BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF AMENDING CHAPTER 17.02B ICC AND ORDINANCE C-86-17 TO CLARIFY CERTAIN COUNTY PROCESSES WITH REGARDS TO FOREST PRACTICES, SURFACE WATER QUALITY MONITORING, AND FARM MANAGEMENT PLANS

ORDINANCE NO. C-55-18;
PLG-002-18

WHEREAS, on January 9, 2018, the Board of County Commissioners passed Resolution C-04-18 and executed a settlement agreement in Whidbey Environmental Action Network v. Island County, Growth Management Hearings Board, Case No.17-2-0008; and

WHEREAS, in the agreement, the County agreed to process certain proposed clarifying amendments to the Critical Areas Ordinance, Chapter 17.02B, and its amending Ordinance C-86-17; and

WHEREAS, on January 22, 2018 and continued on February 12, 2018, the Planning Commission held a public hearing to recommend the Board of Island County Commissioners adopt certain amendments to the County’s forest practices regulations, including clarifying amendments related to the executed settlement agreement; and

WHEREAS, on February 26, 2018 and continued on April 9, 2018, the Planning Commission held a public hearing to recommend the Board of Island County Commissioners adopt the remaining clarifying amendments to the County’s critical areas regulations, related to the executed settlement agreement; and

WHEREAS, this ordinance addresses all clarifying amendments related to the executed settlement agreement in Whidbey Environmental Action Network v. Island County, Growth Management Hearings Board, Case No.17-2-0008 and as such, the Planning Commission’s Findings of Fact for both their January 22, 2018 (signed on February 12, 2018) and April 9, 2018 public hearings are attached; and

WHEREAS, there has been confusion on the part of the public, landowners, and loggers about the interaction of the County critical area regulations and forest practices provisions; and

WHEREAS, a Conversion Forest Practices Permit proposes to take the land out of forest production and County critical areas regulations apply; and

WHEREAS, a Non-Conversion Forest Practices Permit is a logging permit where the applicant proposes to keep the land in forest production; the Department of Natural Resources (DNR) regulates these permits without County critical areas review; and
WHEREAS, it is the intent of these changes to clarify that when the owner of a parcel logged under a non-conversion permit decides to convert the land to a non-forestry use within six (6) years of issuance of the permit, the development proposed on the parcel is subject to County critical area regulations, including restoration of any areas logged under the Non-Conversion Forest Permit sufficient to prevent a net loss of critical area function and value; and

WHEREAS, clarifying ICC 17.02B.040.D, Relationship to Forest Practices Act, and clarifying ICC 17.02B.300.B.2, Exempt Activities, Forest Practices, will help to increase the public’s understanding of how Island County’s forest practices interact with critical areas; and

WHEREAS, specifically, these changes clarify that when the owner of a parcel logged under a Non-Conversion Forest Permit decides to convert any part of the parcel to a non-forestry use within six (6) years of issuance of the permit, the development proposed on the parcel is subject to County critical area regulations, up to and including restoring any areas logged under the Non-Conversion Forest Permit sufficient to prevent a net loss of critical area function and value; and

WHEREAS, within ICC 17.02B.520 Surface Water Quality Monitoring and Adaptive Management, qualifying the language, "adversely affecting critical areas" with "...as evidenced by exceedances in water quality standards" further clarifies the County’s current practice for response to exceedances in water quality standards; and

WHEREAS, within ICC 17.02B.530, Wetlands Monitoring and Adaptive Management, qualifying the language "a decline in wetland health" with "...which is per se evidence of adverse effects to wetland health" further clarifies the County’s current practice for responding to declining trends in monitored wetland health parameters; and

WHEREAS, Island County Code allows a landowner to choose to implement a Farm Management Plan developed with a Natural Resources Conservation Service certified conservation planner as an alternative to implementing the standard Best Management Practices (BMPs) outlined in Exhibit B to Ordinance C-86-17; and

WHEREAS, as a part of that process the landowner is required to submit the portion of the Record of Decisions of the Farm Plan which contains the specific BMPs to be implemented to comply with the standards of the critical areas ordinance; and

WHEREAS, adding more specifics regarding what shall be contained in the portion of the Record of Decisions to be submitted to the County provides clarity to the County’s process for reviewing these plans for compliance with the Critical Areas Ordinance and specifies what items are submitted for review; and

WHEREAS, by adopting these changes, the Board of County Commissioners emphasizes these changes are clarifying in nature only and do not change current County practice or interpretation of Chapter 17.02B ICC and/or its amending Ordinance C-86-17; and
WHEREAS, the Board of County Commissioners finds these changes to be compliant with the Growth Management Act.

