed for alteration, the impact of the proposed Development on the Critical Area and its buffer, what constitutes a Reasonable Use of the property, steps taken to achieve Mitigation sequencing, consistent with ICC 17.02B.080.B, including avoidance and minimization, an explanation of the portion of the code the proposed Development was not compliant with, and other information as deemed necessary by the Director.

E. A Variance shall not permit the creation of a lot that would otherwise be prohibited by ICC 17.02B.400.A.

F. A Variance shall not permit a Throughput Transmission Facility, as defined in Chapter 17.03 ICC, to cross, be routed through, or impact a Critical Area or its buffer.

Comment [BJ40]: Added to address BOCC requested change #8.

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EVALUATION AND PROTECTION STANDARDS

17.02B.400 General Standards:

A. Land Divisions and Related Actions. No lot segregation, Land Division, or Boundary Line Adjustment shall create a lot which does not include an Adequate Building Site outside of Critical Areas and their associated buffers.

B. Overlapping Critical Areas, Interpretations. Where Critical Area protections overlap, the most protective regulations shall apply. Management of the required buffers shall depend on the Critical Area function being protected. Examples are provided below:

1. Example A: Where a stream buffer and a wetland buffer overlap, the regulated buffer would extend to the outer width of the more extensive required buffer.
2. Example B: Steep slope setbacks may limit Development, structures and infiltration. Stream buffers may be managed for water quality such as filtration and recharge. If infiltration is not appropriate for slope stability, steep slope standards would apply.

17.02B.410 Evaluation Requirements – Fish and Wildlife Habitat Conservation Areas

A. Site Assessment and Submittal Requirements. When a Development proposal is located within 1,000 feet of a habitat for a Protected Species or an identified Critical Area or its buffer, based upon maps and other information available to or maintained by the County, as described in 17.02B.200.C., and when the applicant proposes to alter, decrease or average a standard stream buffer, a Biological Site Assessment (BSA) shall be required.

1. The requirement for a BSA may be waived by the Director, if the Director determines that the proposed Development would result in only minor impacts.

B. Biological Site Assessment Contents. A BSA shall be prepared by a Qualified Professional at the expense of the applicant. The level of detail in a BSA should be proportionate to the location, size and impacts of the project proposal. Unless modified by the Director, a BSA shall include:

1. A site plan showing all Critical Areas and associated Critical Area buffers falling on or within 1,000 feet of the portion of the subject property proposed for Development. The site plan shall also clearly show the location and extent of all proposed Clearing, earthwork, Grading, excavation, filling, structures, utilities, septic system components, wells, roads, parking areas, driveways and other Development; and
2. Descriptions of all Critical Areas shown on the site plan, including areas which may act as wildlife corridors, ravines or steep slopes, etc.; and
3. Description of the proposed Development, including, but not limited to, quantity and spatial extent (area) of any proposed Development, Clearing, earthwork, Grading, excavation, and filling, the location and dimensions of all proposed structures, utilities, septic system components, and wells; and
4. Analysis of impacts to the protected species or habitats. A discussion of impacts to all Critical Areas and Critical Area buffers must be included; and
5. The spatial extent of impact to Critical Areas and their buffers shall be quantified; and

6. Regulatory summary, identifying other agencies with jurisdiction; and

7. Best Management Practices, including a discussion of on-going maintenance practices that will assure protection of all Critical Areas on-site after the project has been completed. If Monitoring is required, this section shall include a description of proposed monitoring criteria, methods, and schedule. For Repair or Maintenance of legally established drainage facilities that are associated with Existing and On-Going Agricultural Activities and that are also Regulated Streams, NRCS guidelines shall be accepted as BMPs when it can be shown that such guidelines will protect the functions and values of the Critical Area.

8. The recommendations of the BSA, once approved, shall be included as conditions of approval of the underlying permit.

Comment [BJ41]: This section added to address BOCC requested change #4.

