BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF ADOPTING OFFICIAL CONTROLS TO AMEND DEVELOPMENT REGULATIONS IN ISLAND COUNTY CODE CHAPTERS 17.02 AND 17.02B THAT APPLY TO PREEXISTING AGRICULTURAL ACTIVITIES WITHIN CRITICAL AREA OVERLAY ZONES	ORDINANCE NO. C-106-15 PLG-005-15

WHEREAS, on February 17, 2015, the Board of Island County Commissioners adopted Interim Ordinance C-16-15 as a compliance measure in Growth Management Hearings Board Case No. 98-2-0023c; and

WHEREAS, on May 1, 2015, the Growth Management Hearings Board issued an Order Finding Continuing Non-Compliance ("Order") holding that jurisdictions cannot come into compliance by the adoption of interim ordinances and ordered that Island County take compliance action prior to November 13, 2015; and

WHEREAS, this ordinance is intended to comply with the May 1, 2015 Order by removing the interim nature of those amendments in chapters 17.02 and 17.02B adopted by the Board on February 17, 2015; and

WHEREAS, Island County intends to proceed with the completion of the Growth Management Act ("GMA") periodic review of the Island County Comprehensive Plan and development regulations scheduled to be completed by June 30, 2016. In doing so, Island County intends to build upon prior efforts intended to strike a balance between agricultural preservation and critical area protection; and

WHEREAS, Island County recognizes that, in building upon such past efforts, public participation from all stakeholders will be crucial to the development of an improved program that is more functional, economically feasible to fit within county budget, and more user-friendly for all interested stakeholders, including the agricultural community, environmental community, local government, and the general public;

NOW, THEREFORE,

IT IS HEREBY ORDAINED by the Board of County Commissioners of Island County, Washington, that the official controls attached hereto as Exhibit A amending Island County Code Chapters 17.02 and 17.02B are hereby approved and adopted. Material underlined is added and

material lined through is deleted. The Board of County Commissioners also adopts the Findings of Facts, attached herein as Exhibit B.

ADOPTED this 20th day of October, 2015, and effective immediately.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

HELEN PRICE JOHNSON, Chair

RICHARD M. HANNOLD, Member

JILL JOHNSON, Member

BOARD OF CO. COMMISSIONERS EST ISLAND COUNTY 1853 WASHINGTON

ATTEST:
DEBBIE THOMPSON
Clerk of the Board

APPROVED AS TO FORM:

Daniel B. Mitchell
Deputy Prosecuting Attorney
& Island County Code Reviser

as to Exhibit A that contains code amendments to the Island County Code.
DBM 9/30/15.

EXHIBIT "A"

17.02.030 Definitions.

. . .

Agricultur~~a~~le or agricultural activities means the current employment of land for the primary purpose of raising, harvesting and /or selling crops or the feeding, breeding, management and/or sale of, or the production of, livestock, poultry, fish, fur-bearing animals or honeybees or for dairying and/or the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. Agriculture includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. Agriculture also includes the growing of ornamental shrubs, Christmas trees, pulpwood and similar nursery stock.

Agricultural activities, existing and on-going means those pre-existing agricultural activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock that were in existence as of October 1, 1998. These activities include the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use after October 1, 1998 are not considered ~~part of an on-going operation~~ an existing and on-going agricultural activity. An existing and on-going agricultural activity ~~operation~~ ceases to ~~be on-going~~ qualify as "existing and on-going" when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five (5) years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and on-going agricultural activity. Forest practices are not included in this definition.

. . .

17.02.040 Critical Areas.

. . .

E. **Exemptions**. The following activities or critical areas are exempt from the provisions of this section, sections ICC 17.02.050.A., 17.02.050.C. and 17.02.060, ~~where restoration of a disturbed critical area or its buffer requires planting, native species shall be used~~:

1. Existing and on-going agricultural activities (in existence as of October 1, 1998) when undertaken pursuant to best management practices as provided in Exhibit B to Ordinance C-151-99 to minimize impacts to critical areas when undertaken on the

following applicable lands~~. For example, by minimizing the use of motorized vehicles and machinery in such areas~~:

a. Lands with a zoning designation of Commercial Agriculture and Rural Agriculture;

b. Lands that meet the definition of RCW 84.34.020(2) and that participate in the agricultural tax program provided in Chapter 84.34 RCW; or

c. Lands that are encumbered in perpetuity by a recorded easement created for the purpose of preservation of agricultural practices.