NOW, THEREFORE,

IT IS HEREBY ORDAINED that the Board of Island County Commissioners adopts amendments to the Critical Areas regulations attached as Exhibit A and hereby adopts the Board’s Findings of Fact attached hereto as Exhibit B. 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 and Ordinance C-86-17.

This ordinance will go into effect immediately after Ordinance C-86-17 goes into effect.

ADOPTED this 8th day of May, 2018 following a public hearing.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Helen Price Johnson, Chair

Richard M. Hannold, Member

Jill Johnson, Member

ATTEST:

Debbie Thompson
Clerk of the Board

APPROVED AS TO FORM:

DALTON LEE PENCE
Civil Deputy Prosecuting Attorney and
Island County Code Reviser
Exhibit A
Amendments to:
Chapter 17.02B ICC and
Exhibit B of Ord. C-86-17
The following strikethrough/underline amendment will be made to Island County Code Critical Area
Ordinance, Chapter 17.02B

17.02B.040 – Relationship to other regulations.

... 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 when the forest practices are conducted under a non-conversion
forest practice permit and no conversion option harvest plan as contemplated in ICC 11.02.270
has been submitted to the County, except as otherwise provided in paragraph 3 below.

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

3. During the six (6) years following issuance of a non-conversion forest practice permit,
conversion of all or part of a parcel to non-forestry use, as described in Chapter 76.09
RCW, shall cause the entire parcel to be subject to the full requirements of this chapter.

... 17.02B.300 – Exempt activities.

... B. Fish and wildlife habitat conservation areas and wetlands. The following activities are
exempt from the buffer, mitigation, and protection requirements for Fish and Wildlife Habitat
Conservation Areas and Wetlands within this chapter.

... 2. Forest Practices. 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
(Title 222 WAC), and which are exempt from Island County jurisdiction when the forest
practices are conducted under a non-conversion forest practice permit and no conversion
option harvest plan as contemplated in ICC 11.02.270 has been submitted to the County.
During the six (6) years following issuance of a non-conversion forest practices permit,
conversion of all or part of a parcel to non-forestry use, as described in Chapter 76.09 RCW,
shall cause the entire parcel to be subject to the full requirements of this chapter.
The following strikethrough/underline amendment will be made to Island County Code Critical Area Ordinance, Chapter 17.02B, Monitoring and Adaptive Management, as amended by Ord. No. C-86-17, PLG-009-17.

Monitoring and Adaptive Management

17.02B.520 – Surface Water Quality

A. General. Monitoring surface water quality is important for determining whether exemptions and uses permitted under this chapter, including existing and on-going agricultural activities, are adversely affecting critical areas as evidenced by exceedances in water quality standards. Commencing in 2006, the Planning Director shall implement an interdepartmental surface water quality monitoring program and shall report on monitoring to the public, state agencies and the Board of Island County Commissioners (BOCC) as part of the annual comprehensive plan review process. The foundation of the monitoring program is based upon the DRAFT Water Quality Data Synthesis and Recommendations for a Surface Freshwater Monitoring Program, dated January 18, 2006 by Dr. Paul Adamus and Island County (the Adamus Report). Baseline monitoring, as recommended in the Adamus Report, was conducted between 2006 and 2016. Thus having collected sufficient baseline monitoring data, the water quality monitoring program shall shift to trend monitoring and source identification as recommended in the Adamus Report.

B. Purpose. The primary focus of the County’s surface water quality monitoring program is to detect and respond to potential sources of contamination of surface water that are adversely affecting critical areas as evidenced by exceedances in water quality standards. The sources of concern include, but are not limited to, non-point source contaminants from uses allowed in the rural area of the County.

C. Guiding principles. The following principles shall be used to guide implementation of the surface water quality monitoring program and adaptive management actions that are used by the County to address adverse effects to designated critical areas as evidenced by exceedances in water quality standards that are adversely affecting designated critical areas.

1. The County will carry out a surface water quality monitoring plan that focuses on trend monitoring and source identification. The plan will contain a detailed description of program goals, monitoring, and reporting methods.

2. The County will annually review the monitoring plan, revise as needed, and reprioritize monitored watersheds.

3. Water quality results will be reported interdepartmentally to inform applicable adaptive management decisions. Water quality data will also be reported to the public, BOCC and State and Federal agencies as needed.

4. Water quality data may trigger compliance assessment and/or source identification when data reliably documents ongoing exceedances of surface water standards.

