BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF UPDATING THE ISLAND COUNTY COMPREHENSIVE PLAN AND DEVELOPMENT REGULATIONS PERTAINING TO FISH AND WILDLIFE HABITAT CONSERVATION AREAS AND AMENDING TITLES III, XVI, AND XVII OF THE ISLAND COUNTY CODE	ORDINANCE NO. C-75-14 PLG-006-14

WHEREAS, Island County ("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, by December 1, 2005, Island County should have reviewed, and if necessary, revised its comprehensive plan and development regulations pursuant to RCW 36.70A.130(4)(b); and

WHEREAS, during the 2005 periodic update, Island County did not 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 Comprehensive Plan policies and development regulations pertaining to fish and wildlife habitat conservation areas; 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

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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 28, 2013; and

WHEREAS, RCW 36.70A.172 requires Island County to include the best available science when developing polices and development regulations to protect the functions and values of critical areas, including Fish and Wildlife Habitat Conservation Areas. In addition, Island County is required to give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish species; 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 voted to recommend that the Board of Island County Commissioners approved the revised fish and wildlife habitat conservation areas policies and regulations and signed detailed findings of fact supporting this action on June 12, 2014; and

WHEREAS, the Island County Board of Commissioners finds 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 finds that it is 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 finds 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 has expressed a desire to accommodate, promote, and develop agricultural businesses, as well as those businesses which are directly related to, and supportive of agricultural businesses. Island County is a predominantly rural environment and its island setting makes traditional economic development strategies less viable. Tourism, craft industries, and resource based activities, such as small scale agricultural operations and local food production, are crucial to the County's long term economic health. Accordingly, the Board believes that rural land use policies, including critical area protection standards must recognize the importance of these activities and accommodate their unique needs within the broader framework of GMA planning requirements and environmental protection considerations; and

WHEREAS, the Washington State Growth Management Act has established thirteen specific planning goals which must be considered and balanced in the development of local plans and regulations; and

WHEREAS, many existing and on-going agricultural operations have long utilized modified streams as part of their drainage systems. These modified streams must be regularly maintained in order to preserve their value as drainage systems; however, they must also be regulated and protected through Island County's critical area protection standards in order to preserve water quality, protect fish and wildlife habitat, and to ensure that special consideration has been given to anadromous fish species. The Board of Island County Commissioners notes that traditional buffer and mitigation strategies may be incompatible with existing agricultural operations because the required mitigation plantings and natural vegetation areas would need to be periodically cleared in order to maintain agricultural drainage functions. The Board finds that in such instances it is appropriate to allow Natural Resource Conservation Service guidelines to be used in place of traditional mitigation strategies or Best Management Practices. The Board further finds that when limited to existing and on-going agricultural practices, such an approach balances the agricultural preservation objectives of GMA Planning Goal eight with the environmental protection objectives of GMA Planning Goal ten; and

WHEREAS, the Board of Island County Commissioners held a public hearing on July 21, 2014 and continued the hearing to July 28, 2014, and found that certain minor Code amendments are needed in order to accommodate the operational needs of existing and ongoing agricultural operations and to clarify the intent of the Code; and

WHEREAS, the Board of Island County Commissioners also found that it was necessary to make minor code amendments to prohibit "throughput transmission facilities," as defined in Chapter 17.03 ICC, from being routed through critical areas and critical area buffers; and

WHEREAS, the Board of Island County Commissioners also found that it is necessary to allow the trapping and removal of beavers and beaver dams in order to protect property and infrastructure from flooding. The Board further found that such activities, when carried out

with the authorization of the Department of Fish and Wildlife, can be conducted with very little impact on Fish and Wildlife Habitat and should be permitted as an exempt activity; and

WHEREAS, The Department of Planning and Community Development revised the proposed Fish and Wildlife Habitat Conservation Areas regulations originally approved by the Island County Planning Commission to incorporate the changes described above and presented those changes to the Board of Island County Commissioners at a public hearing on August 25, 2014; and

WHEREAS, following public testimony at the hearing on August 25, 2014 the Board of Island County Commissioners determined that further clarifying amendments were needed in order to clarify the intent of the Code so as to accommodate the operational needs of existing and ongoing agricultural operations in a way that the Board determined does not change the effect of the ordinance pursuant to RCW 36.70A.035(2)(b) as the changes are consistent with the way the Department of Planning and Community Development would have interpreted the code provisions before the clarifying changes; and

WHEREAS, The Board of Island County Commissioners continued the public hearing to September 8, 2014, and noted that additional direction would be given to the Department of Planning and Community Development at a public meeting on September 3, 2014; and

WHEREAS, The Board of Island County Commissioners met at a public meeting on September 3, 2014 to finalize the clarifying language for the ordinance; and

WHEREAS, the Board of Island County Commissioners directed the Department of Planning and Community Development to make additional changes to Exhibit B on September 3, 2014 which are consistent with the way the Department of Planning and Community Development would have interpreted the code provisions; and

WHEREAS, The Department of Planning & Community Development introduced the revised documents at a public hearing on September 8, 2014; and

WHEREAS, The Board of Island County Commissioners scheduled an additional public hearing on September 22, 2014 to allow for public testimony on the revisions made to the Fish and Wildlife Habitat Conservation Areas documents made after August 25, 2014

NOW, THEREFORE,

IT IS HEREBY ORDAINED that the Board of Island County Commissioners adopts amendments to the Island County Comprehensive Plan attached hereto as Exhibit A, amendments to the Island County Code adding new Fish and Wildlife Habitat protection regulations attached hereto as Exhibit B, amendments to Island County Code, Title III attached hereto as Exhibit C, Title XVI, attached hereto as Exhibit D, and Title XVII attached hereto as Exhibit E, and further adopts the Findings of Fact approved by the Planning Commission attached hereto as Exhibit F, and additional findings of fact prepared by the Board of Island County Commissioners attached hereto as Exhibit G. Within Exhibits A, C, D

and E material stricken through is deleted and material underlined is added. The material in Exhibit B is added as new Chapter 17.02B, to the Island County Code.

ADOPTED this 22nd day of September, 2014 following a public hearing.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Jill Johnson, Chair

Helen Price Johnson, Member

Aubrey Vaughan, 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 and
Island County Code Reviser

Approved as to form only for Exhibits "B," "C," "D," and "E" that amend the Island County Code.

EXHIBIT A

Island County Comprehensive Plan

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GENERAL LAND USE POLICIES

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[1] *See the following document: The Watershed Compnany and Parametrix. January 31, 2014. Best Available Science and Existing Conditions Report For Island County's Fish and Wildlife Habitat Conservation Areas (on file with Island County Planning and Community Development*

GENERAL OVERLAYS AND CRITICAL AREAS

In addition to the Mineral Lands Overlay for resource lands, Island County has other overlays and critical areas designations to serve various purposes. They are the: Potential UGA Expansion.

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Fish and Wildlife Habitat Conservation Areas Overlay

Definition:

Land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created.

Designation Criteria:

Areas outside of the Shorelines Overlay that exhibit the following features:

A. Areas with which species listed as endangered, threatened, and sensitive by federal or state government have a primary association.

B. ~~Streams~~Lakes, ponds, streams, inland waters, and underground waters, not otherwise regulated as wetlands.

~~C. Commercial and recreational shellfish beds.~~

~~D. Kelp and eelgrass beds.~~

~~E. Herring and smelt spawning areas.~~

~~F.~~C.State natural area preserves and natural resource conservation areas, and State wildlife areas, where established.~~.~~

D. ~~In addition, h~~Habitats and species of local importance ~~may be~~when nominated and designated.

The following Fish and Wildlife Habitat Conservation Areas are generally found within the jurisdiction of Island County's Shoreline Master Program:

A. Areas with which endangered, threatened, and sensitive marine species have a primary association.

B. Commercial and recreational shellfish areas.

C. Kelp and eelgrass beds.

D. Herring, smelt, and other forage fish spawning areas.

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GENERAL LAND USE POLICIES

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Fish and Wildlife Habitat Conservation Areas Overlay

Goal:

To protect fish and wildlife habitat areas.

Policies:

A. ~~Develop specific criteria and processes to nominate, designate and classify habitats and species of local importance.~~Protect habitats and species designated within the Fish and Wildlife Habitat Conservation Areas Overlay, particularly:

1. Areas with which species listed as endangered, threatened, or sensitive by federal or State governments have a primary association.
2. Lakes, ponds, streams, inland waters, and underground waters.
3. State natural area preserves, natural resource conservation areas, and State wildlife areas.

B. Develop specific criteria and processes to nominate, designate, and classify habitats and species of local importance, particularly those habitats and species that are not otherwise protected by federal, State, or local regulations and protection programs, which are vulnerable to loss or alteration. Ensure management recommendations are provided for habitats and species of local importance, and that conservation is monitored over time. In developing and implementing such designation and monitoring efforts consider:

1. Manage to preserve scarce and rare habitats, such as prairies and old-growth forests. Consider prairies and their associated flora and fauna for designation as Habitat of Local Importance.
2. Periodically review the list of species and habitats identified by State agencies as priority species and habitats in the State that occur in Island County and determine if they should be considered Habitats and Species of Local Importance. Such species and habitats should be considered for designation as Habitats and Species of Local Importance when it can be shown that there are gaps in other regulations and programs designed to protect priority species and habitats.

C. Ensure natural processes and ecosystem functions are maintained between Fish and Wildlife Habitat Conservation Areas Overlay and the Shorelines Overlay in order to protect marine and freshwater habitats and species, particularly:

1. Areas where endangered, threatened and sensitive marine species have a primary association.
2. Commercial and recreational shellfish areas.
3. Kelp and eelgrass beds.
4. Herring, smelt, and other forage fish spawning areas.

D~~B~~. Periodically review and update designations as new information on species viability and habitat needs becomes available.

E~~C~~.Conserve habitats necessary for continued reproductive success of designated species.

1. Protect elements necessary to the survival of designated species, including habitat areas such as nests, breeding areas, nurseries from disturbance during critical life cycle periods.
2. Encourage enhancement of degraded habitat areas.
3. Based on the recommendations of Biological Site Assessment or Habitat Management Plan, provide physical buffers or timing restrictions around specific habitat areas used by designated species commensurate to the seasonal use of the area (where that is the case), the sensitivity of the species and habitat, the relative importance of the species and habitat, and the intensity of proposed and actual uses.
4. Landscaping, screening, or vegetated buffers required through development review should retain, salvage, or re-establish native vegetation.
5. Discourage use of non-native or invasive plant species.

6. Encourage the provision of corridors and networks of native vegetation between protected habitat areas to minimize isolating and fragmenting designated wildlife habitat. Incorporate natural resource lands supporting uses such as forestry and agriculture into wildlife corridors and networks. The Illustrative Habitat Conservation Concept in the Parks and Recreation Element identifies corridors that include habitats and species as well as public and other conservation lands. Map 2 in Parks and Recreation Element may be consulted in development reviews such as in State Environmental Policy Act documentation and in program implementation such as current use taxation implementation.

