

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF AMENDING ISLAND  
COUNTY'S DEVELOPMENT  
REGULATIONS TO PROTECT FISH AND  
WILDLIFE HABITAT CONSERVATION  
AREAS

ORDINANCE C- 44 -16; PLG-  
003-16

**WHEREAS**, Island County conducts planning activities in accordance with Chapter 36.70 RCW, the Planning Enabling Act; and

**WHEREAS**, the planning process and the Island County Comprehensive Plan are further governed by Chapter 36.70A RCW, the Growth Management Act (GMA); and,

**WHEREAS**, in order to comply with Chapters 36.70 and 36.70A RCW, Island County adopted its Comprehensive Plan on September 29, 1998 by Ordinance C-128-98, with an effective date of December 1, 1998; and

**WHEREAS**, state law requires periodic updates of GMA comprehensive plans; and

**WHEREAS**, the Washington State Legislature amended RCW 36.70A.130 to extend the schedule and subsequent review cycles for GMA comprehensive plan periodic updates; and

**WHEREAS**, RCW 36.70A.130(4)(b) established December 1, 2005 as the date for Island County to take action to review, and if necessary, revise its comprehensive plan and development regulations; and

**WHEREAS**, during the 2005 periodic update, Island County failed to update the Fish and Wildlife Habitat Conservation Areas component of the Comprehensive Plan and accompanying regulations and policies; and

**WHEREAS**, the Growth Management Hearings Board issued an order that Island County must review and update its comprehensive plan and development regulations for the protection of fish and wildlife habitat conservation areas by July 24, 2014; and

**WHEREAS**, following the order issued by the Growth Management Hearings Board Island County immediately began work on updating the County's fish and wildlife conservation areas protection standards; and

**WHEREAS**, RCW 36.70A.140 requires cities and counties planning under the GMA to establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans; and

**WHEREAS**, Island County created and adopted a Public Participation Plan and Preliminary Schedule to address RCW 36.70A.140 by Resolution C-96-13 on October 20, 2013; and

**WHEREAS**, RCW 36.70A.172 requires the use of best available science when developing polices and regulations to protect the functions and values critical areas, including Fish and Wildlife Habitat protections standards; and

**WHEREAS**, Chapter 365-195 WAC establishes criteria for determining if information qualifies as best available science; and

**WHEREAS**, Island County reviewed a large body of scientific information and prepared a detailed report synthesizing the results of this review (Best Available Science and Existing Conditions Report for Island County's Fish and Wildlife Habitat Conservation Areas, January 2014); and

**WHEREAS**, Island County reviewed its existing policies and regulations, as well as the findings contained in the Best Available Science Report and produced a report documenting program deficiencies and areas which needed to be updated in order to be consistent with GMA requirements and best available science (Island County Fish and Wildlife Habitat Conservation Areas Audit and Policy/Regulation Framework, March 2014); and

**WHEREAS**, Island County has developed revised comprehensive plan policies and development regulations to incorporate the findings of the Best Available Science Report and Audit and Policy document; and

**WHEREAS**, a Technical Advisory Group (TAG) comprised of representatives from the State agencies, County departments, and members of local organizations with expertise in relevant scientific disciplines was used to assist in the process of selecting and analyzing best available science and in drafting revised policies and regulations; and

**WHEREAS**, The Island County Planning Commission held a public hearing on March 14, 2016 and voted to recommend that the Board of Island County Commissioners approve the revised fish and wildlife habitat conservation areas policies and regulations and signed detailed findings of fact supporting this action on April 1, 2016; and

**WHEREAS**, The Island County Board of Commissioners found that the revised policies and regulations will adequately protect the functions and values of those fish and wildlife habitat conservation areas enumerated in WAC 365-190-130 and that special consideration has been given to protecting anadromous fish as required by WAC 365-195-925; and

**WHEREAS**, The Board of Island County Commissioners found it necessary to amend Titles III, XVI, and XVII of the Island County Code in order to incorporate and fully implement the revised fish and wildlife habitat conservation areas policies and regulations; and

**WHEREAS**, The Board of Island County Commissioners found that a new section should be added to Island County Code and codified as Chapter 17.02B ICC; and

**WHEREAS**, The Board of Island County Commissioners found it necessary to prepare additional findings of fact in order to further clarify, support, and document the County's response to the Growth Management Hearings Board order, and to support a number of minor changes to the Planning Commission's recommended policies and regulations; and

**WHEREAS**, The Board of Island County Commissioners voted to approve the revised fish and wildlife habitat conservation areas policies and regulations and signed the detailed findings of fact supporting this action on September 22, 2014; and

**WHEREAS**, The Growth Management Hearings Board issued an order that Island County must take legislative action to comply with the requirements of the Growth Management Act by June 25, 2016; and

**WHEREAS**, These amendments provided in Exhibit "A," attached hereto are intended as compliance actions for Issues 1, 3, and 10 as described in the Growth Management Hearings Board Final Decision and Order issued June 24, 2015.