5. Monitoring shall utilize the best available "peer reviewed" protocols for sampling, generally including those recommended by the Washington State Department of Ecology and the United States Environmental Protection Agency.

6. Except when authorized pursuant to chapter 17.03.260.A., access to private property to conduct baseline monitoring and source identification shall only occur if the property owner voluntarily consents in writing to such access.
7. All property owners must comply with state water quality standards and the Washington State Department of Ecology is charged with the responsibility to initiate enforcement actions when such actions are required under state law. The County will use adopted water quality standards to identify exceedances in accordance with WAC 173-201A and is responsible for addressing adaptive management actions that may be required under this chapter to ensure that agricultural best management practices are effective.

8. The monitoring program shall be conducted in a manner that encourages the involvement of property owners and voluntary compliance.

D. Baseline Monitoring. The goal of the County is to establish baseline surface water quality conditions countywide within five (5) years of the commencement of the water quality monitoring program has been completed. The County will continue to monitor baseline sites, to assist in identifying areas of exceedances of state water quality standards.

1. Monitored parameters may be changed by the BOCC based on data from baseline monitoring; changed standards of state or federal agencies; or the need to assess the potential adverse effect of unlisted parameters on critical areas.

E. Source Identification.

1. Generally, source identification will be initiated after monitoring has identified parameters that exceed County adopted water quality standards.

2. Types of source identification shall include in order of typical use:
   a. Increase the compilation and analysis of existing data;
   b. Increase the number and changing the location of monitoring sites;
   c. Increase the frequency and changing the timing of monitoring; and
   d. When the above actions prove insufficient, utilize new monitoring methods such as DNA analysis, optical brighteners, tracing, or other specialized methods.


1. Water quality standards are specific measures for a monitoring parameter that, if exceeded, will require immediate action by the County to identify the source of the contaminant. Compliance assessment will typically be the first step taken after an exceedance is identified. Source identification will usually be the second step.

2. Water quality trends are established through monitoring a parameter over time. Typically, data are assessed to determine whether a trend exists in a particular watershed after baseline monitoring in that watershed has been completed. Not all monitoring parameters will have adopted trends. A worsening or improving trend may serve as a basis for initiating source identification and/or Adaptive Management actions, while an improving trend may serve as a basis to reduce regulations.

3. The water quality standards for perennial streams set forth by the Washington State Department of Ecology in WAC 173-201A, as amended, shall be used to guide implementation of the water quality monitoring program.

G. Adaptive Management. Monitoring provides information used by the County to assist in determining the effectiveness of the County's critical area regulations and BMPs applicable to existing and ongoing agriculture. The adaptive actions that may be triggered could be to make County regulations and BMPs more stringent, less stringent or leave them unchanged. All three (3) outcomes are possible. Adaptive management actions to address adverse effects to
designated critical areas as evidenced by exceedances of water quality standards that are adversely affecting designated critical areas shall conform to these guiding principles:

1. Adaptive actions initiated by the County to address non-point source adverse effects to designated critical areas as evidenced by exceedances of water quality standards contamination when the source of the contamination cannot be identified that is adversely affecting designated critical areas shall usually be through legislative changes in critical area regulations typically applied county-wide and applicable to new and not existing uses.

2. When specifically authorized by this chapter, the Planning Director may order a property owner(s) to modify BMPs being used by existing and ongoing agriculture only when it has been determined through source identification that site- or area-specific management practices need to be modified to address adverse effects to designated critical areas as evidenced by water quality exceedances that are adversely affecting designated critical areas.

3. Any order directing that BMPs be modified may be appealed to the hearing examiner by a property owner that is required to modify management practices. Appeals will be governed by this chapter and chapter 16.19.

4. Enhancement or restoration projects initiated by the County to address adverse effects to designated critical areas as evidenced by water quality contamination from existing uses that is adversely affecting designated critical areas shall conform to the conditions established in the multi-species salmon recovery plan adopted by the Board of Commissioners in May 2005.