7. Consult with state and federal agencies when making wildlife management and protection decisions.
8. Develop and implement programs to identify, restore, rehabilitate, and acquire important habitat areas.

F~~D~~.Protect all ~~streams~~lakes, ponds, streams, inland waters, marine shorelines, and underground waters.~~.~~

~~E. Protect near-shore habitats, including commercial and recreational shellfish areas; kelp and eelgrass beds; herring and smelt spawning areas.~~

~~1.~~ Ensure t~~T~~he design of new and replacement on-site sewage systems ~~shall~~ meets the minimum requirements outlined in ICC 8.07C and are designed and located so as to discharge sewage effluent as far as possible from critical areas and their buffers.~~The design of new and replacement on-site sewage systems shall meet the minimum requirements outlined in ICC 8.07C.~~

1. ~~Require buffers for new development adjacent to streams and marine habitats.~~
2. Require buffers for new development adjacent to streams ~~and marin~~to protect ecological functions. Where critical area protections overlap, the most protective regulations should control. For example, where a stream buffer and a wetland buffer overlap, the regulated buffer should extend to the outer width of the more extensive required buffer.
3. Require preparation of farm plans for new agriculture uses in the Commercial Agriculture land use district.
4. Require implementation of best management practices for new and existing agricultural activities.

G~~F~~. Upon approval by the Washington State Department of Ecology, Island County's updated Shoreline Master Program shall be used to protect Fish and Wildlife Habitat Conservation Areas in the Shoreline Overlay including near-shore habitats, including commercial and recreational shellfish areas; kelp and eelgrass beds; herring and smelt spawning areas. Until approved by the Department of Ecology, Fish and Wildlife Habitat Conservation Areas shall be protected by all applicable policies the Comprehensive Plan, and by those regulations contained in Chapter 17.02 ICC.~~Maps, site-specific studies, and information collected by other agencies available for public review will be made readily accessible to potential and existing landowners, interested citizens, and development interests to aid in the protection of these areas.~~

H~~G~~. When a critical area lies in the Shorelines Overlay but its buffer falls outside of shoreline jurisdiction, the buffer is subject to Fish and Wildlife Habitat Conservation Areas Overlay policies.~~Regulation of these areas will take into consideration the function of the area, the potential environmental costs of alterations, the sensitivity of the area to disturbance, and the intensity and potential risks associated with a proposed land use.~~

I~~H~~. Proposed uses, activities, and alterations inside the Fish and Wildlife Habitat Conservation Areas Overlay that impact habitats and species inside shoreline jurisdiction are subject to Fish and Wildlife Habitat Conservation Areas Overlay policies, and steps should be take to minimize, avoid, or eliminate such impacts. ~~When a violation of the policies and regulations of this area is identified, the enforcement action and severity of any penalty will be proportional to the nature and circumstances of the violation and the damage or risk to private and public resources.~~

J~~I~~. Overlay policies and development regulations shall be implemented in addition to those associated with the underlying land use designation. When there is a conflict in policy statements or development regulations, the more restrictive shall apply.

K. Protect landscape level processes that indirectly or directly affect Fish and Wildlife Habitat Conservation Areas by implementing low impact development,

stormwater, water quality clearing and grading, steep slope, and tree retention policies, regulations, and plans.

L. Maps, site-specific studies, and information collected by other agencies available for public review will be made readily accessible to potential and existing landowners, interested citizens, and development interests to aid in the protection of these areas.

M. Regulation of these areas will take into consideration the function of the area, the potential environmental costs of alterations, the sensitivity of the area to disturbance, and the intensity and potential risks associated with a proposed land use.

N. Promote incentives to conserve and restore habitats, including:

1. Include incentives for habitat enhancement in Fish and Wildlife Habitat Conservation Areas regulations.
2. Update and maintain a habitat corridor map to direct programs and funding to landscapes that connect Fish and Wildlife Habitat Conservation Areas.
3. Update the Open Space Current Use Public Benefit Rating System to prioritize rare and valuable habitats and species that are at risk of alteration or loss and that lack regulatory protection. Ensure the program includes clearly defined outcomes and measurable and verifiable requirements.

O. Ensure the County coordinates its own programs with those of other public and private organizations to enhance management of Critical Areas in Island County.

P. When considering changes to development regulations and planning policies consideration should be given to policies and regulations which encourage the creation, linkage and maintenance of large blocks of uninterrupted forest cover.

~~K.~~Q. When a violation of the policies and regulations of this area is identified, the enforcement action and severity of any penalty will be proportional to the nature and circumstances of the violation and the damage or risk to private and public resources.

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NATURAL LANDS ELEMENT

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Open Space Corridors. The protection or conservation of individual areas of wildlife habitat are not sufficient for the protection of many species. These species require areas sufficient to permit migratory patterns, access to water, and access to seasonal forage

areas. The preservation of natural and man-made corridors can serve this purpose. Conversely, seemingly minor intrusions into existing corridors can have significant unforeseen impacts. Natural lands corridors also serve important functions for humans, providing walking, jogging or cycling paths, or scenic vistas.

The identification of open space corridors within cities and Urban Growth Areas is of particular importance in meeting the requirements of GMA. Such corridors will include streams and their associated buffer areas, shorelines and intertidal areas, utility transmission paths, non-motorized trails, and scenic roadways. The comprehensive plans of several incorporated areas within the county have identified areas that may be important as open space corridors. These corridors may be located within city limits, or within UGAs, or within the broader Joint Planning Areas cooperatively identified between the county and the various communities. *Map ~~1~~ 2 Illustrative Habitat Conservation Concept* in the Parks and Recreation Element identifies the open space corridors within and between the Urban Growth Areas associated with the cities of Langley and Oak Harbor. The map also conceptually identifies public lands, lands protected by conservation easements, and potential habitat corridors. ~~identifies the open space corridors for the Urban Growth Areas of the cities of Langley and Oak Harbor, the town of Coupeville does not have an Urban Growth Area.~~

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Map 1 **(See Map 2 in the Parks and Recreation Element)**.~~**UGA/Joint Planning Area/Open Space Corridors**~~

EXHIBIT B

Chapter 17.02B
Island County Critical Areas Regulations

General Provisions

17.02B.010 Purpose and Intent
17.02B.020 Authority
17.02B.030 Applicability
17.02B.040 Relationship to Other Regulations
17.02B.050 General Interpretations and Definitions
17.02B.060 Definitions
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Designation, Classification and Mapping

17.02B.200 Fish and Wildlife Habitat Conservation Areas
17.02B.210 Wetlands: Reserved
17.02B.220 Geologically Hazardous Areas: Reserved

Exempt Activities, Permitted Alterations and Variances

17.02B.300 Exempt Activities
17.02B.310 Permitted Alterations
17.02B.320 Variances

Evaluation and Protection Standards

17.02B.400 General Standards
17.02B.410 Evaluation Requirements – Fish and Wildlife Habitat Conservation Areas
17.02B.420 Protection Standards – Streams and other Aquatic Habitats
17.02B.430 Protection Standards – Other Fish and Wildlife Habitat Conservation Areas

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

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

17.02B.460 Wetlands: Reserved

17.02B.470 Geologically Hazardous Areas: Reserved

Habitats and Species of Local Importance

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

17.02B.510 Designated Habitats and Species of Local Importance

GENERAL PROVISIONS

17.02B.010 Purpose and Intent

A. General: Reserved.

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

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

C. Wetlands: Reserved.

D. Geologically Hazardous Areas: Reserved

17.02B.020 Authority

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

17.02B.030 Applicability

A. General: Reserved

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

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

C. Wetlands: Reserved.

D. Geologically Hazardous Areas: Reserved

17.02B.040 Relationship to Other Regulations

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

B. Relationship to Shoreline Master Program:

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

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

C. Relationship to SEPA:

1. General: Reserved.

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

3. Wetlands: Reserved.

4. Geological Hazards: Reserved.

D. Relationship to Forest Practices Act:

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

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

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

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

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

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

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

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

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

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

17.02B.050 General Interpretation and Definitions

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

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

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

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

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

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

B. **Agricultural Activities, Existing and On-Going:** Those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock. These activities include the operation and normal maintenance of legally existing farm and stock ponds or drainage ditches, operation and normal maintenance of legally existing Unregulated Streams, changes between agricultural activities, and normal maintenance, repair, or operation of legally existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be on-going when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Natural Stream Channels: Those areas where naturally occurring surface waters produce a defined channel, bed, bank or side, and where there is clear evidence of the passage of water such as bedrock channels, gravel beds, sand and silt beds and defined channel swales. The channel or bed need not contain water year-round.

2. Modified Stream Channels: Those natural stream channels with or without headwaters that follow and/or replace historic natural watercourses that have been significantly channelized, relocated, and/or constrained. Modified stream channels include segments of a stream that have been legally modified, and are in compliance with all necessary permits in effect at the time of its approval.

3. Artificial Stream Channels: Artificial channels either used by salmonids of any life stage, or that 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.

NN. **Stream, Unregulated:** Ditches and other water conveyance systems which are artificially constructed and actively maintained for irrigation ~~and~~ drainage and which are not otherwise classified as a Regulated Stream. and/or HPJ

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

17.02B.070 Permit Required

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

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

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

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

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

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

17.02B.080 General Mitigation Requirements

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

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

1. Avoiding the impact by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;

6. Monitoring the impact and taking appropriate corrective measures.

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

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

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

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

1. Protected habitats and species that are at greater risk can be substituted for impacted protected habitats and species; and

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

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

H. Mitigation, monitoring, and adaptive management plans must be developed by a Qualified Professional, unless at the applicant's request, the Director agrees that small scale, easily implemented compensatory Mitigation can be prescribed by the Director. Such small scale compensatory Mitigation may be prescribed by the Director, where detailed plans are unnecessary for successful project implementation, and where ongoing monitoring is unnecessary. Mitigation, monitoring, and adaptive management plans shall be reviewed and approved by the Director. For projects exempt from Biological Site

Assessment requirements under ICC 17.02B.410.A.2, no Mitigation plan shall be required.

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

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

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

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

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

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

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

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

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

17.02B.090 Existing Uses

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

17.02B.100 Appeals

See Chapter16.19 Land Use Review Process.

17.02B.110 Penalties and Enforcement

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

17.02B.120 Severability

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

DESIGNATION, CLASSIFICATION AND MAPPING

17.02B.200 Fish and Wildlife Habitat Conservation Areas

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

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

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

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

2. Streams and Waters of the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Commercial and recreational shellfish areas;

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

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

owners and will be periodically updated as new Critical Areas are identified. They are a reference and do not provide a final Critical Areas designation. In the event of a conflict between FWHCA mapping and the designation criteria outlined above, the designation criteria shall control.

17.02B.210 Wetlands: Reserved

17.02B.220 Geologically Hazardous Areas: Reserved

EXEMPT ACTIVITIES, PERMITTED ALTERATIONS AND VARIANCES

17.02B.300 Exempt Activities

A. Except as 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 ICC 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 ICC 16.19 and the criteria identified in ICC 17.02.B.300.B and C.