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17.02B.420 Protection Standards – Streams and other Aquatic Habitats

A. Buffers Required. Protective riparian buffers shall be required to preserve stream/riparian functions and values. The purpose of riparian buffers is to protect riparian functions that influence in-stream and near-stream habitat quality. These include, but are not limited to:

1. Recruitment of Large Woody Debris (LWD). Large Woody Debris creates habitat structures necessary to maintain salmon/trout and other aquatic organisms' productive capacity and species diversity.

2. Temperature and Microclimates. Temperature and microclimates influence water temperatures and the availability of oxygen needed for salmon/trout and other aquatic organisms. Temperature is influenced by shading.

3. Bank Integrity (Root Reinforcement). Bank integrity influences habitat quality and water quality by reducing bank erosion and creating habitat structure and in-stream hiding cover for salmon/trout and other aquatic organisms.

4. Sediment and Contaminant Filtration. Filtration of nutrients, sediments and other contaminants in runoff (surface and shallow subsurface flows) influences water quality.

5. Wildlife Habitat. Functional wildlife habitat for all life stages of riparian-dependent species is based on sufficient quantity and quality of riparian vegetation to provide for those needs including protection for nesting and feeding and detrital inputs for food.

B. Buffer Conditions. Stream buffers shall be maintained in an undeveloped state and should be densely vegetated with native vegetation adequate to protect the stream or resource's functions and values. Activities allowed in stream buffers are listed in ICC 17.02B.300 and 310. This provision is not intended to require the establishment of natural buffer areas within the legally established boundaries of an Existing and On-Going Agricultural

Comment [BJ42]: Typo correction – added reference to subsection 300 because activities allowed in buffers are listed in both subsection 300 and subsection 310.

activity, except as Mitigation for a Development unrelated to the Existing and On-Going Agricultural Activity.

Comment [BJ43]: Added this provision to address BOCC requested changes #1 and #10.

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C. Standard Buffers. Buffer distances shall be measured horizontally from the Ordinary High Water Mark of the stream. Standard stream buffer widths are shown in the table below. A stream buffer shall have the width recommended, unless a greater width is required pursuant to Subsection E~~, or a lesser width is allowed pursuant to the buffer averaging or buffer reduction provisions of this Chapter~~.

Comment [BJ44]: LG change – correction needed as the code no longer includes buffer averaging and reduction provisions.

Stream Type	Standard Buffer
S	See Island County Shoreline Master Program
F	100
Np	75
Ns	50

D. Other Aquatic and Deep Water Habitats. Buffers for ponds and lakes that are less than 20 acres in size and greater than 6.6 feet deep, are not regulated as Shorelines of the State under the Island County SMP or the Washington State SMA and are not regulated as wetlands under Chapter 17.02A ICC, shall extend 75 feet from the ordinary high water mark. In the case where a lake or pond meeting these criteria has fringe wetland adjacent to it, the larger of the wetland or FWHCA buffer shall apply.

1. Recreational uses shall be allowed on Deep Water Ponds provided they are consistent with the provisions of Chapter 17.02A ICC.
2. Overwater structure may be allowed on Deep Water Ponds provided they attain necessary state approvals and permits and are constructed and operated consistent with Chapter 17.02A ICC.

E. Increasing Buffer Widths. The Director has the authority to increase the standard buffer widths on a case-by-case basis when a larger buffer is determined to be necessary to protect stream water quality or a protected species. A decision to increase the standard buffer shall be based on the intensity of the proposed use, the functions of the stream and the condition of the existing buffer. For example, stream buffers that contain unstable slopes may require larger buffer widths; PRDs using density bonuses may warrant increased buffer widths. However, an applicant may enhance any such buffer (such as through bioengineering using native plants) to maintain the standard buffer width following submittal, review and approval of a BSA which demonstrates that the

enhancement will provide a buffer which protects riparian function as well as or better than the increased buffer width.

F. Interrupted Buffers. Where a legally established and constructed public roadway transects a riparian buffer, the Director may approve a modification of the standard buffer width to the edge of the roadway, provided:

1. The isolated part of the buffer provides insignificant biological, geological or hydrological buffer functions relating to the riparian area; and
2. If the resulting buffer distance is less than 50% of the standard buffer for the applicable stream type, no further reduction shall be allowed.