. . .

17.02B.300 Exempt Activities.

A. Except as noted in subsection B or otherwise, the following activities listed in the exemption table noted with an "E" as "exempt activities" are exempt from the buffer, mitigation, and protection requirements of this chapter.

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 16.19 for the associated permit.

2. For development 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 chapter16.19 and the criteria identified in section17.02.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 chapter 16.19 and the criteria identified in section17.02.B.300.B. and C.

	Exemption Table	FWHCA	Wetlands: RESERVED	Geologically Hazardous RESERVED
1.	Existing and On-going agricultural activities that qualify under ICC 17.02.040.E.1 ~~as defined in this chapter~~ (preexisting as of October 1, 1998) • This exemption includes normal maintenance or repair of existing drainage facilities and unregulated streams, when such features are related to a legally existing and on-going agricultural activity. • This exemption does not include work in regulated streams. Work in regulated streams is addressed in section ICC 17.02B.310.C.7. • An existing and on-going agricultural activity 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 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 existing and on-going agricultureal activity exemption and associated allowances for maintenance or repair of existing drainage facilities shall not continue or transfer when a new use is established and the existing and on-going agricultural activity is discontinued.	E		
2.	. . .			

EXHIBIT "B"

Findings in support of Ord. C-106-15 a proposed official control, adopting development regulations in ICC 17.02 and 17.02B that apply to existing and on-going agricultural activities within regulated critical areas and their buffers.

Background

In 2005 the Island County Board of Commissioners adopted amendments to development regulations of Island County Code in response to the County's obligations under the Growth Management Act (GMA) for the protection of critical areas and promotion of agricultural resource lands. A court challenge to the Growth Management Hearings Board (GMHB) approval of the County's ordinance resulted in the 2005 ordinance essentially being replaced by an earlier, 1999 ordinance (C-151-99), and remand from the Hearings Board to address the agricultural operations exemption in critical areas in updated code. The Hearings Board established a deadline by which the County must amend its critical areas ordinance to address existing and on-going agricultural activities that pre-existed County critical area ordinances, subject to further review for compliance with the GMA.

The main goal of the ordinance proposed (including text amendments to development regulations) in this instance is to align local code addressing existing and on-going agricultural operations in critical areas to be consistent with the GMHB order issued on July 17, 2014, identify appropriate lands where such exemptions may be applied, and concurrently, set out a work plan by which the issue may be addressed within the context of the overall Comp Plan update, due to be adopted in 2016.

Acting under the authority granted in both the Planning Enabling Act (36.70 RCW) and the Growth Management Act (36.70A RCW), the Board of Island County Commissioners adopts Ordinance C-106-15, an official control related to existing and on-going agricultural operations in the Commercial Agriculture (CA), Rural Agriculture (RA) and other zones, subject to certain conditions.

SEPA Threshold Determinations associated with legislative decisions are reviewed under WAC 197-11-210 for integration with the GMA. Specifically, WAC 197-11-210(1) states: The purpose of WAC 197-11-210 through 197-11-235 is to authorize GMA counties/cities to integrate the requirements of SEPA and the Growth Management Act (GMA) to ensure that environmental analyses under SEPA can occur concurrently with and as an integral part of the planning and decision making under GMA. Nothing in these sections is intended to jeopardize the adequacy or require the revision of any SEPA or GMA processes, analyses or document deadlines specified in GMA.

Compliance with Growth Management Act

Finding A: Amendments to portions of the Island County Comprehensive Plan and Development Regulations that regulate development must be consistent with the Growth Management Act (GMA), written in statute as chapter 36.70A RCW. The proposed amendments to critical areas regulations address GMA provisions that concurrently require: 1) development regulations to assure the conservation of agricultural, forest, and mineral resource lands; and 2) development regulations that protect critical areas required to be designated under RCW 36.70A.170. (RCW 36.70A.060)

The critical areas cited for protection in the GMA include: a) wetlands; b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. (RCW 36.70A.030.5).

The GMHB order concerned exemptions for existing and on-going agricultural operations in critical areas and their buffers, as regulated in ICC 17.02 and 17.02B. In doing so, the County is faced with balancing two priorities of the GMA in County policy and development regulation. By extending the exemption for existing and on-going agricultural activities to lands designated Commercial Agriculture and Rural Agriculture, the County is recognizing those lands that are designated for long-term agricultural use, consistent with RCW 36.70A.060(1). The designation of these lands in the 1998 Plan, and again in the 2006 update, satisfied this element of the GMA. In further allowing such an exemption to other lands qualified to be in the agricultural-tax program, or subject to conservation easement, (despite their current zoning designation) the County recognizes that agriculture of long-term significance occurs on lands beyond that deemed so in the original Plan adoption.