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

	Exemption Table	FWHCA	Wetlands: RESERVED	Geologically Hazardous RESERVED
1.	Existing and on-going agricultural activities as defined in this Chapter. • 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 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 Agriculture 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.	Forest practices regulated and conducted in accordance with the provisions and requirements of Chapter 76.09 RCW as well as all applicable forest practice regulations, and which are exempt from Island County jurisdiction.	E		
3.	Normal Maintenance or Repair of existing serviceable public or private roads, paths, bicycle ways, trails, bridges, and associated storm drainage facilities. Where reconstruction is the normal method for Maintenance or Repair, it is considered exempt if it does not change the character, scope, or size of the original structure, facility, utility or improved area beyond the original design, unless such changes are intended to improve ecological conditions or habitat, such as fish passage.	E		
4.	Normal Maintenance 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 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.	E		
5.	Normal and routine Maintenance or Repair of existing utility facilities or rights-of-way.	E		
6.	Installation, construction, relocation, operation, Normal Maintenance or Repair, or alteration of all utility lines, equipment, or appurtenances, not including substations, in improved and maintained road rights-of-way. Replacement may be considered an Exempt Activity if it is the normal method of Repair, as determined by the Director. Relocation of utility lines, equipment, or appurtenances shall occur as far as feasible from the FWHCA or its buffer. This exemption does not include the installation of Throughput Transmission Facilities as defined in Chapter 17.03 ICC.	E		
7.	Reconstruction, Remodeling, or Maintenance or Repair of existing structures, provided 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		

	Exemption Table	FWHCA	Wetlands: RESERVED	Geologically Hazardous RESERVED
8.	Site investigative work necessary for permit submittals, or County-authorized monitoring activities, such as surveys, soil logs, and percolation tests provided there is no Clearing, fill or use of heavy equipment in a Critical Area or impacts to its buffer.	E		
9.	Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation. The Department shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken unless the nature of the emergency is such that it is not possible to first gain approval of the Department, in which case such review must occur within ten (10) days of the conclusion of the emergency work.	E		
10.	Provided such actions do not increase the size or capacity of such facilities operation, normal Maintenance 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.	E		
11.	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. • Normal Maintenance or Repair of Unregulated Streams is not considered exempt if Maintenance or Repair of such Unregulated Streams is discontinued as per ICC 17.03.230.I Existing Uses.	E		
12.	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.	E		
13.	Maintenance or Repair activities including, but not limited to, cutting, mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and planting of noninvasive ornamental vegetation or indigenous native species to maintain the general condition and extent of such areas; provided, that such 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. • Native growth protection areas, Mitigation sites, or other areas protected via permit conditions, conservation easements or similar restrictive covenants are not covered by this exception.	E		
14.	• The removal or control of noxious weeds listed in Chapter 16-750 WAC and consistent with ICC Chapter 8.28. • The removal or control of Invasive Species including, but not limited to, Himalayan Blackberry and Evergreen Blackberry shall be with hand labor, hand application of herbicides and/or hand-held mechanical tools. Use of heavy equipment may be allowed if approved by the Director subject to Subsections B and C of this section. All herbicide applications in aquatic environments shall conform to the rules of the Department of Ecology, Department of Agriculture and Department of Natural Resources, pursuant to Chapters 173-201A, 16-228, and 222 WAC. Provided that, noxious weeds or invasive species removed from a Critical Area or Critical Area buffer shall be removed using Best Management Practices and shall be taken away	E		

	Exemption Table	FWHCA	Wetlands: RESERVED	Geologically Hazardous RESERVED
	and disposed of appropriately. Revegetation with appropriate native plant species at natural densities is allowed in conjunction with the removal. Unless the Director determines that a larger acreage meets the criteria in Subsections B and C, or is proposed at federal, state, or county approved habitat mitigation bank, the Director shall limit the size of the noxious weeds removal or control of invasive species to an area equal to or less than 1 acre.			
15.	Removal of Beaver. The control, trapping, and removal of Beaver from Critical Areas or Critical Area Buffers provided no alteration occurs except the removal of the Beaver dam and the control, trapping, or removal is authorized by the Washington State Department of Fish and Wildlife (WDFW) through the issuance of a Hydraulic Project Approval (HPA).	E		

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

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

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

3. Reserved: Drainage best management practices.

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

1. Where a proposed Development activity is unlisted or does not meet the precise terms of an Exempt Activity listed above and requires interpretation as to whether

the proposed Development is fundamentally similar to the listed Exempt Activities, or where an applicant has requested an Exemption Authorization, the Director may require an applicant to provide a written description of the proposed Development describing how the proposal meets the description of an Exempt Activity in Subsection A and the Standard Environmental Protection Criteria in Subsection B. In such cases, the applicant shall provide a map identifying the location of the proposed Development and the applicable type of Critical Area and its buffer.

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

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

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

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

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

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

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

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

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

17.02B.310 Permitted Alterations

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

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

2. Unless exempted under the provisions of ICC 17.02B.410.A, the Director shall require a Biological Site Assessment per Section 17.02B.410 to evaluate the Permitted Alteration. A Mitigation plan shall also be required by the Director consistent with Section 17.02B.080 unless the Director determines that the project is exempt from Mitigation Plan requirements pursuant to ICC 17.02B.080.H.

B. General Alterations: Reserved.

C. Fish and Wildlife Habitat Conservation Areas:

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

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

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

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

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

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

2. Low-impact uses and activities which are consistent with the purpose and function of the buffer when such improvements are limited to the minimum amount necessary and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved; provided, that such activity shall not result in a decrease in FWHCA functions and values and shall not prevent or inhibit the buffer's recovery to at least pre-altered condition or function.

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

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

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

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

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

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

f) Best Management Practices shall be employed during construction.

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

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

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

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

4. Installation of underground utilities or moderate impact stormwater facilities, such as grass-lined swales, may be allowed to alter Fish and Wildlife Habitat Conservation Areas, and associated buffers, when no feasible alternative exists, and where such facilities are constructed in a manner which minimizes impacts to Critical Area functions and values. For purposes of interpreting this section, the term "utilities" does not include Throughput Transmission Facilities as defined in Chapter 17.03 ICC.

5. Conservation, preservation, or enhancement projects. The Director shall require a Biological Site Assessment per Section 17.02B.410 in order to determine whether the proposed Development would conserve, preserve, or enhance Critical Area

functions in the long-term and is designed to minimize temporary environmental impacts.

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

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

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

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

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

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

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

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

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

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

7. Normal Maintenance or Repair of drainage facilities related to Existing and Ongoing Agricultural Activities within Regulated Streams. The Director may approve a Type II Permitted Alteration Permit for a multi-year period to address recurring work in

Regulated Streams that are also drainage facilities associated with Existing and On-Going Agricultural Activities, consistent with ICC 17.02B.310.A.1 and 2. When such a multi-year permit is approved, it shall be valid for a period of not less than five years.

D. Wetlands: Reserved

E. Geologically Hazardous Areas: Reserved

17.02B.320 Variances

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

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

1. Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands subject to the provisions of this Chapter; and
2. The special conditions and circumstances do not result from the actions of the applicant or owner; and
3. The inability to derive Reasonable Use of the property is not the result of a Land Division or a Boundary Line, which created the undevelopable condition after October 1, 1998; and
4. A literal interpretation of the provisions of this Chapter would deprive the applicant of all Reasonable Use of the subject property, and the Variance requested is the minimum necessary to provide the applicant with such rights; and
5. Granting the Variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, structures, or buildings under similar circumstances; and
6. The granting of the Variance is consistent with the general purpose and intent of this Chapter, and will not further degrade the functions or values of the subject Critical Areas; and
7. The proposed Development does not pose a threat to public health, safety and welfare on or off the subject property; and

8. Any alterations permitted pursuant to the requirements of this Chapter shall be the minimum necessary to allow for Reasonable Use of the property; and
9. The decision to grant the Variance considers Best Available Science for the Critical Area and gives special consideration to conservation and protection measures necessary to preserve or enhance anadromous fish habitat;
10. The Mitigation sequencing provisions of ICC 17.02B.080.B have been applied; and
11. The proposal mitigates the impacts on the Critical Area to the maximum extent possible, while still allowing Reasonable Use of the lot; and
12. The granting of the Variance is consistent with the general purpose and intent of the Island County Comprehensive Plan, and Planning Policies.

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

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

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

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

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

EVALUATION AND PROTECTION STANDARDS

17.02B.400 General Standards:

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

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

1. Example A: Where a stream buffer and a wetland buffer overlap, the regulated buffer would extend to the outer width of the more extensive required buffer.

2. Example B: Steep slope setbacks may limit Development, structures and infiltration. Stream buffers may be managed for water quality such as filtration and recharge. If infiltration is not appropriate for slope stability, steep slope standards would apply.

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

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

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

2. For activities authorized pursuant to ICC 17.02B.310.C.7 no BSA shall be required provided that:

a) The activity does not involve a type "F" or type "S" stream; and

b) The activity is associated with an Existing and On-Going Agricultural Activity; and

c) The Director verifies, prior to permit approval, that the area where the proposed activity will take place has been actively used for, and continuously maintained as, an agricultural drainage facility; and

d) The proposed activity is limited to Maintenance or Repair; and

e) Critical Area functions and values can be protected through the application of clear, and easily understood Mitigation measures and BMPs; and

f) Upon completion of the proposed work the Director verifies that required BMPs have been properly implemented and that all conditions of permit approval have been adhered to.

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

1. A site plan showing all Critical Areas and associated Critical Area buffers falling on or within 1,000 feet of the portion of the subject property proposed for Development. The site plan shall also clearly show the location and extent of all proposed Clearing, earthwork, Grading, excavation, filling, structures, utilities, septic system components, wells, roads, parking areas, driveways and other Development; and
2. Descriptions of all Critical Areas shown on the site plan, including areas which may act as wildlife corridors, ravines or steep slopes, etc.; and
3. Description of the proposed Development, including, but not limited to, quantity and spatial extent (area) of any proposed Development, Clearing, earthwork, Grading, excavation, and filling, the location and dimensions of all proposed structures, utilities, septic system components, and wells; and
4. Analysis of impacts to the protected species or habitats. A discussion of impacts to all Critical Areas and Critical Area buffers must be included; and
5. The spatial extent of impact to Critical Areas and their buffers shall be quantified; and
6. Regulatory summary, identifying other agencies with jurisdiction; and
7. Best Management Practices, including a discussion of on-going maintenance practices that will assure protection of all Critical Areas on-site after the project has been completed. If Monitoring is required, this section shall include a description of proposed monitoring criteria, methods, and schedule.
8. The recommendations of the BSA, once approved, shall be included as conditions of approval of the underlying permit.

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

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

1. Recruitment of Large Woody Debris (LWD). Large Woody Debris creates habitat structures necessary to maintain salmon/trout and other aquatic organisms' productive capacity and species diversity.
2. Temperature and Microclimates. Temperature and microclimates influence water temperatures and the availability of oxygen needed for salmon/trout and other aquatic organisms. Temperature is influenced by shading.