G. When a Critical Area lies in the Shoreline Jurisdiction but its buffer falls outside of Shoreline Jurisdiction, the buffer shall be established and subject to the requirements of this Chapter.

H. In the case of any approved alteration to a FWHCA or associated buffer that requires Mitigation, restoration, or enhancement, a monitoring plan shall be included with the BSA that is consistent with ICC 17.02B.080.

17.02B.430 Protection Standards – Other Fish and Wildlife Habitat Conservation Areas

A. Bald Eagle. When the bald eagle is listed under Washington State Law as threatened or endangered, bald eagle habitats shall be protected pursuant to the Washington State Bald Eagle Protection Rules, WAC 232-12-292. When the bald eagle is not so listed, federal laws such as the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act still apply. If the Planning Director determines that the scope or timing of the proposal may create an adverse impact or adversely affect the eagle nest territory, he/she shall require the preparation of a Habitat Management Plan prior to any Clearing, Grading, or construction whenever activities that alter habitat are proposed near a verified nest territory.

B. Washington Natural Heritage Program Areas

1. South Camano and Keystone. South Camano is inventoried as a significant plant community dominated by Big Leaf Maple (Acer macrophyllum). Keystone is inventoried as a significant plant community dominated by Douglas Fir, Western Hemlock and Swordfern. Natural vegetation between the Ordinary High Water Mark and the top of banks and bluffs ten (10) feet or higher shall be retained, except for removal of Hazard Trees and to allow for pedestrian waterfront access. Removal of invasive non-native species is authorized. Trimming but not removal for view enhancement is authorized.
2. Grasser’s Hill. Grasser’s Hill is inventoried as a significant plant community including white-top aster (Sericocarpus rigidus), a Protected Species. A Biological

Site Assessment and a habitat management plan (HMP) shall be prepared pursuant to this Chapter in order to ensure protection of the white-top aster.

3. West Beach and Ebey's Landing. West Beach and Ebey's Landing are inventoried as a significant plant community including golden indian paintbrush (Castileja levisecta), a Protected Species. A Biological Site Assessment and a habitat management plan (HMP) shall be prepared pursuant to this Chapter in order to ensure protection of the golden indian paintbrush.

4. All other high quality terrestrial ecosystems per Washington Natural Heritage Program. Projects affecting these areas will require Mitigation sequencing, as demonstrated through the preparation of a Biological Site Assessment in consultation with the Washington Natural Heritage Program.

C. All other FWHCA shall be protected on a case-by-case basis depending on the vulnerable resource and proposed activity or Development.

D. Buffers shall be established adjacent to FWHCA as necessary to protect the ecological integrity, structure and functions of the resource from Development induced impacts. Buffer widths shall reflect the sensitivity of the species or habitat present and the type and intensity of the proposed adjacent human use or activity.

E. The Director shall determine the appropriate buffer for FWHCA other than streams based on Best Available Science and the following guidance:

Fish and Wildlife Habitat Conservation Area	**Buffer Requirement**
Areas with a primary association with endangered, threatened, and sensitive species	Buffer shall be based on management recommendations provided by the Washington State Department of Fish and Wildlife PHS Program and shall consider site-specific conditions and recommendation of Qualified Professional.
State Natural Area Preserves, Natural Resource Conservation Areas, and State Wildlife Areas	Buffers shall not be required adjacent to these areas. These areas are assumed to encompass the land required for species preservation. The Director may impose a new buffer or increase the applicable buffer if it is determined that a proposed Development would infringe on or inhibit use of the entire property for species preservation.

Fish and Wildlife Habitat Conservation Area	Buffer Requirement
Species and Habitats of Local importance	The need for and dimensions of buffers for approved species and habitats of local importance shall be determined on a case-by-case basis by the Director according to adopted Habitat Management Plans for the specific resource (ICC 17.02B.500)

F. If in reviewing the BSA and proposal, the County determines that impacts to a protected species or habitat may occur as a result of a proposal, a Habitat Management Plan (HMP) may be required. An applicant may either use a standard HMP maintained by the County (if available) or may choose to complete an HMP for a site-specific analysis to better determine the impact to habitat and to determine the appropriate buffer width for the proposed Development based on the site-specific analysis. The preparation and submission of this report is the responsibility of the applicant and subject to approval by the County. The report shall rely on Best Available Science and shall be prepared by a Qualified Professional.