Public Notice and Compliance with Chapters 16.19 and 16.26, Island County Code

Finding B: This action to amend the development regulations of the Island County Code was initiated by the Board of Commissioners consistent with ICC16.19.205 and ICC 16.26.020.B, an action taken pursuant to chapter 36.70 RCW and 36.70A RCW.
Public notice for this legislative action was provided by including the item for a public hearing on the Board's agenda for their regularly scheduled meeting on October 27, 2015, e-mail distribution and posting on the County's website. The Board's public hearing follows the Planning Commission's review and report of the Board's initiated ordinance at a regular planning commission meeting that was held on September 28, 2015.

Findings of Proposed Amendments to Development Regulations – Consistency with Comprehensive Plan

Finding C: The Board finds the proposed amendments to be consistent with the Land Use Element and Policies of the Current Island County Comprehensive Plan, specifically the areas directly related to these development regulations: the conservation of agricultural resource lands and the protection of critical areas.

The Comprehensive Plan includes a Land Use Element, which highlights broad policies for land use by category, addressed further in specific policies and designation criteria to guide implementation through the tool of zoning.

Agricultural Land Conservation – Policy:

The current Comprehensive Plan addresses agricultural lands in both large parcel-farms, those zoned for that purpose; and, recognizes the importance of small-scale, scattered farms where most of the farming activity in the County actually occurs. The Plan states in 1997 there were 622 parcels in the agricultural tax program in the County, totaling approximately 13,042 acres. Currently, there are 767 parcels in the tax program, totaling approximately 12,430 acres; 170 of these parcels are in zones other than Commercial Agriculture (CA) and Rural Agriculture (RA).

The Plan policy states: "In light of the existing pattern of rural development in Island County, and the remaining agricultural activities that continue in the County, the focus of agricultural protection must be on blocks within one ownership or management of 20 acres or larger."

Agriculture in the Rural Zone – Policy:

Addressing agriculture in the Rural (R) zone, the Plan states: "Most of the County's farming activity occurs in the Rural zone. Typically small scale and noncommercial in nature, farming in the Rural zone has and will continue to play a significant role in the cultural heritage of the County." Given the existing parcel pattern of the rural areas of the County, the 1998 Plan recognizes the role of small-scale farming in the cultural heritage of the County, that these lands are often leased by commercial farmers to support farming activities, and, they provide a buffer for agriculture-designated lands from more intense rural development.

Critical Areas – Policy:

Addressing critical areas, the Plan states: "Critical areas are lands that possess certain development limitations, or that provide important public resources. Many of the County's most valuable critical areas lie in undeveloped rural areas and in resource lands."

Findings of Proposed Amendments to Development Regulations – General

Finding D: The Board finds that activities inherent to the management of agriculture should be distinguished from that of other development activities in critical areas or their buffers, as they are reliant on the land itself, considered resource utilization activities in critical areas, but are not entirely exempt from critical area regulations.
The Board finds that current County Code, as adopted in Ordinance C-151-99, does deem existing and on-going agricultural activities as exempt from critical areas regulation, albeit limited to those agricultural activities that pre-existed the adoption of critical area regulations, October 1, 1998 and limited to agricultural activities that employ Best Management Practices.
Finding E: The Board finds that existing and on-going agriculture operations located on Commercial Agriculture (CA) and Rural Agriculture (RA) zoned parcels to be consistent with

the intent of the GMA. These properties have the best potential for remaining a viable part of the agricultural economy of the County, and thus, earn a higher priority for their on-going use 'as-is'.