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

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

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

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

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

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

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

1. Recreational uses shall be allowed on Deep Water Ponds provided they are consistent with the provisions of Chapter 17.02A ICC.

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

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

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

1. The isolated part of the buffer provides insignificant biological, geological or hydrological buffer functions relating to the riparian area; and

2. If the resulting buffer distance is less than 50% of the standard buffer for the applicable stream type, no further reduction shall be allowed.

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

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

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

A. Bald Eagle. When the bald eagle is listed under Washington State Law as threatened or endangered, bald eagle habitats shall be protected pursuant to the Washington State Bald Eagle Protection Rules, WAC 232-12-292. When the bald eagle is not so listed, federal laws such as the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act still apply. If the Planning Director determines that the scope or timing of the proposal

may create an adverse impact or adversely affect the eagle nest territory, he/she shall require the preparation of a Habitat Management Plan prior to any Clearing, Grading, or construction whenever activities that alter habitat are proposed near a verified nest territory.

B. Washington Natural Heritage Program Areas

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

2. Grasser's Hill. Grasser's Hill is inventoried as a significant plant community including white-top aster (Sericocarpus rigidus), a Protected Species. A Biological Site Assessment and a habitat management plan (HMP) shall be prepared pursuant to this Chapter in order to ensure protection of the white-top aster.

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

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

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

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

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

Fish and Wildlife Habitat Conservation Area	Buffer Requirement
Areas with a primary association with endangered, threatened, and sensitive species	Buffer shall be based on management recommendations provided by the Washington State Department of Fish and Wildlife PHS Program and shall consider site-specific conditions and recommendation of Qualified Professional.
State Natural Area Preserves, Natural Resource Conservation Areas, and State Wildlife Areas	Buffers shall not be required adjacent to these areas. These areas are assumed to encompass the land required for species preservation. The Director may impose a new buffer or increase the applicable buffer if it is determined that a proposed Development would infringe on or inhibit use of the entire property for species preservation.
Species and Habitats of Local importance	The need for and dimensions of buffers for approved species and habitats of local importance shall be determined on a case-by-case basis by the Director according to adopted Habitat Management Plans for the specific resource (ICC 17.02B.500)

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

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

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

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

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

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

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

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

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

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

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

D. Development at the top of bluffs where the bluff crest is outside of Shoreline Jurisdiction, or where the Development will take place outside of Shoreline Jurisdiction, shall be setback adequately from the bluff crest to account for 100 years of erosion in the absence

of a bulkhead or shoreline armoring. For all such Development the following conditions must be satisfied prior to permit approval:

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

   a) The rate of expected erosion; and

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

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

17.02B.460 Wetlands: Reserved

17.02B.470 Geologically Hazardous Areas: Reserved

HABITATS AND SPECIES OF LOCAL IMPORTANCE

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

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

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

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

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

   b) Specific features to be protected (for example, nest sites, breeding areas, nurseries, vegetation communities) or, if a habitat is being nominated in its entirety, a description of the habitat, its structure, function, species, and

geographic boundaries of the habitat(s) encompassed, and any other relevant attributes; and

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

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

2. A demonstrated need for special consideration based on:

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

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

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

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

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

f) The need for maintaining connectivity between habitat areas.

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

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

5. Identification of effects on property ownership and use.

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

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

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

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

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

1. Satisfies the nomination criteria and includes the information required in Subsection B; and
2. Is supported by Best Available Science for the subject species or habitat of local importance; and
3. For which management strategies are practicable; and
4. Without protection, there is a likelihood that the species or habitat will not persist over the long term.

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

A. Protected Species List – Flora:

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

B. Species and Habitats of Local Importance List:

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

EXHIBIT C

TITLE III

REVENUE AND FINANCE

...

Chapter 3.40

Island County Public Benefit Open Space Rating System

...

3.40.250 High Priority Open Space Resources

A. **Resource and Rural Agricultural Lands**

...

E. **Significant Fish and Wildlife Habitat Conservation Areas, Species and Habitats of Local Importance, Category A and B Wetlands and Special Plant Sites**

1. **Definitions**

a) **Significant Fish and Wildlife Habitat Conservation Areas**. Those areas identified as being of critical importance to the maintenance of fish and wildlife species including areas with which endangered, threatened, and sensitive species have a primary association; habitats and species of local importance; streams; commercial and recreational shellfish areas; kelp and eelgrass beds; herring and smelt spawning areas; state natural area preserves, and state natural resource conservation; or

b) **Species and Habitats of Local Importance**

(i) Those areas containing vascular plant species as identified and listed in the Natural Heritage Program as being either endangered, threatened, or sensitive and areas identified in the Natural Heritage Program as high quality ecosystems.

(ii) Those areas or species designated as Species or Habitats of Local Importance set forth in Chapter ~~17.02 ICC.~~ 17.02B ICC.

...

3. **Eligibility**

a) Areas which have a primary association with federally- or state-listed endangered, threatened, or sensitive species of fish or wildlife, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. A Habitat Management Plan shall be submitted which

identifies the area to be protected and appropriate mitigation, management and/or protection strategies that will be employed.

...

c) Streams, provided that the stream buffer is at least twice the size of that required under Chapter 17.02B ICC. Buffer averaging shall not be utilized;

d) Commercial and recreational shellfish areas, provided that the fish and wildlife habitat conservation area buffer is at least twice the size of the largest applicable buffer ~~that~~ required under Chapters 17.02 or 17.02B ICC. Buffer averaging shall not be utilized;

e) Kelp and eelgrass beds; herring and smelt spawning areas, provided that the fish and wildlife habitat conservation area buffer is at least twice the size of ~~that~~ the largest applicable buffer required under Chapters 17.02 or 17.02B ICC. Buffer averaging shall not be utilized;

f) State natural area preserves and natural resource conservation areas;

g) Sites listed in the Natural Heritage database as containing endangered, threatened, or sensitive vascular plant species or high quality ecosystems, or which are verified by an expert in the field as containing the same plants or communities and which are acceptable by the state agency for addition to the database. A Habitat Management Plan shall be submitted which identifies the area to be protected and appropriate mitigation, management and/or protection strategies that will be employed; and

h) Eligible sites are those wetlands classified Category "A" or "B" by Chapter 17.02A ICC or Category "A" by Chapter 17.02 ICC.

Items a) through h) listed above require protection through easements, or voluntary buffers in those cases where buffers are not established through Chapter ~~17.02 or~~ 17.02A or 17.02B ICC and, in certain cases, shall require preparation and submittal of a Biological Site Assessment or Habitat Management Plan. The BSA or HMP shall provide a description of the fish and wildlife habitat conservation area, the location of the protected features, the location of buffers and a description of efforts to protect the fish and wildlife habitat conservation area, or a description of restoration efforts in those instances where the critical area has been damaged.

EXHIBIT D

TITLE XVI

PLANNING AND SUBDIVISIONS

...

Chapter 16.06
Land Divisions and Dedications

...

16.06.040 Definitions

Whenever the following words and phrases appear in this Chapter, they shall be given the meaning attributed to them by this section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural and the plural the singular; the word "shall" is always mandatory and the word "may" indicates a use of discretion in making a decision. Capitalized words and phrases identify terms defined in this Chapter, other Chapters in Title 16 or Chapters contained in Title 17 ICC.

Alteration: Any change to the boundaries of Lots within a recorded Final Short Plat or Final Plat which does not qualify as a Boundary Line Adjustment, Lot Combination, boundary line correction, Withdrawal or Vacation; any change in easements or areas dedicated to the public; or, any change in conditions of approval of such a Plat.

Alteration of a Critical Area: As defined in Chapters 17.02, 17.02A, or 17.02B ICC as such Chapters~~it~~ may be amended.

Applicant: Any Person who files an Application for Land Division who is either the Person(s) identified in the Assessor's Records as the Owner of Property on which that proposed activity would be located; or the authorized agent of such a Person.

...

Contiguous: Land adjoining and touching other property including lands separated from each other by Private Road or private right-of-way.

Critical Areas: As defined in Chapters 17.02, 17.02A, or 17.02B ICC as ~~it~~ such Chapters may be amended.

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16.06.060 Application Requirements

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A. Short Subdivision and Subdivisions. All Applications for preliminary approval of Short Subdivisions and Subdivisions shall include:

1. A completed Application, in a format as established by the County, shall contain the following:

...

11. Reports and determinations that are required by County Critical Area Regulations, Chapters 17.02, 17.02A, and 17.02B ICC.

B. Boundary Line Adjustments. All Applications for Boundary Line Adjustments shall include:

1. The Application requirements set forth in subsection A.1.a) through d) and A.2 also apply to Boundary Line Adjustments.

2. Legible Boundary Line Adjustment map prepared, on paper not larger than 8.5" by 14", drawn to scale, which shall include the following for all Lots involved in the adjustment. Where location of a feature or Structure is required, a site specific survey by a registered land surveyor is encouraged but not required. If the proposed boundaries are not determined by site specific survey, a notation shall be placed by the County on the face of the map approved by the Planning Director stating that the boundaries have not been formally surveyed:

a) North indicated with an arrow;

b) Use a scale such as; 1" to 100 feet; or whatever engineering or architectural scale which will allow the greatest detail on a single map;

c) Approximate area calculations for the existing and proposed Lots;

d) Approximate location of ~~any~~ significant natural features, such as Critical Areas and their associated buffers;

...

16.06.070 Boundary Line Adjustments

A. Criteria for Approval of a Boundary Line Adjustment. The Planning Director shall approve all complete Boundary Line Adjustment Applications for adjustments which are consistent with the following criteria:

1. The Lots involved in the adjustment are Contiguous legally created Lots;

...

8. Adjustment among existing Lots. For adjustments among two (2) or more Lots in which one (1) or more of the Lots involved in the adjustment is smaller than the current zoning classification, the adjustment would allow a Lot to more nearly conform to the Lot size or setback requirements of Chapter 17.03 ICC or create more buildable Lot configurations. For example, a smaller Lot may be made larger by reducing the size of a larger Lot so that, on balance, greater conformity is achieved.

9. The adjustment shall not result in the creation of a lot which lacks an Adequate Building Site as defined in Chapter 17.02B ICC.

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Chapter 16.13

Hearing Examiner

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16.13.100 Powers

The Examiner shall receive and examine available information, conduct public hearings and prepare a record thereof, and enter decisions as provided for herein.

A. **Final Decisions (Type II).** The decision of the Hearing Examiner on the following Type II Decision appeals shall be final unless such decision is appealed to Superior Court or, in the case of an appeal of a SEPA threshold determination issued for a legislative action initiated pursuant to Chapter 36.70A RCW, to the Growth Management Hearings Board as provided in ICC 16.19.205 or RCW 90.58.180 (Shorelines Hearings Board appeals):

1. Appeals from decisions of the short plat administrator; appeals of Planned Residential Development Decisions for projects of four (4) Dwelling Units or less;

...

11. Appeals of decisions of the Public Works Director under Chapters 11.02, 11.03 and 11.04 ICC; ~~and~~
12. Appeals of decisions of the Island County Building Official under Chapter 14.01A ICC;~~.~~ and
13. Appeals of Type II Decisions issued under Chapter 17.02B ICC.