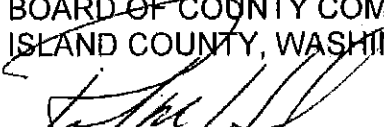
**NOW THEREFORE,**

**IT IS HEREBY ORDAINED** that the Board of Island County Commissioners adopts amendments to the Fish and Wildlife Habitat protection regulations attached hereto as Exhibit A. Within Exhibit A, material stricken through is deleted and material underlined is added. The material in Exhibit A is intended to be a revision to Island County Code Chapter 17.02B. The Board also hereby adopts Exhibit B, the Board's Findings of Fact.

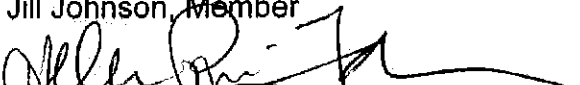
ADOPTED this 3rd day of May, 2016.



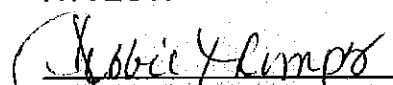
BOARD OF COUNTY COMMISSIONERS  
ISLAND COUNTY, WASHINGTON

  
Richard M. Hannold, Chair

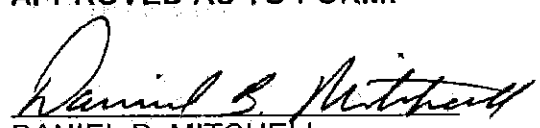
  
Jill Johnson, Member

  
Helen Price Johnson, Member

ATTEST:

  
Debbie Thompson  
Clerk of the Board

APPROVED AS TO FORM:

  
DANIEL B. MITCHELL  
Deputy Prosecuting Attorney and  
Island County Code Reviser

**Exhibit A**

**Revised Island County Code Chapter 17.02B**

## Chapter 17.02B

### Island County Critical Areas Regulations

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#### 17.02B.060 - Definitions—Fish and wildlife habitat conservation areas.

**Adequate building site** means an area large enough to accommodate a reasonably sized home, driveway, utilities, septic system, and, if necessary, a well.

**Agricultural activities, existing and on-going** means 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 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 on-going 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 five (5) years, unless the idle land is registered in a federal or state soils conservation program other than conservation 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 legally existing 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. Such extensions are subject to applicable requirements in this chapter.

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~~**Reasonable use** means 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.~~

**Reasonable use** means the logical or rational use of a specific parcel of land which a person can be expected to conduct or maintain fairly and appropriately under the specific circumstances, considering the size of the lot, the type of use or structure proposed and similar uses and structures in the general vicinity of the lot, that are permitted uses consistent with and conforming to current regulations.

**Regulated activities** means all development occurring within designated FWHCA and their buffers that is not either listed as an exempt activity in section 17.02B.300 or been determined to be an exempt activity by the director in accordance with section 17.02B.300.

**Remodel** means 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.

**Serviceable** means 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.

**Shoreline jurisdiction** means 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 section 17.05.040.WW., and RCW 90.58.040 and 90.58.030.

**Stream, regulated** means the following features are defined as streams and are regulated as critical areas under the provisions of this chapter:

1. **Natural stream channels** means 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** means 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** means artificial channels either used by salmonids of any life stage, or that directly 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.

**Stream, unregulated** means ditches and other water conveyance systems which are artificially constructed and actively maintained for irrigation and/or drainage and which are not otherwise classified as a regulated stream.

**Variance, critical areas** means 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.

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#### 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 chapter 16.19 and the criteria identified in section 17.02B.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 section 17.02B.300.B. and C.

	Exemption Table	FWHCA	Wetlands: RESERVED	Geologically Hazardous: RESERVED
1.	Existing and on-going agricultural activities that qualify under section 17.02.040.E.1. (preexisting as of October 1, 1998)	E		
	<ul style="list-style-type: none"> <li>• 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.</li> </ul>			
	<ul style="list-style-type: none"> <li>• This exemption does not include work in regulated streams. Work in regulated streams is addressed in section 17.02B.310.C.7.</li> </ul>			
	<ul style="list-style-type: none"> <li>• 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</li> </ul>			

	<p>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. <del>Such extensions shall be limited to three years.</del></p>				<p>One extension may be allowed and shall be limited to three years.</p> <p><i>Rick AFJ</i></p>
	<ul style="list-style-type: none"> <li>The existing and on-going agricultural 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.</li> </ul>				
2.	<p>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.</p>	E			
3.	<p>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.</p>	E			
4.	<p>Normal maintenance or repair of existing serviceable drainage facilities or systems, including, but not limited to, unregulated streams, culverts, catch basins, and outfalls provided that there is no expansion of facilities or change in conveyance capacity. This exemption includes replacement</p>	E			



	where it is the normal method of maintenance 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.			
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.	E		
7.	Reconstruction, remodeling, or maintenance or repair of existing structures, provided 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 critical area and its buffer.	E		
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	E		