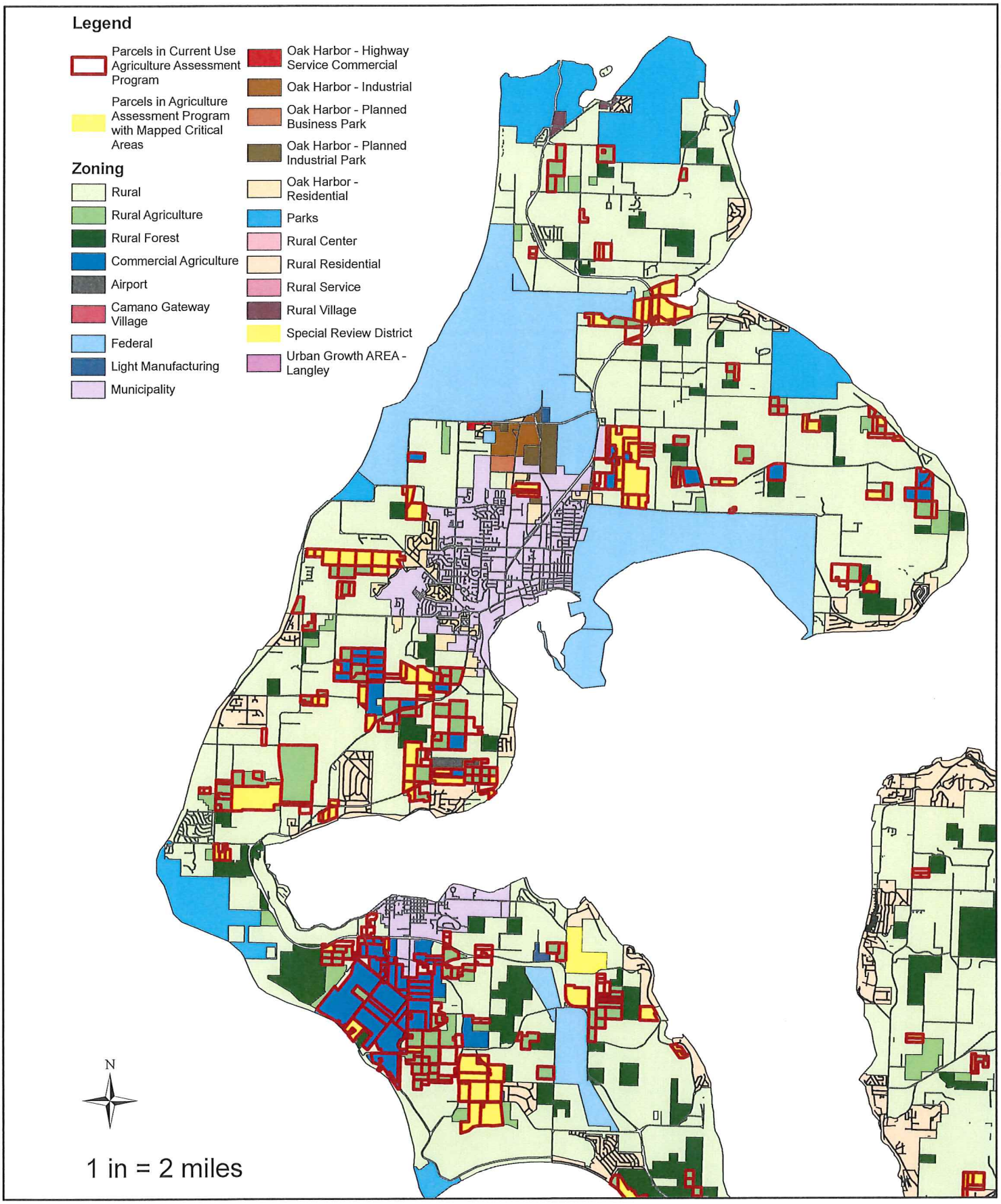
Finding F: The Board finds that commercial agricultural use may take place on lands that did not receive CA or RA zoning, and are included in the agricultural tax program, as qualified: 'Commercial Agriculture purposes' means the use of land on a continuous and regular basis, prior to and subsequent to application for classification or reclassification, that demonstrates the owner or lessee is engaged in and intends to obtain through lawful means, a monetary profit from cash income by producing an agricultural product, or qualifying commercial agricultural purposes as defined in RCW 84.34. As these properties are qualified for the tax program by demonstrating commercial agriculture is indeed taking place, the Board finds they should enjoy the same privileges as that of properties designated for long-term agricultural use because of their long term commitment to preservation of farmland. Appendix 'A' of these findings shows parcels currently in the Current Use Agriculture Assessment Program, for illustrative purposes.

Finding G: The Board finds that critical areas are protected through the County's critical areas ordinances, and the potential impact of the exemption for existing and on-going agricultural practices for operations that pre-exist those ordinances (prior to October 1, 1998) to be minimal, as the number of properties and acreage the exemption will apply to are limited in scope.