B. **Appealable Decisions (Type III).** The decision of the Examiner on the following matters shall be final unless such decision is appealed as provided in ICC 16.19.170, WAC 173-17-060 (Shoreline Civil Penalties), or Chapter 16.21 ICC (Shoreline Administration); or is appealed in accordance with RCW 90.58.180 (Shorelines Hearings Board appeals):

1. Shoreline substantial development permit, Conditional Use, and variance permits when the underlying permit requires a hearing; rescission of such permits;

...

7. Commercial Agriculture Zoning verifications; ~~and~~
8. Rezones classified Type III Decisions by Chapters 17.03 and 16.19 ICC;~~.~~ and
9. Critical Area Variance requests as provided in Chapter 17.02B ICC.

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Chapter 16.14C

County Environmental Policy

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16.14C.030 Additional Definitions

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this Chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

A. **Department** means any division, subdivision or organizational unit of the County established by ordinance, rule, or order.

...

E. **Lands Covered by Water**: As used in Chapter 197-11 WAC, lands covered by water refers to wetlands, streams and deep water habitat regulated by Chapters 17.02, 17.02A and 17.02B ICC and to lands below the ordinary high water mark of shorelines regulated by the Shoreline Master Program.

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16.14C.160 Substantive Authority

A. The policies and goals set forth in this Chapter are supplementary to those in the existing authorization of Island County.

...

D. The County designates and adopts by reference the following policies as the basis for the County's exercise of authority pursuant to this section:

1. The State/County Health Department Saltwater Intrusion Policy dated 7/21/89;

...

18. Gravel Mining Operation Policy; ~~and~~

19. Critical Area Regulations (Chapter 17.02 ICC)~~.~~;

20. Critical Area Regulations (Chapter 17.02A ICC); and

21. Critical Area Regulations (Chapter 17.02B ICC).

...

16.14C.190 Environmentally Sensitive Areas

A. Island County may designate environmentally sensitive areas under the standards of WAC 197-11-908 and shall file maps designating such areas, together with the exemptions from the list in WAC 197-11-908 that are inapplicable in such areas, with the Island County Auditor and the Department of Ecology, Headquarters Office, Olympia, Washington. The environmentally sensitive area designations shall have full force and effect of law as of the date of filing.

B. Island County has selected the following categorical exemptions that will not apply in Critical Areas as defined in Chapter 17.02B ICC:

1. WAC 197-11-800(1); and

2. WAC 197-11-800(2)(a) through (g); and

3. WAC 197-11-800(6)(a); and

4. WAC 197-11-800(23)(a) through (d); and

5. WAC 197-11-800(24)(g)

C. The scope of environmental review associated with actions within the areas identified above shall be limited to the following:

1. Documenting whether the proposal is consistent with the requirements of Chapter 17.02B ICC; and

2. Evaluating potentially significant impacts on the Critical Area resources not adequately addressed by Island County Code requirements and permit application materials, if any, including any additional mitigation measures needed to protect Critical Areas in order to achieve consistency with SEPA and other applicable environmental review laws.

D~~B~~. The County shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this Chapter, making a threshold determination for all such proposals. The County shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

E~~C~~. Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether lands covered by water are mapped.

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Chapter 16.15

Site Plan Review

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16.15.040 Application Requirements

Except as provided in section 16.15.050, each application for Site Plan Review shall include the following information:

A. A completed application in a format as established by the County shall contain the following:

1. Name, mailing address, and telephone number of the applicant and if applicable, duly authorized representative;

2. Assessor's tax account numbers of every Parcel included within the proposal;

3. Section, Township, Range, and Quarter Section;

...

19. Environmental Checklist if required by Chapter 16.14C and Chapter 197-11 WAC; and

20. Reports and determinations that are required by ~~the County Critical Areas Ordinance,~~ Chapters 17.02, 17.02A, and 17.02B ICC.

...

16.15.060 Conditions of Approval for NR Uses in the R, RR, RA, RF, and CA Zones

Except for Essential Public Facilities, no application for a NR use in the Rural, Rural Residential, Rural Agriculture, Rural Forest or Commercial Agriculture Zones shall be approved unless a specific finding is made that the proposed conditional use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:

A. The proposed use shall not result in a significant adverse environmental impact that cannot be mitigated by reasonable mitigation measures.

...

E. The location, size, design and operating characteristics of the proposed development/use would not be detrimental to the neighborhood, nor be detrimental to the public interest, health, safety, or welfare of the County in conformance with the standards of this Chapter, Chapter 17.02 ICC, Chapter 17.02A ICC, Chapter 17.02B ICC, and Chapter 17.03 ICC.

F. The proposed use and its design fulfill the definition of rural character as defined in Chapter 17.03 ICC.

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16.15.080 Criteria for Approval

A. No application for Site Plan Review shall be approved unless it meets the requirements of this section. No development pursuant to an approved Site Plan shall be undertaken unless it meets the requirements of Titles 8, 11, 13 and 17 ICC pertaining to such development.

1. Open Space. Provide Open Space in the amount required by Chapter 17.03 ICC. The location, use and design shall meet the following standards:

a) Include critical areas designated and regulated by Chapters 17.02, 17.02A, and 17.02B ICC; and

b) Include areas of prime soils identified by NRCS.

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Chapter 16.17

Planned Residential Development

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16.17.040 Application Requirements

Except as provided in ICC 16.17.050, each application for approval of a Planned Residential Development shall include the following information:

A. A completed application in a format established by the County shall contain the following:

1. Name, mailing address, and telephone number of the Applicant and if applicable, duly authorized representative;

...

18. Environmental Checklist if required by Chapter 16.14C and Chapter 197-11 WAC; and

19. Reports and determinations that are required by Island County Critical Area ~~Ordinance,~~regulations under Chapters 17.02, 17.02A, and 17.02B ICC.

...

16.17.070 Specific Criteria for Approval

A. No application for PRD approval shall be approved unless it meets the requirements of this section. No development pursuant to an approved PRD shall be undertaken unless it meets the requirements of Titles 8, 11, 13, 16 and 17 ICC.

1. Preservation of natural features.

a) Proposed Structures, Uses and Roads shall be located to minimize disturbance to natural features by, for example, minimizing tree and soil removal.

b) Open Space, in the amount required by Chapter 17.03 ICC, shall be clearly defined and protect natural features in the following order of importance or priority:

(i) first, include critical areas designated and regulated by Chapters 17.02, 17.02A, and 17.02B.

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Chapter 16.19

Land Use Review Process

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16.19.040 Application/Decision Types, Permit Classifications, and Urban Growth Area/Joint Planning Area Procedures

A. Application Types. Applications and decisions for review pursuant to this Chapter shall be categorized as a Type I, II, or III decision as set forth in Table A.

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B. Permit Classifications: Land Use decisions shall be categorized by Application type as set forth in Table B.

TABLE B
Permit Classifications

CODE CHAPTER	**I**	**II**	**III**	**IV**
Chapters 11.02, 11.03, 11.04, 14.01A, 16.06, 16.14, 16.15, 16.17, 17.02, 17.02A, 17.02B, 17.03, 17.05		Any otherwise Type I application/decision not exempt from SEPA threshold determinations		
Chapters 11.02, 11.03 and 11.04	Administrative Determinations exempt from SEPA threshold determinations			
Chapter 14.01A	Building Permits exempt from SEPA threshold determinations			
Chapter 15.02	Storm and Surface Water Utility Charges			
Chapter 15.03	Clean Water Utility Rate Adjustments and/or Classification Changes			
Chapter 16.06	Administrative Determinations Boundary Line Adjustments Final Subdivision and Short Subdivision Decisions that are all exempt from SEPA threshold determinations	Preliminary Short Subdivision Decisions Alterations, Withdrawal or Vacation of a Short Subdivision	Preliminary Subdivision Decisions Alterations, Withdrawal or Vacation of a Subdivision	
Chapter 16.14C	SEPA categorical exemption decisions for Type 1 Decisions	SEPA categorical exemption decisions and SEPA threshold determinations for Type II Decisions	SEPA categorical exemption decisions and SEPA threshold determinations for Type III Decisions	
Chapter 16.15	Administrative Determinations exempt from SEPA threshold determinations	Administrative Conditional Uses (see 16.15 and 17.03)	Quasi-Judicial Conditional Uses (see 16.15 and17.03)	

-- CONTINUED ON NEXT PAGE --

TABLE B (Continued)
Permit Classifications

CODE CHAPTER	**I**	**II**	**III**	**IV**
Chapter 16.17	Administrative Determinations exempt from SEPA threshold determinations	PRDs of 4 or less units	PRDs of 5 or more units	
Chapters 17.02, ~~and~~ 17.02A, and 17.02B	Permitted Use/Reasonable Use Determinations Adaptive Management Orders Administrative Determinations Single Family On Existing Lot Wetland Map Corrections Rural Stewardship Plans Voluntary Improvement Plans that are all exempt from SEPA threshold determinations Exemption Authorizations	Permitted Use/Reasonable Use Determinations Reasonable Use Compliance Restoration Plans Permitted Alteration Permits	Alterations of Deepwater Habitat or FWHCA Permitted Use/Reasonable Use Determinations Base Density Exceptions Critical Area Variances	Designation of Habitats or Species of Local Importance
Chapter 17.03	Animal Management Plan RA, and RF Rezones Temporary Use Approvals Permitted Uses Farm (BMP) Management Plan that are all exempt from SEPA threshold determinations	Zoning Code Interpretations Zoning Variances Zoning Setback Reductions Certificates of Zoning Compliance Administrative Conditional Uses Enforcement Orders	Quasi-Judicial Conditional Uses CA, RA and RF Rezones Revocations of Permits and Approvals	Special Review District Approvals Zoning Code Amendments Farm/EDU Management Plan Approvals CA/RA/RF Verifications Designation of Existing Master Planned Resorts
Chapter 17.05	Shoreline Exemptions Administrative Determinations exempt from SEPA threshold determinations	Shoreline Substantial Development Permits Shoreline CUP and Variances	Shoreline Permit Approvals for Quasi-Judicial Uses	Shoreline Master Program Amendments

EXHIBIT E

TITLE XVII

ZONING

Chapters:

17.02 **Old Island County Critical Areas Ordinance**

17.02A **New Island County Critical Areas Ordinance**

17.02B **Island County Critical Areas Regulations**

17.03 **Island County Zoning Code**

17.04 **Ebey's Landing National Historical Reserve (Superseded by 17.04A)**

17.04A **Ebey's Landing National Historical Reserve Design Review and Community Design Standards**

17.05 **Shoreline Use Regulations**

Chapter 17.02

Old Island County Critical Areas Ordinance

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17.02.040 Critical Areas

A. **Purpose.** This section establishes general requirements and regulations for the protection of critical areas pursuant to the Growth Management Act.

1. For a Development Proposal submitted prior to the effective date of Chapter 17.02A ICC, unless an Owner or applicant elects voluntarily to have a complete application reviewed under that Chapter, the application shall be reviewed under this Chapter.