G. The HMP may be combined with the BSA. The HMP must be consistent with the Management Recommendations adopted by the Washington Department of Fish and Wildlife, and the specific attributes of the affected properties, such as, but not limited to, property size and configuration, surrounding land use, and the practicability of implementing the HMP, and the adaptation of the species to human activity.

H. Standard Habitat Management Plan. Where the County has developed a standard HMP, the applicant may either accept and sign the standard HMP or prepare his or her own HMP pursuant to ICC 17.02B.430.D and E. From time to time as the lists of Protected Species and Species of Local Importance are amended, the County may develop additional standard HMPs, modify adopted standards; and/or delete HMP requirements.

17.02B.440 Additional Provisions – Habitat and Species of Local Importance

A. Any proposed Development or activity that would result in an adverse alteration to or impact on a species or habitat of local importance, as defined in ICC 17.02B.300 and listed in Section 17.02B.510, shall be subject to review on a case-by-case basis by the Director.

B. If the Director determines that the scope or timing of the proposal may create or result in an adverse impact or adversely affect a habitat or species of local importance, the Director shall have the authority to require an assessment of the effects of the alteration on habitats and species of local importance and may require preparation of a BSA consistent with the requirements of ICC 17.02.410.

C. The Director shall also have the authority to require the preparation of a HMP, consistent with the requirements of ICC 17.02B.430.G which must be approved by the Department of Fish and Wildlife and signed by the landowner prior to issuing a permit for the proposed activity.

17.02B.450 General Standards – Fish and Wildlife Habitat Conservation Areas Adjacent to Shorelines

A. Fish and Wildlife Habitat Conservation Areas and their buffers which are located entirely within Shoreline Jurisdiction shall be regulated and protected by the Island County Shoreline Master Program (subject to the provisions of ICC 17.02B.040.A).

B. Where a FWHCA is located within Shoreline Jurisdiction but its associated buffer, or a portion of its associated buffer, extends beyond Shoreline Jurisdiction, the buffer or setback identified in this Chapter shall be applied to all buffer areas outside of Shoreline Jurisdiction.

C. Development occurring outside of Shoreline Jurisdiction but within a buffer established by this section shall only be permitted if such Development can be authorized as an Exempt Activity or Permitted Alteration, or if such Development is authorized by a Critical Areas Variance.

D. Development at the top of bluffs where the bluff crest is outside of Shoreline Jurisdiction, or where the Development will take place outside of Shoreline Jurisdiction, shall be setback adequately from the bluff crest to account for 100 years of erosion in the absence of a bulkhead or shoreline armoring. For all such Development the following conditions must be satisfied prior to permit approval:

1. A report prepared by a ~~a~~ licensed geologist or geotechnical engineer shall be submitted which documents and quantifies the following:

   a) The rate of expected erosion; and

   b) The setback necessary to ensure compliance with this requirement.

2. A declaration or covenant shall be recorded which clearly identifies all known risks and permit conditions, and which clearly states and acknowledges that no bulkhead or shoreline armoring shall be constructed or installed on the Development site or property.

Comment [BJ45]: LG change – typo correction

17.02B.460 Wetlands: Reserved

17.02B.470 Geologically Hazardous Areas: Reserved

HABITATS AND SPECIES OF LOCAL IMPORTANCE

17.02B.500 Habitats and Species of Local Importance Nomination Process

A. Any person may nominate for designation, or propose de-designation, of a species or habitat of local importance in accordance with a Type IV permit process. Nominations will be processed pursuant to Chapter 16.19 and 16.26 ICC. Nominated habitats or species must meet the definition in ICC 17.02B.200. Proposals for de-designation of a species or habitat of local importance shall follow the same process as a nomination for designation, except that the proponent shall demonstrate that all designation criteria in Subsection B no longer apply, such as due to federal or state de-listing of protected species, recovery has been achieved, or other facts that support that the species is no longer vulnerable or is protected through other means.