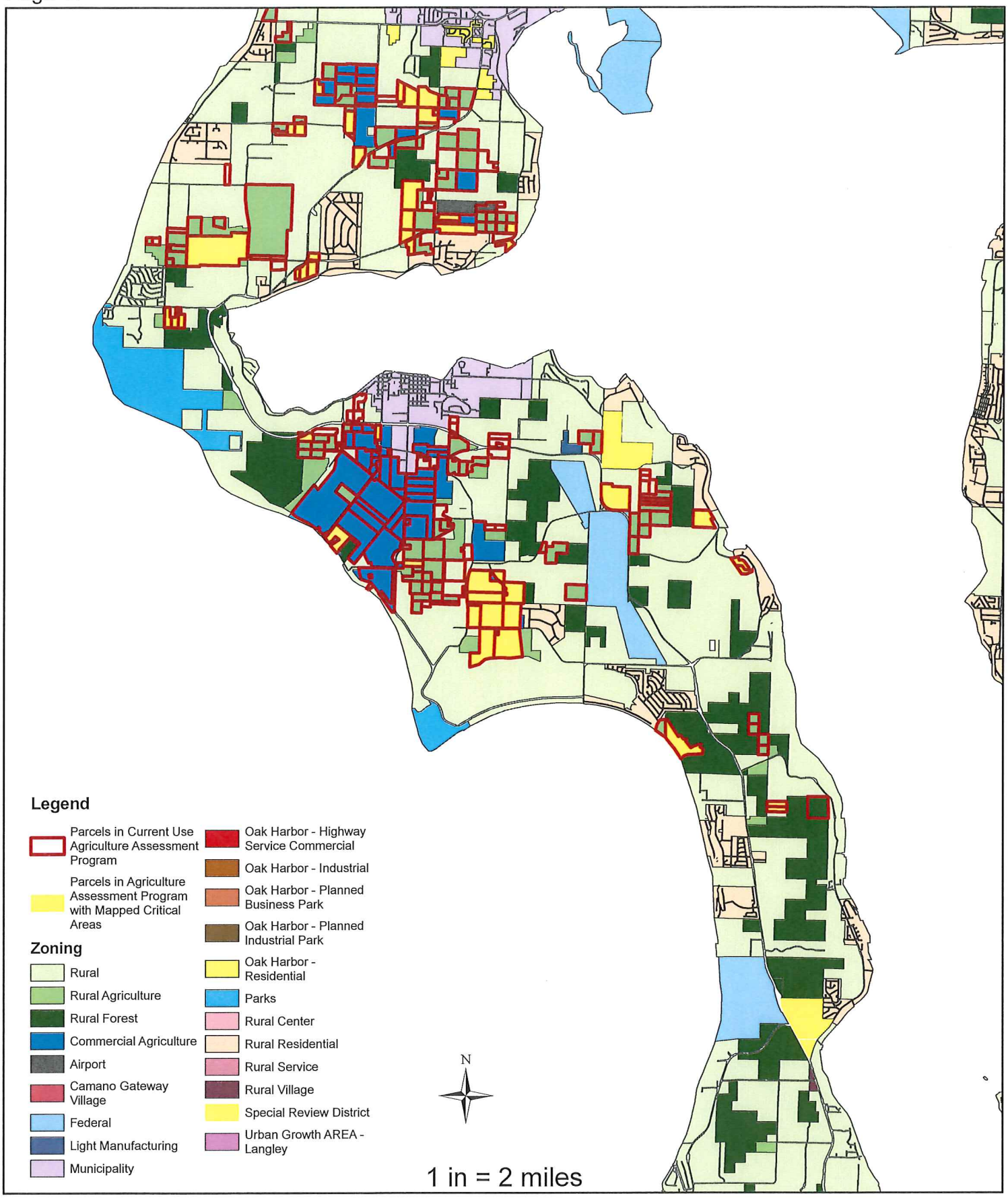
Furthermore, farming practices over the years have tended toward using best management practices which protect critical areas aside from regulatory intervention. Resources such as the WSU Extension Service, conservation districts, and published best management practices are often used by farmers engaged in commercial farm operations to increase their income and viability of the farm itself.

Finding H: The Board finds that easements purchased, recorded and applied to lands in perpetuity for purposes of encouraging agriculture, while preventing other types of development, also qualify that portion of the properties for the conditional exemption from the critical areas ordinance. This decision to retain properties for an intended use as agriculture provides a similar level of commitment as zoning for long-term agricultural use, and addresses the intention of the GMA in designating lands for uses supported by state-wide goals.