2. Unless an Owner or applicant elects voluntarily to comply with the Critical Area requirements of Chapter 17.02A ICC, all Agricultural practices, on lands that contain or are affected by Critical Areas or Critical Area Buffers, shall comply with this Chapter.

B. **Applicability.** This section shall apply to all properties referenced in subsection A which contain or are affected by Critical Areas or Critical Areas Buffers except as specifically noted below. Designated critical areas are:

1. Wetlands. Wetlands are regulated pursuant to the Wetlands Overlay Zone, ICC 17.02.050.A, the Land Use Standards governing wetlands, deepwater habitats and their surrounding buffers, ICC 17.02.060, 17.03.260.I and the Land Development Standards, Chapter 11.01 ICC.

2. Fish and Wildlife Habitat Conservation Areas. ~~Fish and Wildlife Habitat Conservation Areas are regulated pursuant to the Fish and Wildlife Habitat Conservation Areas Overlay Zone, ICC 17.02.050.C, the health regulations governing the design and installation of on-site sewage systems, Chapter 8.07D ICC, and the Land Development Standards, Chapter 11.01 ICC.~~ Fish and Wildlife Habitat Conservation Areas shall be regulated as follows:

   a) Until such time that the updated Island County Shoreline Master Program adopted by Resolution C-125-12 is approved by the Washington State Department of Ecology, Fish and Wildlife Habitat Conservation Areas within the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by this Chapter.

   b) Upon approval by the Washington State Department of Ecology of the updated Shoreline Master Program adopted by Resolution C-125-12, Fish and Wildlife Habitat Conservation Areas within the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by the Island County SMP.

   c) Fish and Wildlife Habitat Conservation Areas outside of the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by the provisions of Chapter 17.02B ICC.

   d) Fish and Wildlife Habitat Conservation Areas shall also be regulated pursuant to health regulations governing the design and installation of on-site sewage systems, Chapter 8.07D ICC, and the Land Development Standards, Chapter 11.01 ICC.

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Chapter 17.02A
New Island County Critical Areas Ordinance

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17.02A.020 Designated Critical Areas

This Chapter shall apply to all properties located in Island County that contain or are affected by designated Critical Areas or Critical Area Buffers except as noted below. Designated Critical Areas are:

A. Wetlands. Wetlands are regulated by this Chapter, Chapters 17.02 and 17.03 ICC; the health regulations governing the design and installation of on-site sewage systems; the Land Development Standards Ordinance, Chapter 11.01 ICC; the Clearing and Grading Ordinance, Chapter 11.02.ICC; the Storm Water Management Ordinance, Chapter 11.03 ICC; and the Shoreline Master Program, Chapter 17.05 ICC.

B. Fish and Wildlife Habitat Conservation Areas. Fish and Wildlife Habitat Conservation Areas shall be regulated as follows:

   1. Until such time that the updated Island County Shoreline Master Program adopted by Resolution C-125-12 is approved by the Washington State Department of Ecology, Fish and Wildlife Habitat Conservation Areas within the jurisdiction of the Island County

Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by Chapter 17.02 ICC.

2. Upon approval by the Washington State Department of Ecology of the updated Shoreline Master Program adopted by Resolution C-125-12, Fish and Wildlife Habitat Conservation Areas within the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by the Island County SMP.

3. Fish and Wildlife Habitat Conservation Areas outside of the jurisdiction of the Island County Shoreline Master Program (SMP) and the Washington State Shoreline Management Act (SMA) shall be regulated by the provisions of Chapter 17.02B ICC.

4. Fish and Wildlife Habitat Conservation Areas shall also be regulated pursuant to health regulations governing the design and installation of on-site sewage systems, Chapter 8.07D ICC, and the Land Development Standards, Chapter 11.01 ICC. ~~Fish and Wildlife Habitat Conservation Areas are regulated by Chapters 17.02 and 17.03 ICC; the health regulations governing the design and installation of on-site sewage systems, Chapter 8.07D ICC; and the Land Development Standards, Chapter 11.01 ICC.~~

C. Geologically Hazardous Areas. Geologically hazardous areas are regulated by Chapters 11.02 and 11.03 ICC.

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17.02A.030 Definitions

Unless expressly noted otherwise, words and phrases that appear in this Chapter shall be given the meaning attributed to them by this section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural and the plural the singular; the word "shall" is always mandatory and the words "may" and "should" indicate a use of discretion in making a decision. Capitalized words and phrases identify a term defined in this Chapter; other Chapters of Title 17; or Chapters contained in Title 16.

Accessory Use or Structure: A Use or Structure customarily considered incidental to or secondary to a Permitted Use or an approved Conditional Use on a Lot or on adjacent Lots under the same ownership. Examples of Accessory Structures include, but are not limited to, sheds, shops, garages, greenhouses, barns, Guest Cottage, etc.

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Habitat Management Plan: For Wetlands, a site-specific plan for Maintaining, Re-establishing, Rehabilitating, Enhancing, Creating or Preserving Habitat for a Wetland Dependent Species. For Fish and Wildlife Habitat Conservation Areas, specific requirements for a Habitat Management Plan (HMP) are set forth in Chapter 17.02B ICC.

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Protected Species: Species of flora and fauna listed by the federal government or the State of Washington as endangered, threatened or sensitive which are present in Island County and those species of flora and fauna which, while not necessarily endangered or threatened, are determined by Island County to be worthy of a higher level of protection than other species and are designated as Species of Local Importance under Chapter 17.02B ICC

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Species of Local Importance: Plants or animals designated by the County pursuant to Chapter 36.70A RCW. The procedure and criteria for such designations are set forth in Chapter 17.02B ICC and the designated Species of Local Importance are listed in Appendix A to that Chapter.

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17.02A.070 Critical Area Mitigation

A. General Mitigation Standards

1. Mitigation shall be required to compensate for any approved Alteration of a Wetland or Fish and Wildlife Habitat Conservation Area or Buffer for these Critical Areas. Mitigation requirements shall be established after determining that the Alteration cannot be avoided, reduced or Restored as required by ICC 17.02A.040.A.5.

2. Unless clearly specified otherwise, all Mitigation required under this Chapter shall be based on an approved Mitigation Plan. Mitigation Plan requirements for Wetlands are set forth in ICC17.02A.090 and for Fish and Wildlife Habitat Conservation areas in Chapter 17.02B ICC. All Mitigation shall be Monitored, typically by the Applicant, and a Contingency Plan shall be required for any approved Mitigation.

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17.02A.100 Fish and Wildlife Habitat Conservation Areas (See ICC 17.02.050C and Chapter 17.02B ICC)

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Chapter 17.03
Island County Zoning Code

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17.03.030 User Guide

A. Three different sections of the Zoning Code need to be consulted to understand what land Use activity can be conducted in the County. First, turn to the applicable Zone classification. You will find both Permitted and Conditional Uses. Second, once you have located your intended Use, check the definition section for the definition of special terms, ICC 17.03.040. Capitalized words and phrases identify a defined term. Third, check to see if special conditions or land Use standards are applicable to the Use. You will find these standards in the land Use standards section, ICC 17.03.180. If you find no special standards for a listed Use, then none are expressly required by this Zoning code. Though not typically used, site specific conditions may be imposed to address impacts of a proposal. Other Chapters of Title 17 may also require compliance. Chapters 17.02, 17.02A, and 17.02B Critical Areas and Chapter 17.05 Shoreline Use Regulations may impose special standards and in some cases limit Uses otherwise allowed by the Zoning Code. For example, Chapter 17.05 ICC provides for and establishes standards for some specific shoreline uses. Other titles of the Island County Code may also need to be consulted as well, such as Health (Title 8), Land Development Standards (Title 11), Public Works (Title 13), Building (Title 14) and Planning and Subdivision (Title 16).

...

17.03.040 Definitions

Unless expressly noted otherwise, words and phrases that appear in this Chapter shall be given the meaning attributed to them by this section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural and the plural the singular; the word "shall" is always mandatory and the words "may" and "should" indicate a use of discretion in making a decision. Capitalized words and phrases identify a term defined in this Chapter; other Chapters of Title 17; or Chapters contained in Title 16. Unless otherwise noted, the words and phrases defined in this section shall apply, unless a more specific definition is provided in another Title or Chapter of Island County Code.

17.03.050 Zoning Classifications and Overlays

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C. Maps of Zoning Classifications, Shoreline Environments and Overlays

1. Zoning classifications established by this Chapter are bounded and defined as shown on the official zoning maps contained in the Zoning Atlas of Island County, which together with all explanatory materials contained thereon, are hereby made a part of this Chapter. The Zoning Atlas shall also identify approved surface mining operations and lands that have been designated mineral lands of long term commercial significance.

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4. Certain areas have also been mapped as Overlay Zones. Generally, except for the potential UGA Expansion Area Overlay these areas are defined and regulated by Chapters 17.02, 17.02A, and 17.02B ICC. Shoreline areas are also subject to additional regulations and mapped shoreline environment designations. Uses in these areas are governed by Chapter 17.05 ICC.

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17.03.082 Oak Harbor – Industrial (OH-I) Zone

The OH-I district is intended to accommodate certain industrial structures and uses having physical and operational characteristics, which might adversely affect adjoining residential and commercial uses. Regulations are designed to permit those industrial uses that can be operated in a clean, quiet and safe manner compatible with adjoining land uses.

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G. Land Use Standards

All projects shall comply with applicable use standards of ICC 17.03.180 unless modified by this Section; Critical Area Standards, Chapters 17.02, 17.02A, and 17.02B ICC; and Island County AICUZ Standards.

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17.03.083 Oak Harbor - Highway Service Commercial (OH-HSC) Zone

The Highway Service Commercial Zone (OH-HSC) is intended to permit the establishment of facilities within the Oak Harbor Municipal Urban Growth Area oriented toward uses dependent upon highway location. It is intended that such districts should be placed at locations providing the highest degree of usefulness to the traveling public and maintain an attractive, functional and safe highway corridor within the Oak Harbor UGA.

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G. **Land Use Standards**

All projects shall comply with applicable use standards of ICC 17.03.180 unless modified by this Section; Critical Area Standards, Chapters 17.02, 17.02A, and 17.02B ICC; and Island County AICUZ Standards.

17.03.084 Oak Harbor - Planned Business Park (OH-PBP) Zone

The purpose and intent of the Planned Business Park is to:

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G. **Land Use Standards**

All projects shall comply with applicable use standards of ICC 17.03.180 unless modified by this Section; Critical Area Standards, Chapters 17.02, 17.02A, and 17.02B ICC; and Island County AICUZ Standards.

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17.03.086 Oak Harbor-Planned Industrial Park (OH-PIP) Zone

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G. **Land Use Standards**

All projects shall comply with applicable use standards of ICC 17.03.180 unless modified by this Section; Critical Area Standards, Chapters 17.02, 17.02A, and 17.02B ICC; and Island County AICUZ Standards.