B. Nominations for habitats or species of local importance shall include the following:

1. Identification of the habitat or species being nominated. Identification shall include, at a minimum, the following information:

   a) A legible map or maps of species and/or habitat location(s);

   b) Specific features to be protected (for example, nest sites, breeding areas, nurseries, vegetation communities) or, if a habitat is being nominated in its entirety, a description of the habitat, its structure, function, species, and geographic boundaries of the habitat(s) encompassed, and any other relevant attributes; and

   c) An analysis of the habitat and hydrological functions and location of the area relative to already designated Critical Areas and the nearest similar habitat if known.

   d) The Director has the authority to alter these requirements if he/she determines that alternative methods of identification or characterization are more accurate or reliable.

2. A demonstrated need for special consideration based on:

   a) Habitat or species rarity or vulnerability to rarity as evidenced by restricted, small or declining species population and habitats or community loss or degradation; or

   b) Vulnerability to habitat Perturbation, including a discussion of and the potential cause of that perturbation; or

   c) The need for protection, maintenance, and/or restoration of the nominated habitat to ensure the long term persistence of a species; or

   d) The ability of the site to disproportionately contribute to regional biodiversity as evidenced by species use, richness, abundance, and/or rarity; or

e) The commercial, recreational, cultural, or other special value; or

f) The need for maintaining connectivity between habitat areas.

3. An explanation of why special protection is needed and how existing County, State and federal programs and regulations do not provide adequate protection.

4. Proposed management strategies for the species or habitats. Management strategies must be supported by Best Available Science.

5. Identification of effects on property ownership and use.

6. The Director may, on a case-by-case basis require additional information needed to evaluate the resource being nominated.

C. Nomination proposals shall be reviewed by the County and may be forwarded to the State Departments of Fish and Wildlife, Natural Resources, and/or other local, State, federal, and/or Tribal agencies or experts for comments and recommendations.

D. The Director shall determine whether the nomination proposal is complete and, if complete pursuant to criteria in Subsection B and requirements of Chapter 16.19 ICC, shall evaluate it according to the characteristics enumerated in this section and make a recommendation to the Planning Commission based on those findings.

E. The Planning Commission shall hold a Public Hearing for proposals found to be complete, and make a recommendation to the Board of Commissioners to approve or deny the nomination based on the standards enumerated in Subsection B.

F. Following the recommendation of the Planning Commission, the Board of Commissioners shall designate a Habitat or Species of Local Importance that:

1. Satisfies the nomination criteria and includes the information required in Subsection B; and

2. Is supported by Best Available Science for the subject species or habitat of local importance; and

3. For which management strategies are practicable; and

4. Without protection, there is a likelihood that the species or habitat will not persist over the long term.

17.02B.510 Designated Habitats and Species of Local Importance. Habitats and Species of Local Importance and Protected Species that have been approved for designation by Island County include:

A. Protected Species List – Flora:

Scientific Name	Common Name	State Status	Federal Status

Scientific Name	Common Name	State Status	Federal Status
Agoseris elata	tall agoseris	sensitive	
Sericocarpus rigidus	white-top aster	sensitive	species of concern
Castilleja levisecta	golden indian paintbrush	endangered	listed threatened
Circuta bulbifera	bulb bearing water hemlock	sensitive	
Fritillaria camschatcensis	black lily	sensitive	
Meconella oregana	white meconella	threatened	species of concern
Puccinella nutkaensis	Alaska alkaligrass		

B. Species and Habitats of Local Importance List:

Scientific Name	Common Name	Protected Area	State Status	Federal Status
Ardea herodias	great blue heron	Nest sites		
Pandion haliaetus	osprey	Nests		
Dryocupus pileatus	pileated woodpecker	Nest Sites		
Cygnus buccinator	trumpeter swan	Foraging habitat		
Whidbey Island Game Farm/ Au Sable Institute	Not applicable	Property		