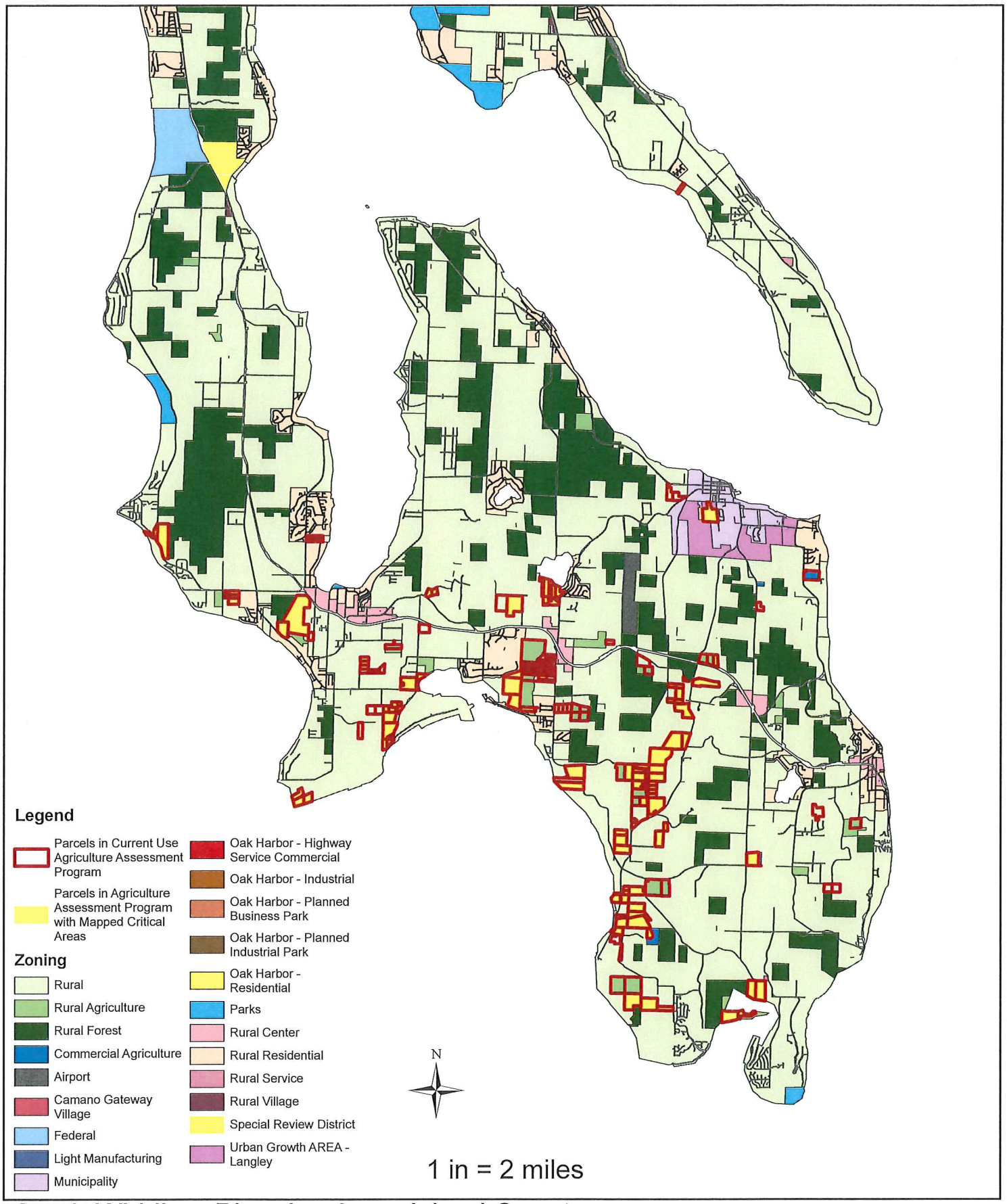
Finding I: The Board finds the work plan funded through a National Estuary Program Grant will address Best Available Science related to Critical Areas, the protection of critical areas and continuing agricultural practices within critical areas and adjacent lands. The course of this analysis will take place over the next year, and refinements to the development code regarding Critical Areas are anticipated by February 2016, to be implemented as part of the overall Comprehensive Plan update.