5. Adaptive Management shall follow the steps set forth below:
   a. **Step 1—Compliance assessment/source identification.** Compliance assessment is the first adaptive management action the County will initiate after water quality monitoring indicates exceedance(s) of a standard(s). The purpose of the assessment is to determine whether there is compliance with applicable critical area regulations and/or BMPs are being used. When compliance assessment shows that required BMPs have been implemented and are in conformance with critical area requirements, then source identification monitoring may also be initiated to determine the source(s) of the exceedance(s).
   b. **Step 2—Education.** If the County determines that an exceedance in a water quality standard is, at least in part, attributable to non-compliance with applicable critical area regulations or failure to implement BMPs, the County will initiate actions to secure voluntary compliance.
   c. **Step 3—Enforcement.** If reasonable efforts to achieve voluntary compliance are not successful, then the County will initiate enforcement actions under sections 17.02D.110 and 17.03.260.
   d. **Step 4—Site specific change in BMPs.** If specifically authorized by section 17.02B.400-490, the Planning Director may require a property owner or owners to modify BMPs applicable to existing and ongoing agriculture, to on-site septic systems and other residential uses.
      i. This step may be taken when the County determines that specific site conditions on a specific property require a change in BMPs.
      ii. This step shall be taken only when adverse effects to designated critical areas are evidenced by exceedances of adopted water quality standards are exceeded and the exceedance is adversely affecting designated critical areas. Any action to initiate site
or area specific modification of Ag BMPs will be based on recommendations from conservation districts, NRCS and/or a certified farm planner.

iii. This step shall be limited to modifications of BMPs that have been required by this chapter.

iv. An order of the Planning Director to modify BMPs may be appealed to the hearing examiner by the affected party and, if appealed, the County shall have the burden of demonstrating that the change(s) in BMP(s) is needed to address the exceedance in adopted water quality standards. Appeals will be governed by chapter 16.19.

e. **Step 5—Modification of critical area regulations.** This step shall be initiated when monitoring indicates adverse effects to designated critical areas as evidenced by that water quality standards and/or thresholds are being exceeded; the exceedance is adversely affecting designated critical areas; and, a change in regulations that are applicable County-wide is needed to address the exceedance. Modifications may also be made if monitoring indicates that less stringent standards are appropriate. Any modification of critical area regulations will be based on best available science.

H. **Reporting.** The County will produce annual reports and make them available to the public and state agencies. These reports will include all baseline monitoring data, summary statistics, an assessment of the accuracy and completeness of the data, and a description of data collection issues, if any, identified during the reporting period as well as the following additional information:

1. A description of all compliance assessments and source identification actions taken during the reporting period.

2. A description of educational outreach actions as well as enforcement actions taken during the reporting period.

3. A description of any actions taken to modify BMPs on a site or area specific basis.

4. A discussion of watershed monitoring priorities for the next reporting period.

17.02B.530 – Wetlands

Monitoring is an important assessment of the County's CAO ability in achieving the goals and policies set forth in the Island County Comprehensive Plan for Critical Areas. In 2006, the County initiated a comprehensive water quality monitoring program focused on lakes and streams. This program is set forth in this chapter.

In addition to monitoring water quality for surface waters, the County has a parallel monitoring program for wetlands. The wetlands monitoring program has two (2) forms. First, a multi-year, science-based monitoring program to measure water quality in the County's wetlands. In addition to measuring water quality, the County monitors changes in wetland vegetation. Together, water quality and wetland vegetation is used to track changes in the health of wetlands located in Island County. These data will augment and expand on the work completed in 2006 by Dr. Paul Adamus and be documented in Wetlands of Island County, Washington - Profile of Characteristics, Functions and Health published by the County in August, 2006.

A. **Purpose.** The primary purpose of the County's wetland monitoring program is to determine the overall health of a wetland. To do so, the County tracks both chemical indicators through measuring water quality and biological indicators by sampling wetland vegetation. These measures are used to evaluate the effectiveness of County regulations.
B. **Guiding principles.** The following principles are used to guide the implementation of the wetland monitoring program and any adaptive management actions that are used by the County to address a decline in wetland health, should a decline, which is **per se** evidence of adverse effects to wetland health, be identified through the monitoring program—**that is adversely affecting wetlands.**

1. Vegetation monitoring as well as water quality monitoring shall be conducted in wetlands to which the County has been granted access, and which represent a range of surrounding land uses and buffer widths. Wetland vegetation monitoring will focus on measuring changes in the species composition and the surface area of herbaceous vegetation. Water quality monitoring will track change in water quality parameters. For a given wetland, change will be analyzed at five-year intervals. Changes in overall cover of woody vegetation will be interpreted from aerial imagery.

2. The identification of the source or sources of the decline in wetland health shall generally follow after commencing monitoring. However, existing data may trigger compliance assessment and/or source identification when the existing data reliably documents an ongoing decline.

3. Both water quality and vegetation monitoring shall utilize the best available "peer reviewed" protocols for sampling and measuring contaminants and changes in wetland vegetation.

4. Except when authorized pursuant to chapter 17.03.260.A, access to private property to conduct baseline monitoring or source identification shall only occur if the property owner voluntarily consents in writing to such access.