	<p>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.</p>			
10.	<p>Provided such actions do not increase the size or capacity of such facilities operation, normal maintenance or repair of existing dikes, unregulated 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.</p>	E		
11.	<p>Provided such actions do not increase the size or capacity of such facilities, operation, normal maintenance or repair of existing unregulated 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.</p>	E		
	<ul style="list-style-type: none"> <li>• Normal maintenance or repair of unregulated streams is not considered exempt if maintenance or repair of such unregulated streams is discontinued as per section 17.03.230.I., Existing uses.</li> </ul>			
12.	<p>Normal maintenance 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.</p>	E		
13.	<p>Maintenance or repair activities including, but not limited to, cutting, mowing lawns, weeding,</p>	E		

	<p>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 maintenance 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.</p>			
	<ul style="list-style-type: none"> <li>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.</li> </ul>			
14.	<ul style="list-style-type: none"> <li>The removal or control of noxious weeds listed in Chapter 16-750 WAC and consistent with chapter 8.28.</li> </ul>	E		
	<ul style="list-style-type: none"> <li>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 Department of Ecology, Department of Agriculture and Department of Natural Resources, pursuant to Chapters 173-201A, 16-228, and 222 WAC.</li> </ul>			
	<p>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</p>			

	<p>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 one (1) acre.</p>			
15.	<p><del>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).</del></p>	E		

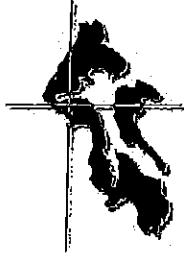
B. Standard exemption environmental protection criteria: Proposed exempt activities shall comply with the following environmental protection criteria in addition to meeting any provisions contained in the exemption description in subsection A.:

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## **Exhibit B**

### **Board Findings of Fact**

The Board of County Commissioners approves of and incorporates in full the findings of fact of the Planning Commission attached as Attachment "A"



**ISLAND COUNTY  
PLANNING & COMMUNITY DEVELOPMENT**

**ISLAND COUNTY PLANNING COMMISSION**

Dean Enell, Chairperson

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**~FINDINGS AND CONCLUSIONS~**

**TO: Board of Island County Commissioners**

**FROM: Island County Planning Commission**

**DATE: March 31, 2016**

**REGARDING: Regulation Amendment to Fish and Wildlife Habitat protection regulations, Chapter 17.02.B of the Island County Code to address Growth Management Hearings Board Order 14-2-0009 issued June 24, 2015.**

**SUMMARY**

Island County Planning & Community Development has revised fish and wildlife habitat protection standards in order to address an order from the Washington State Growth Management Hearings Board (GMHB). On September 22, 2014 the Island County Board of Commissioners adopted new Fish and Wildlife Habitat protection regulations (ICC 17.02B). On June 24, 2015, the Growth Management Hearings Board (GMHB) issued an order in response to an appeal asserting that the County's update complied with the Growth Management Act with respect to four of the issues raised in the appeal, and did not comply with respect to seven other issues. The GMHB order required the County to address these issues by June 24, 2016. In order to address three of the seven issues in this order, Island County intends to adopt revised regulations before June 24, 2016.

**FINDINGS OF FACT**

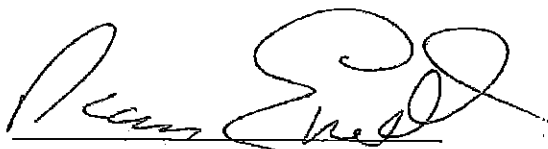
1. Island County received an order from the Growth Management Hearings Board to review and update the Island County Comprehensive Plan and development regulations for Fish and Wildlife Habitat Conservation Areas.

2. On September 22, 2014 Island County adopted new Fish and Wildlife Habitat Conservation Areas policies and regulations.
3. On June 24, 2015, the Growth Management Hearings Board (GMHB) issued an order in response to an appeal finding that the County's update complied with the Growth Management Act with respect to four of the issues raised in the appeal, and did not comply with respect to seven other issues.
4. The Planning Commission finds that removing the current definition of reasonable use (ICC 17.02B.060) and replacing it with the definition of reasonable use found in ICC 17.02A.030 would be sufficient to comply with RCW 36.70A.060 and RCW 36.70A.172.
5. The Planning Commission finds that removing the exemption for the removal of beaver found in ICC 17.02B.300A(15) would be sufficient to comply with RCW 36.70A.060 and RCW 36.70A.172 while still allowing for land owners to take emergency action to protect their property from flooding or water inundation caused by beaver activity.
6. The Planning Commission finds that identifying maximum extension periods and including more specificity within the code and definition of existing and on-going agricultural activities is sufficient to comply with RCW 36.70A.060.

### CONCLUSION

The Island County Planning Commission has reviewed the proposed changes to Island County Code Chapter 17.02B and hereby recommends that the Board of County Commissioners adopt an ordinance to incorporate the proposed amendments, which will be attached to the ordinance as Exhibit A.

Respectfully submitted through the Island County Planning Department to the Board of Island County commissioners, pursuant to RCW 36.70.430, this 15<sup>th</sup> day of April, 2016 by,



Dean Enell  
Chair, Island County Planning Commission