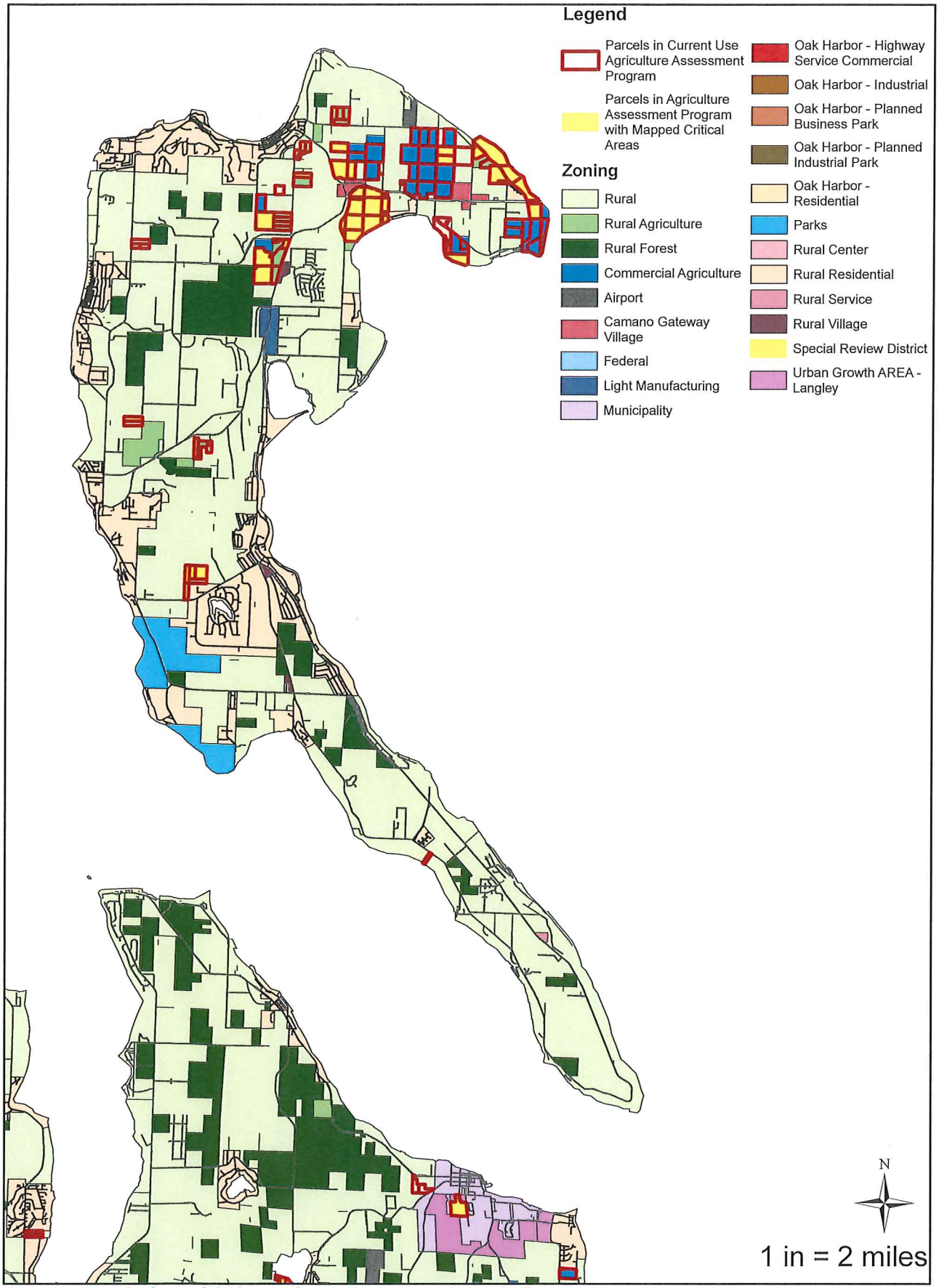
North Whidbey Planning Area, Island County
Parcels in Current Use Agriculture Assessment Program with Mapped Critical Areas



Central Whidbey Planning Area, Island County
Parcels in Current Use Agriculture Assessment Program with Mapped Critical Areas



South Whidbey Planning Area, Island County
Parcels in Current Use Agriculture Assessment Program with Mapped Critical Areas



Camano Island Planning Area, Island County
Parcels in Current Use Agriculture Assessment Program with Mapped Critical Areas