5. If baseline monitoring identifies a significant elevation of water quality contaminants or more than a ten-percent increase in the percent cover of non-native herbaceous vegetation or more than a ten-percent change in species richness, the first step initiated by the County will typically be compliance assessment to determine whether a source or sources of the contamination or plant community change can be readily identified. Subsequently, the County may initiate source identification.

6. The monitoring program shall be conducted in a manner that encourages the involvement of property owners and voluntary compliance. Educational outreach will be the first action taken by the County after compliance assessment or source identification determines that an exceedance is attributable to a specific source or sources.

7. Adaptive actions initiated by the County to address unidentifiable sources of non-point source contamination and spread of non-native plants, which is **per se** evidence of adverse effects to wetland health, that are adversely affecting wetland health shall usually be through legislative changes in critical area regulations typically applied County-wide and applicable to new and not existing uses.

C. **Baseline monitoring.** The goal of the County is to establish baseline conditions countywide within five (5) years of the commencement of the wetland monitoring program.

1. Monitoring parameters used by the County to establish baseline conditions shall include:
   a. Dissolved oxygen;
   b. Fecal coliform;
   c. Nitrate;
   d. pH;
   e. Phosphorus;
f. Temperature;
g. Turbidity;
h. Conductivity;
i. Hardness; and
j. Wetland vegetation.

2. The parameters listed above may be changed by the board from time to time based on data from baseline monitoring; changed standards of state or federal agencies; or the need to assess the potential adverse effect of unlisted parameters on wetlands.

D. Source identification.

1. Generally, source identification is initiated only after baseline monitoring has identified contaminants that exceed County adopted water quality standards or thresholds or wetland vegetation monitoring shows signs of significantly diminished health of a wetland.

2. Before baseline monitoring is completed, the County may initiate source identification in some watersheds, based on existing data.

3. Types of source identification shall include in order of typical use:
   a. Increase the compilation and analysis of existing data;
   b. Increase the number of monitoring sites including wetland vegetation monitoring sites and/or change the location of monitoring sites;
   c. Increase the frequency of water quality monitoring or change the frequency of wetland vegetation monitoring; and
   d. When the above actions prove insufficient, implement different monitoring methods such as analysis of DNA, optical brighteners or other specialized tracing methods.

E. Monitoring trends. Unlike surface water quality in lakes and streams, there is no general concurrence on appropriate standards or thresholds for wetlands. Therefore, the County's monitoring focus is on establishing a baseline and trends. These trends in both water quality and vegetation are established through monitoring a parameter over time.

F. Adaptive management. Baseline monitoring and source identification provide information used by the County to assist in determining the effectiveness of the County's wetland regulations. The adaptive actions that may be triggered could be to make county regulations more stringent, less stringent or leave them unchanged. All three (3) outcomes are possible. Adaptive management actions to address worsening trends, which is per se evidence of that are adversely affecting to wetland health shall conform to the guiding principles set forth in subsection B. above and shall follow the steps set forth below:

1. Step 1—Compliance assessment/source identification. Compliance assessment is the first adaptive management action the County will initiate after a decline in wetland health has been detected. The purpose of the assessment is to determine whether there is compliance with applicable critical area regulations. When compliance assessment shows conformance with critical area requirements, then source identification will be initiated to determine the source or sources of the worsening trend.

2. Step 2—Education. If the County determines that decline in wetland health is, at least in part, attributable to non-compliance with applicable critical area regulations, the County will initiate actions to secure voluntary compliance.
3. **Step 3—Enforcement.** If reasonable efforts to achieve voluntary compliance are not successful, then the County will initiate enforcement actions under chapter 17.03.

4. **Step 4—Modification of critical area regulations.** This step shall be initiated when monitoring shows signs of declining wetland health attributable to County regulation; and, a change in regulations that are applicable countywide is needed to address the decline in wetland health. Any modification of critical area regulations will be made after considering best available science.

G. **Wetland monitoring reports.** The County shall produce annual reports on wetland monitoring as well as on activities and decisions relating to wetlands. The wetland monitoring reports will be similar in format to the water quality monitoring reports and be made available to state agencies and the public. These reports will include all baseline monitoring data, summary statistics, an assessment of the accuracy and completeness of the data, and a description of data collection issues, if any, identified during the reporting period as well as the following additional information:

1. A description of any identified trends and all compliance assessments and source identification actions taken during the reporting period.

2. A description of educational outreach actions as well as enforcement actions taken during the reporting period.

3. A discussion of wetland monitoring priorities for the next reporting period.

4. A description of approved development proposals that required a wetland alteration, including a description of wetland type, category, buffer, mitigation and monitoring.