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17.03.160 Special Review District

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D. **Standards.** The Site Plan approval criteria set forth in Chapter 16.15 ICC shall be applied to a Master Plan for a Special Review District. In addition, the proposed uses may be approved only upon determining that features of historical, archaeological or environmental significance will be enhanced, conserved or highlighted. Further, reasonable conditions may be required to ensure that the proposed Master Plan protects Rural Character. Unless waived or modified by the Board in its approval, the Land Use standards set forth in ICC 17.03.180 shall apply to all Uses. The following standards shall also apply:

1. The land area that is included in the acreage calculation must consist of land that is either physically or functionally connected to the primary use of the site. The applicant must demonstrate one of the following:

    a) All 150 acres are contiguous, or

    b) For any land that is not contiguous, it must be demonstrated that there is an interdependence between the primary use(s) and the use of the non-contiguous property. The applicant shall describe the relationship between any properties that are not contiguous, why they are binding upon each other, and why it is necessary that the non-contiguous property must be included in order to achieve the purpose, goals and objectives of the Master Plan beyond merely meeting the minimum acreage requirement.

2. The 150 acres may consist of any upland areas as well as any areas that consist of critical areas and their buffers as established in Chapters 17.02, 17.02A, and 17.02B ICC.

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17.03.161 Au Sable Institute (SD-ASI) Zone

The Au Sable Institute (SD-ASI) Zone is applied to a one-hundred-seventy-five (175) acre site in Central Whidbey that is owned and operated by the Au Sable Institute. This zone allows for development and specific uses that have been approved through the adoption of a Master Plan. The purpose and intent of the Master Plan is to provide long term protection to environmentally, historically and archaeologically significant lands while allowing uses, activities and development that will enhance, conserve or highlight these features of significance.

All Permitted and Conditional Uses shall comply with the applicable Land Use Standards of ICC 17.03.180. For those Land Use Standards that are addressed in the approved Master Plan, standards in the Master Plan shall be applicable. For those Uses that are not specifically listed as permitted or conditional and are not specifically identified in the Master Plan, the Planning Director shall have the authority to make Code Interpretations pursuant to ICC 17.03.190. All development shall adhere to Critical Area Regulations as they are prescribed in Chapters 17.02, 17.02A, and 17.02B ICC.

...

17.03.163 Greenbank Farm Port Tract (SR-GF) Zone

...

This zone allows for development and specific uses that have been approved through the adoption of a Master Plan. All permitted and conditional uses shall comply with the Land Use Standards of ICC 17.03.180 unless otherwise directed in this section or the Master Plan. If there is a conflict between standards of this section or with standards in other sections of this chapter, the Master Plan shall prevail. For those uses that are not specifically listed as permitted or conditional and are not specifically identified in the Master Plan, the Planning Director shall have the authority to make Code Interpretations pursuant to ICC 17.03.190. All development shall adhere to the Critical Area Regulations as they are prescribed in Chapters 17.02, 17.2A, and 17.02B ICC, the Land Development Standards of Title 11 and all other applicable regulations. The SR-GF Zone includes four sub-

designations; Area 1 is Agriculture, Area 2 is Recreation, Area 3 is Commercial and Area 4 is Environmentally Sensitive.

A. Area 1 – Agriculture

...

D. Area 4 – Environmentally Sensitive

1. Permitted Uses. These uses, activities and standards have been approved through and are subject to the Master Plan. These uses are processed as Type I decisions pursuant to Chapter 16.19 ICC, however, additional permit requirements may be necessary pursuant to the Critical Area regulations set forth in Chapters 17.02, 17.02A, and 17.02B ICC~~, the Critical Areas Ordinance~~. Prior to conducting any activity or establishing any use in this area, the provisions of Chapters 17.02, 17.02A, and 17.02B ICC shall be satisfied and adhered to.

   a) Low impact trails and recreational uses;

   b) Birding Platforms; and

   c) Interpretive areas.

2. Prohibited Uses.

   a) Any Structure, Uses or Activity that does not meet the standards of Chapters 17.02, 17.02A, and 17.02B ICC, the Critical Areas Regulations;

   b) Agriculture is prohibited within a regulated critical area or its buffer; and

   c) Camping.

E. Annual Review Amendments. Any amendment to the Master Plan, the Comprehensive Plan or to this ordinance shall be processed as an Annual Review Amendment pursuant to Chapter 16.26 ICC.

F. Setbacks and Heights

1. Setbacks from designated critical areas shall comply with buffer and setback provisions of Chapters 17.02, 17.02A, and 17.02B ICC.

...

17.03.180 Land Use Standards

The Land Use Standards contained in this section supplement the general land Use regulations of this Chapter and the specific development standards contained in other Chapters of the Island County Code.

A. **General Standards for Nonresidential Uses in the Rural, Rural Residential, Rural Forest, Rural Agriculture and Commercial Agriculture Zones**

...

S. **Site Coverage and Setbacks**

1. Site Coverage. Lot or Parcel site coverage is established by a ratio percentage based on the gross site area of the property. Specific coverage ratios are as follows:

...

7. Special Shoreline Setbacks

   a) The standard Shoreline Setback for Dwelling Units shall be fifty (50) feet landward of the OHWM except for the Conservancy and Natural Environments, where the setback shall be seventy-five (75) feet landward of the OHWM.

   b) A greater Setback may be required if necessary to comply with the grading, geologically hazardous area, erosion control and drainage requirements of Chapter 11.02 ICC and Chapter 11.03 ICC and/or the critical areas regulations contained in Chapters 17.02, 17.02A, and 17.02B ICC.

   c) For the purpose of accommodating shoreline views within existing developed areas. Setbacks for residential uses may be reduced consistent with the following:

      (i) Where there are Existing principal residences that encroach on the established setback within two-hundred-forty (240) feet of either side of the proposed building footprint, the required setback for the proposed structure may be reduced by review and approval of the Shoreline Administrator. In such cases, the setback of the proposed residential structures may be reduced to the average of the setbacks of the existing adjacent principal residences.

      (ii) In those instances where only one (1) Existing principal residence is within two-hundred-forty (240) feet of either side of the proposed building site, the Setback of the proposed structure may be reduced (with approval of the Administrator) to the average of the Setbacks for the existing adjacent principal residence and the applicable Setback for the adjacent vacant parcel.

      (iii) The reduced setbacks applied above shall not be less than twenty-five (25) feet landward of the OHWM except for the Natural and Conservancy Environments, where the minimum shall be fifty (50) feet, unless required to comply with the Setback requirements of this Chapter and Chapters 17.02, 17.02A, and 17.02B ICC.

...

U. **Surface Mining.** The purpose of this subsection is to protect from encroachment reserves of nonrenewable resources and minimize increases in costs of new construction. Also the purpose of this chapter is to establish standards which minimize the impacts of extractive operations upon surrounding properties by: ensuring adequate review of operating aspects of extractive sites; requiring project phasing on large sites to minimize environmental impacts; and requiring minimum site areas large enough to provide setbacks and mitigations necessary to protect environmental quality. Surface Mining is prohibited in the Commercial Agriculture Zone.

1. Application Requirements. Applications will be reviewed through the Site Plan review process as a Type III application set forth in Chapter 16.15 ICC. If the proposed surface mine is not identified on the Mineral Resource Lands Map E of the Comprehensive Plan, an annual review amendment application shall be submitted concurrently with the Site Plan

Review application. If the project is granted site plan approval prior to being added to Map E the applicant may develop the project pursuant to Site Plan Review conditions and does not have to wait for the Comprehensive Plan Amendment. In addition to the information required by Chapters 8.09 and 16.15 ICC, the applicant must provide the following information:

...

3. Standards - Reclamation

a) General requirements. Reclamation of mined lands shall be carried out in accordance with the requirements of this section, the approved Reclamation plan, and Chapter 78.44 RCW. The operator shall guarantee all Reclamation work accomplished for a period of two (2) years or such greater period as may be determined necessary by the Hearing Examiner to assure the permanency of any or all physical Reclamation features.

b) Progressive Reclamation. Reclamation of mined areas shall take place as soon as practical following completion of Surface Mining at successive locations within the mining site as specified by the Hearing Examiner in the approval of the Reclamation plan.

...

d) Drainage, erosion and sediment control

(i) Any temporary stream or watershed diversion shall be restored in final Reclamation unless determined unnecessary by the Hearing Examiner, based on recommendation of the County Engineer. Stream diversions shall comply with the Critical Area requirements of Chapters 17.02, 17.02A, and 17.02B ICC.

...

W. Scenic Corridors

The purpose of the Scenic Corridor standards is to establish the general design guidelines for aesthetic improvements on the main entrance roadways to a city/town/non-municipal Urban Growth Area. Existing significant trees and understory vegetation should be preserved that can be incorporated into the landscape design of development proposed along the designated scenic corridors. These standards are intended to result in development that provides a visual buffer between development and the road, and maintains a continuity of the City's/Town's/Non-Municipal Urban Growth Area design concepts and preserves existing natural vegetation.

1. Langley Scenic Corridors within the Urban Growth and Joint Planning Areas:

...

Coupeville Scenic Corridors:

a) The purpose of the Coupeville Scenic Corridors is to protect existing stands of significant trees and understory vegetation outside the public right-of-way. The following roads within the Coupeville Joint Planning Area as shown on Map B-1 of the Island County Comprehensive Plan as subarea 2 will be afforded additional standards listed herein:

...

b) A minimum setback of fifty (50) feet is established where structures may not be constructed in subarea 2. The fifty (50) feet setback shall be measured outside of and adjacent to the right-of-way on private or public property, on each side of the identified roadways. For lots less than one (1) acre in size, the setback may be reduced as necessary to allow reasonable economic use of the property as a Type II Planning and Community Development Director decision pursuant to ICC 16.19. The setback shall not be reduced to less than twenty (20) feet unless it is necessary to achieve a R~~r~~easonable U~~u~~se ~~pursuant to ICC 17.02.107.D~~as defined in Chapters 17.02, 17.02A, and 17.02B ICC.

...

Y. **Existing Master Planned Resorts.** Through the Type IV decision process, Existing Master Planned Resorts may be designated provided that future development and specific uses have been approved through the adoption of a master plan. The purpose and intent of the master plan is to provide long term protection to environmentally, historically and archaeologically significant lands, while allowing uses, activities and development that will enhance, conserve or highlight these features of significance. This section is established for the purpose of allowing Existing Master Planned Resorts to be recognized in the Island County Code thereby enabling existing resorts to carry out future development plans. In the absence of this section of County code, uses that now qualify as an Existing Master Planned Resort were regulated under the provisions of the underlying zoning designation. Uses that qualify as an Existing Master Planned Resort do not conform to the underlying zoning designation and would therefore be subject to the Existing Uses section of this Chapter found in 17.03.230. The urban nature of Existing Master Planned Resorts as defined by RCW 36.70A.362 was not acknowledged or accommodated before the establishment of this section.

1. Existing Master Planned Resorts must adhere to the standards defined in RCW 36.70A.362.

a) The master plan must show that the land is better suited, and has more long term importance, for the existing resort than for the commercial harvesting of timber or agricultural production, if located on land that would otherwise be designated as forest land or agricultural land under RCW 36.70.110 and 36.70A.170.