ISLAND COUNTY
PLANNING & COMMUNITY DEVELOPMENT

PHONE: (360) 679-7339 ■ from Camano (360) 629-4522, Ext. 7339 ■ from S. Whidbey (360) 321-5111, Ext. 7339 FAX: (360) 679-7306 ■ 1 NE 6th Street, P. O. Box 5000, Coupeville, WA 98239-5000
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Report to the Board of County Commissioners

FROM: **Planning Commission**

DATE: **September 28, 2015**

SUBJECT: **Agricultural exemption in critical areas for pre-existing, on-going activities**

Island County adopted Ordinance C-151-99 in 1999 in its attempt to balance the preservation of agricultural activity with the protection of critical areas. At the end of a legal challenge, the Washington State Court of Appeals agreed with the Growth Management Hearings Board which held that the Agricultural Best Management Practices Program ("AG BMP") established in C-151-99 was too broad in its scope without sufficient justification.

In 2005 the Island County Board of Commissioners adopted amendments to development regulations of Island County Code in response to the County's obligations under the Growth Management Act (GMA) for the protection of critical areas and promotion of agricultural resource lands. A court challenge to the Growth Management Hearings Board (GMHB) approval of the County's ordinance resulted in the 2005 ordinance essentially being replaced by the earlier ordinance (C-151-99), and remand from the Hearings Board to address the agricultural operations exemption in critical areas in updated code. The Hearings Board established a deadline by which the County must amend its critical areas ordinance to address existing and on-going agricultural activities that pre-existed County critical area ordinances, subject to further review for compliance with the GMA.

The main goal of the ordinance proposed (including text amendments to development regulations) in this instance is to align local code addressing existing and on-going agricultural operations in critical areas to be consistent with the GMHB order originally issued on July 17, 2014 and identify appropriate lands where such exemptions may be applied.

Acting under the authority granted in both the Planning Enabling Act (36.70 RCW) and the Growth Management Act (36.70A RCW), the Board of Island County Commissioners adopted Ordinance C-16-15, an *interim* official control related to existing and on-going agricultural operations in the Commercial Agriculture (CA) and Rural Agriculture (RA), as well as those pre-existing agricultural activities in other zones, so long as those lands meet the definition of RCW 84.34.020(2) and participate in the agricultural tax program, or such lands are encumbered in perpetuity by a recorded easement created for the purpose of preservation of agricultural practices.

It was intended the County would adopt the interim control (which can be done quickly, to meet the compliance deadline), then follow-up with additional information or changes to the interim ordinance as needed to address the court's concerns.

On May 1, 2015, the Growth Management Hearings Board issued an Order Finding Continuing Non-Compliance ("Order"), holding that jurisdictions cannot come into compliance by the adoption of *interim* ordinances and ordered that Island County take compliance action regarding its interim ordinance prior to November 13, 2015.

The Planning Commission understands that under the authority of RCW 36.70.640, when it deems it to be for the public interest, the Board of Commissioners may initiate consideration of an ordinance establishing an official control, or amendments to an existing official control. The Board is to refer the proposed official control or amendment to the Planning Commission for report which shall, thereafter, be considered and processed in the same manner as that set forth in RCW 36.70.630 regarding a change in the recommendation of the planning agency.

Finding

A. The Planning Commission finds the proposed amendments and findings to be consistent with the Land Use Element and Policies of the Current Island County Comprehensive Plan, specifically the areas directly related to these development regulations: the conservation of agricultural resource lands and the protection of critical areas.

B. The Planning Commission finds that the proposed code amendments contain revisions intended to replace the interim ordinance addressing pre-existing agricultural activities within critical area overlay zones. The definition of pre-existing agricultural activities and application of an exemption to the critical areas ordinance was previously considered and adopted by the County Board of Commissioners. In response to the Growth Management Hearings Board decision, Island County proposes to adopt these code amendments without the limitation of RCW 36.70A.390 for interim zoning controls, as the Hearings Board found the interim ordinance does not comply with the Growth Management Act, due to its interim nature.

Recommendation

The Planning Commission has reviewed the proposed changes to implementing ordinances of the Comprehensive P, specifically 17.02.030, 17.02.040 and 17.02.300.B; and hereby recommends the Board of Island County Commissioners adopt the ordinance as presented to the Planning Commission.

Jeffery Wallin, Chair
Island County Planning Commission