5. A review of the application of permitted alterations contained in section 17.02B.310.

6. A review of activities and uses that are exempt under section 17.02B.300.


8. A description of enforcement actions relating to wetlands.


10. A description of requested alterations, the action taken on the request and the reasons that support the action.

11. A summary characterization of wetland health and the effectiveness of CAO regulations in implementing comprehensive plan goals and policies for wetlands.
The following strikethrough/underline amendment will be made to Ord. No. C-86-17, PLG-009-17, Exhibit B, Agricultural Best Management Practices for Existing and Ongoing Agriculture on RA and CA Property

...

IX. FARM MANAGEMENT PLAN

...

F. Review of Farm Management Plans.

1. The landowner shall submit to the Planning Department the final signed Farm Management Plan Record of Decisions for review under Section IX as a Type 1 decision. Submissions to the Planning Department shall be limited to The landowner shall only submit the portion of the Record of Decisions which contains the specific BMPs to be implemented to comply with the standards of this ordinance:

a. sets forth the specific BMPs selected from Groups 1-7 in accordance with the process outlined in Section IX, subparagraph C;

b. describes the nature of the critical areas as defined in 17.02B the BMPs are intended to protect;

c. indicates whether the BMPs are temporal or year-round in nature; and

d. sets forth the date by which the BMPs will be implemented in order to comply with the standards of this ordinance.
Exhibit B

Board Findings of Fact

The Board of County Commissioners approves of and incorporates section two of the findings of fact of the Planning Commission titled, "Changes to Clarify Island County’s Critical Area Ordinance as it Relates to Forest Practices Provisions." The full findings of fact of the Planning Commission dated January 22, 2018 (without enclosures), is attached as Attachment 1.

The Board of County Commissioners also approves of and incorporates in full the findings of fact of the Planning Commission dated April 9, 2018 (without enclosures), attached as Attachment 2, with the following exception:

Attachment 2, Finding 6 is rejected because it does not reflect the proposed changes to ICC 17.02B.530, Wetlands Monitoring and Adaptive Management. In its place, the Board adopts the following finding of fact:

The Board finds that within ICC 17.02B.530, Wetlands Monitoring and Adaptive Management, qualifying the language “a decline in wetland health” with “...which is per se evidence of adverse effects to wetland health” further clarifies the County’s current practice for responding to declining trends in monitored wetland health parameters.
Attachment 1
Planning Commission Findings of Fact
January 22, 2018
~FINDINGS AND CONCLUSIONS~

TO:                  Board of Island County Commissioners
FROM:               Island County Planning Commission
DATE:               January 22, 2018
REGARDING:          Amending Chapter 17.02B ICC to Clarify Island County's Forest Practices Provisions' and Amending Chapters 11.02, and 17.03 ICC to Improve the Code's Alignment with State Requirements

CHANGES TO PROVIDE CONSISTENCY WITH REQUIREMENTS OF RCW 76.09 THE FOREST PRACTICES ACT

SUMMARY

The code changes that are referred to in the below findings of fact are a specific effort on the part of the County to provide consistency between Island County's Forest Practices provisions (chapters 11.02 and 17.03 ICC) and the State Forest Practices Act (RCW 76.09, FPA) as amended in 2007.

FINDINGS OF FACT

1. Prior to 2007, RCW 76.09 required local governments deny all permit applications for non-forestry uses on land subject to a non-conversion forestry permit for six years, required applicants to acknowledge the six-year moratorium and, in some cases, record the moratorium in the public property records (see Exhibit B). RCW 76.09.060(3)(b)(ii)(D) and (E) required the local government to develop a process for lifting this moratorium.

2. Island County adopted ICC 17.03.270 to implement the statute, specifically citing RCW 76.09.060(3)(b)(i)(D) and (E) for the process to lift the six-year moratorium.
3. The Planning Commission finds that the County has historically interpreted the statute, especially sub-subsection RCW 76.09.060(3)(b)(iii), to require mitigation for the impacts that would have been regulated by the County had the landowner stated an intent to convert at the time of the original application.

4. In 2007, the State Legislature substantially amended RCW 76.09.060 and changed the process of the moratorium, renamed "development prohibition"; deleting sub-subsection RCW 76.09.060(3)(b)(i) in its entirety, including the direction to local governments to deny all permits for six years, to record the moratorium in the local property records, and to adopt a process to lift the moratorium (see Exhibit C).

5. In the place of sub-subsection RCW 76.09.060(3)(b)(i), the State Legislature amended RCW 76.09.060(3) in relevant part such that:
   (e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.
   (f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

6. The State Legislature also eliminated the requirement in former RCW 76.09.060(3)(b)(i)(D) and (E) that local governments must adopt a process to lift the moratorium. The goal of reforestation and/or compliance with local regulations did not change.

7. The new RCW 76.09.470 requires that if a landowner decides to convert land to a non-forestry use within six years of non-conversion approval, they must stop all activities on the parcel subject to the proposed conversion, withdraw their Non-Conversion Forest Permit, and apply for a new conversion permit.

8. As stated in RCW 76.09.470(2)(b)(iii), the County must determine whether the "land in question" is in compliance with local regulations. If the land is not in compliance, mitigation "must be required for the parcel in question." Mitigation may include revegetation to "restore critical area and buffer function." These efforts may be above and beyond any DNR reforestation requirements.

9. Consistent with prior County practice, mitigation and revegetation at the local level may still be required if an applicant seeks conversion within six-years of obtaining a DNR non-conversion permit.

10. As part of the review of the Island County code relevant to Forest Practices, staff recommended that clarifying and updating the process for a conversion option harvest plan and the short plat/short subdivision exemption would cause the code to be more consistent with the 2007 statutory changes and County practice.

11. The Planning Commission finds that clarifying the process for lifting the moratorium (without renaming the process to "development prohibition", providing for a conversion option harvest plan, editing the short plat/short subdivision exemption, and emphasizing the statutory mitigation...
requirements provides consistency with the 2007 statutory changes and the County's current practices.

12. The Planning Commission recommends that a copy of the DNR report related to the non-conversion permit process be made available to the Assessor's office for possible use in their database.

CHANGES TO CLARIFY ISLAND COUNTY'S CRITICAL AREA ORDINANCE AS IT RELATES TO FOREST PRACTICES PROVISIONS

SUMMARY

The code changes that are referred to in the below findings of fact are a specific effort on the part of the County to add certain clarifying amendments to Chapter 17.02B.

FINDINGS OF FACT

1. On January 9, 2018, the Board of County Commissioners passed Resolution C-04-18 and executed a settlement agreement in Whidbey Environmental Action Network v. Island County, Growth Management Hearing Board, Case No. 17-2-0008. In the agreement, the County agreed to process certain proposed clarifying amendments to the critical areas ordinance, Chapter 17.02B, and its amending Ordinance C-86-17.

2. There has been confusion on the part of the public, landowners, and loggers about the interaction of the County critical area regulations and forest practice provisions. A Conversion Forest Permit proposes to take the land out of forest production and County critical areas regulations apply. A Non-Conversion Forest Permit is a logging permit where the applicant proposes to keep the land in forest production; the Department of Natural Resources (DNR) regulates these permits without County critical areas review. It is the intent of these changes to clarify that when the owner of a parcel logged under a non-conversion permit decides to convert the land to a non-forestry use within six (6) years of issuance of the permit, the development proposed on the parcel is subject to County critical area regulations, including restoration of any areas logged under the Non-Conversion Forest Permit sufficient to prevent a net loss of critical area function and value.

3. The Planning Commission finds that clarifying ICC 17.02B.040 - Relationship to Forest Practices Act, and clarifying ICC 17.02B.300 - Forest Practices exemption, will help to increase the public's understanding of how Island County's forest practices interact with critical areas.

4. The Planning Commission finds that, specifically, these changes clarify that when the owner of a parcel logged under a Non-Conversion Forest Permit decides to convert any part of the parcel to a non-forestry use within six (6) years of issuance of the permit, the development proposed on the parcel is subject to County critical area regulations, up to and including restoring any areas logged under the Non-Conversion Forest Permit sufficient to prevent a net loss of critical area function and value.
5. By recommending adoption of these changes, the Planning Commission emphasizes these changes are clarifying in nature only and do not change current County practice or interpretation of Chapter 17.02B ICC and/or its amending Ordinance C-86-17. The Planning Commission finds that the proposed changes are compliant with the Growth Management Act.

CONCLUSION

The Island County Planning Commission has reviewed the proposed changes to Island County Code Chapters 11.02, 17.02B, and 17.03 ICC, and hereby recommends that the Board of County Commissioners adopt an ordinance(s) to incorporate the proposed amendments, attached hereto as Exhibit A into Island County Code.

Respectfully submitted through the Island County Planning Department to the Board of Island County Commissioners, pursuant to RCW 36.70.430, this 12th day of February 2018 by,

Karen Krug
Vice Chair, Island County Planning Commission

Enclosures:
Exhibit "A"—Amendments to the Island County Code Chapters 11.02, 17.02B and 17.03 ICC
Exhibit "B" - RCW 76.09.080 The Forest Practices Act: Pre 2007 Amendment
Exhibit "C" - RCW 76.09.080 The Forest Practices Act: Current
Attachment 2
Planning Commission Findings of Fact
April 9, 2018
ISLAND COUNTY
PLANNING & COMMUNITY DEVELOPMENT

ISLAND COUNTY PLANNING COMMISSION

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~FINDINGS AND CONCLUSIONS~

TO: Board of Island County Commissioners
FROM: Island County Planning Commission
DATE: April 9, 2018

REGARDING: Amending Chapter 17.02B ICC and Ordinance C-86-17 to Clarify Certain County Processes with Regards to Surface Water Quality Monitoring and Farm Management Plans

CHANGES TO CLARIFY ISLAND COUNTY’S CRITICAL AREA ORDINANCE AS IT RELATES TO SURFACE WATER QUALITY MONITORING AND FARM MANAGEMENT PLANS

SUMMARY
The code changes that are referred to in the below findings of fact are a specific effort on the part of the County to add certain clarifying amendments to Chapter 17.02B and Ordinance C-86-17.

FINDINGS OF FACT

Background
1. On January 9, 2018, the Board of County Commissioners passed Resolutions C-04-18 and executed a settlement agreement in Whidbey Environmental Action Network v. Island County, Growth Management Hearing Board, Case No.17-2-0008. In the agreement, the County agreed to process certain proposed clarifying amendments to the critical areas ordinance, Chapter 17.02B, and its amending Ordinance C-86-17.
2. These clarifying amendments mentioned in the above finding address the topics of: Forest Practices, Surface Water Quality Monitoring, and Farm Management Plans.

**Forest Practices**

3. On January 22, 2018 and continued on February 12, 2018, the Planning Commission held a public hearing to recommend the Board of Island County Commissioners adopt certain amendments to the County's forest practices regulations, including clarifying amendments related to the executed settlement agreement.

4. The Planning Commission finds that there are no further changes related to forest practices proposed as a part of this recommendation because all were addressed during the Planning Commission's public hearing on January 22, 2018 and February 12, 2018.

**Surface Water Quality Monitoring**

5. The Planning Commission finds that within 17.02B.520, Surface Water Quality Monitoring and Adaptive Management, qualifying the language, "adversely affecting critical areas" with "...as evidenced by exceedances in water quality standards" further clarifies the County's current practice for response to exceedances in water quality standards.

6. The Planning Commission finds that within 17.02B.530, Wetlands Monitoring and Adaptive Management, qualifying the language, "adversely affecting critical areas" with "...as evidenced by exceedances in water quality standards" further clarifies the County's current practice for response to exceedances in water quality standards.

**Farm Management Plans**

7. Island County Code allows a landowner to choose to implement a Farm Management Plan developed with a Natural Resources Conservation Service certified conservation planner as an alternative to implementing the standard Best Management Practices (BMPs) outlined in Exhibit B to Ordinance C-86-17. The Planning Commission finds that as a part of that process the landowner would be required to submit the portion of the Record of Decisions of the Farm Plan which contains the specific BMPs to be implemented to comply with the standards of the critical areas ordinance.

8. The Planning Commission finds that adding more specifics regarding what shall be contained in the portion of the Record of Decisions to be submitted to the County, provides clarity to the County's process for reviewing these plans for compliance with the Critical Areas Ordinance and specifies what items are submitted for review.

**Denial of Merit**

9. By recommending adoption of these changes, the Planning Commission emphasizes these changes are clarifying in nature only and do not change current County practice or interpretation of Chapter 17.02B ICC and/or its amending Ordinance C-86-17. The Planning Commission finds that the proposed changes are compliant with the Growth Management Act.

**CONCLUSION**
The Island County Planning Commission has reviewed the proposed changes to Island County Code Chapters 17.02B, and Ordinance C-86-17, and hereby recommends that the Board of County Commissioners adopt an ordinance(s) to incorporate the proposed amendments, attached hereto as Exhibit A into Island County Code.

Respectfully submitted through the Island County Planning Department to the Board of Island County Commissioners, pursuant to RCW 36.70.430, this ___ day of ___, 2018 by,

Darin Hand  
Chair, Island County Planning Commission

Enclosures:  
Exhibit "A" – Amendments to the Island County Code Chapter 17.02B and Ordinance C-86-17