...

e) The master plan for the Existing Master Planned Resort shall be consistent with standards, requirements, and provisions of Chapters 17.02, 17.02A, and 17.02B ICC ~~ICC, the County Critical Areas Ordinance~~.

...

2. A master plan shall demonstrate how the existing resort meets the requirements of ICC 17.03.180.G(1) AND include the following:

a) An inventory of the existing structures and land uses on the property where the proposed Existing Master Planned Resort exists.

...

h) A resource management plan that outlines management strategies for timber or agricultural~~e~~ lands and sensitive or threatened species as identified in Chapter 17.02B

ICC.

...

17.03.190 Code Interpretation

The Planning Director shall interpret by written decision the text of this Chapter pursuant to the terms and conditions of this section.

A. **Purpose.** This section provides a simple and expeditious method for clarifying ambiguities in the text of this Chapter or classifying Uses that are not expressly referenced. Broad latitude has been provided in the specific Uses enumerated in each land Use classification. Therefore, interpretation will be required, from time to time, to overcome inadvertent rigidities and limitations inherent whenever lists of specific Uses are established. Prohibited Uses are identified expressly. There is no presumption that a Use that is not listed is or should be prohibited. Code interpretations are used to establish the proper classification of unnamed Uses and allow for the formalization of other interpretations that may be required to effectively administer the Zoning Code. Code interpretation can be initiated by the County or requested by an Owner.

...

E. **Time Limit.** Use interpretations shall remain in effect until modified by a subsequent code interpretation or code amendment.

F. **Applicability to Chapter 17.02B ICC.** The procedures outlined in this section shall also be used to issue interpretations of Chapter 17.02B ICC, subject to any additional requirements or provisions set forth in ICC 17.02B.050.

...

17.03.210 Variances

The Planning Director may authorize variances from the standards of this Chapter pursuant to this section.

A. **Purpose.** The purpose of this section is to allow the County to consider requests to vary or adapt the strict application of any of the following provisions of this Chapter:

1. Setback requirements of this Chapter.

...

7. The performance and dimensional standards of Chapter 17.02B ICC.

...

C. **Review Process.** The review process for variances shall be the review process set forth in Chapter 16.19 ICC for Type II decisions and for Type III decisions for height variances and Critical Areas Variances issued pursuant to the provisions of Chapter 17.02B. ICC.

D. **Standards.** No variance shall be granted unless the County makes findings of fact showing that the following circumstances exist:

1. For all variance requests, the applicant demonstrates, and the County finds that:

...

5. For Critical Areas Variance requests allowed pursuant to A.7 of this section, the applicant demonstrates, and the County finds that:

a) The variance request is consistent with the general standards applicable to all variance requests pursuant to D.1 of this section; and

b) The variance request is consistent with the specific criteria applicable to Critical Areas Variances set forth in Chapter 17.02B ICC.

...

17.03.230 Existing Uses

The Planning Director shall act upon applications for certificates of zoning compliance pursuant to the terms and conditions of this section.

A. **Purpose.** This section provides a simple and expeditious process for establishing, upon request of a property Owner, that a Lot, Use or Structure lawfully existed prior to the effective date of this Chapter. In addition, this section establishes the terms and conditions for continuing Existing Uses, Structures and Lots which were lawfully established prior to the effective date of this Chapter and to allow Existing businesses and uses to continue to operate even though the Use is no longer permitted in the zone in which the Use is located.

...

H. **Expansion of Existing Use or Structure and Structural Modifications.** A legally established Existing Use or Structure may be expanded, enlarged, or extended (including extension of hours of operation) provided the expansion conforms to land Use standards set forth in ICC 17.03.180 for parking and Setbacks; the height restrictions of the applicable Zone; and the applicable Critical Area standards of Chapters 17.02, 17.02A, and 17.02B ICC. –Provided that this subsection does not apply to Airports that are not zoned AP, Gun Clubs and Shooting Ranges or Junk and/or Salvage Yards.

...

J. **Existing Certificates of Zoning Compliance.** This new Chapter does not alter or restrict Existing Certificates of Zoning compliance issued pursuant to Chapter 17.02 ICC, prior to the effective date of this Chapter, and any determinations or interpretations contained in a Existing Certificate are not affected by this Chapter.

K. **Applicability to Chapter 17.02B ICC.** This section shall also apply to Lots, Uses, Structures, and Developments which are subject to the standards, requirements, and regulatory provisions of Chapter 17.02B ICC. For such Lots, Uses, Structures, and Developments, the following provisions shall apply in addition to the other provisions of this section:

1. Lots, Uses, Structures, and Developments which in whole or in part are not in conformance with the current standards or requirements set forth in Chapter 17.02B ICC, but which were legally established at a prior date, at which time they were in conformance with all applicable standards, and requirements in effect at the time of their inception shall be deemed a legally Existing Lot, Use, Structure, or Development and may be used as if conforming.

2. Lots, Uses, Structures, and Developments which in whole or in part are not in conformance with the current standards or requirements set forth in Chapter 17.02B ICC and were not in conformance with the applicable standards and requirements at the time of their inception, or subsequent modification, shall be deemed an illegal Lot, Use, Structure, or Development. Such Lots, Uses, Structures, and Developments shall not be approved for any alteration or expansion and actions shall be taken to reach conformance with the current standards and requirements of Chapter 17.02B ICC.

3. The burden of establishing that any Lot, Use, Structure, or Development was legally established in accordance with the applicable standards and requirements in effect at the time of its inception shall, in all cases, rest with the Owner and not with the County.

4. All modifications, expansions, and material alterations to a legally Existing Lot, Use, Structure, or Development shall be consistent with the standards and provisions of Chapter 17.02B ICC.

...

17.03.260 Penalties and Enforcement

The Planning Director is charged with enforcement of the provisions of this Chapter, Chapters 17.02, 17.02A and 17.02B~~A~~, Chapter 17.04, Chapter 17.05, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, and Chapter 14.01A. It shall be unlawful for any Person to construct, enlarge, alter, repair, move, demolish, use, occupy or maintain any Use or cause the same to be done in violation of any of the provisions of this Chapter, Chapters 17.02, 17.02A and 17.02B~~A~~, Chapter 17.04, Chapter 17.05, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, and Chapter 14.01A. Any such violation is declared to be a public nuisance and shall be corrected by any reasonable and lawful means as provided in this section.

A. **Inspections**

...

B. **Cease and Desist Order.** Whenever a continuing violation of this Chapter, Chapters 17.02, 17.02A and 17.02B~~A~~, Chapter 17.04, Chapter 17.05, Chapter 16.06, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, and Chapter 14.01A will materially impair the Planning Director's ability to secure compliance with said Chapters, or when any person is proceeding in defiance of permit requirements issued in conjunction with said Chapters, the Planning Director or his designee may issue a Stop Work Order and the following provisions shall apply:

...

D. **Violators Punishable by Civil Penalties.** The Planning Director may:

1. Take appropriate informal action or institute a proceeding to require compliance with this Chapter or to enjoin, correct or abate any acts or practices which constitute or will constitute a violation. When appropriate, the Planning Director is authorized to waive the permit and/or restoration requirements of this ordinance as necessary to abate or correct a violation of a minor nature. If a violation can be remedied or abated through a permit process and the landowner agrees to submit all necessary applications, a period of up to forty-five (45) days shall be allowed for the landowner to make application for all necessary permits before an Enforcement Order may be issued.

...

4. Suspend or revoke any approvals or permits issued for the same property and/or the property Owner pursuant to this Chapter, Chapters 17.02, 17.02A, and 17.02B~~A~~, Chapter 17.04, Chapter 17.05, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, and Chapter 14.01A ICC. Unless the permit is required as a means to achieve compliance, the Planning Director may also suspend review of any pending permit applications and refuse to process any permit applications applied for through the aforementioned Chapters until compliance is achieved; and

...

E. **Administrative Notice and Order**. Within twenty (20) days of discovery or receiving notice of a potential violation, the Planning Director shall make a determination of whether a violation has occurred, and, if there is a determination that a violation has occurred that cannot otherwise be abated pursuant to subsection D.1, issue an enforcement order. The Planning Director shall notify the complainant of his determination in writing.

Additionally, whenever the Planning Director has reason to believe that a Use or condition exists in violation of this Chapter and that violation will be most promptly and equitably terminated by an administrative proceeding, he may commence an administrative notice and order proceeding to cause assessment of a civil penalty, abatement or suspension of work or revocation of any approvals or permits issued pursuant to this Chapter, Chapter 11.01, Chapter 11.02, Chapter 11.03, Chapter 14.01A, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 17.04, Chapter 17.05 or Chapters 17.02, 17.02A and 17.02B~~A~~ ICC.

1. Enforcement Order. The order may be issued without written or oral notice. The Planning Director shall cause the enforcement order to be directed to and served upon the property Owner on whose property the violation exists, and/or operator of the source of the violation, and/or the Person in possession of the property where the violation originates, and/or the Person otherwise causing or responsible for the violation. In addition, the Order may be posted on the subject property and may be filed in the Office of the Island County Auditor. The order shall require immediate cessation of such work or activity and may temporarily suspend any approval or permit issued under this Chapter, Chapter 11.01, Chapter 11.02, Chapter 11.03, Chapter 14.01A, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 16.21,

Chapter 17.04, Chapter 17.05 or Chapters 17.02, 17.02A and 17.02B~~A~~ ICC. The notice and order shall contain:

...

G. **Revocation of Approvals or Permits**

1. Basis for revocation. The Planning Director may revoke any approval or permit issued under this Chapter, Chapter 11.01, Chapter 11.02, Chapter 11.03, Chapter 14.01A, Chapter 16.06, Chapter 16.14C, Chapter 16.15, Chapter 16.17, Chapter 17.04, Chapter 17.05 or Chapters 17.02, 17.02A and 17.02B~~A~~ ICC until compliance is achieved for:

...

17.03.270 Forest Practices

A. Pursuant to RCW 76.09.060(3)(b)(i)(D) and (E) the following standards shall apply to forest practices conducted in Island County.

...

2. The grading permit application shall be reviewed for consistency with all applicable codes and ordinances of Island County including, but not limited to, Chapters 11.02 (Land Development Standards), 16.14C (SEPA), 17.03 (Zoning) and 17.02, 17.02A, and 17.02B (Critical area regulations) of the Island County Code.

...

Chapter 17.04A

Ebey's Landing National Historical Reserve
Design Review and Community Design Standards

...

17.04A.020 Applicability

This Chapter applies to the geographic area of the Reserve within unincorporated Island County and to all buildings, sites, structures, landscapes, and objects which add to the historic architectural qualities, historic associations, or archeological values of the Reserve which were designated as "Contributing" in the *Building and Landscape Inventory*, prepared for the Ebey's Landing National Historical Reserve; those that are subsequently listed on the *National Register of Historic Places*; and those properties containing protected cultural resources. This Chapter also applies to new construction within the geographic area of the Reserve within unincorporated Island County.

...

Nothing in this Chapter changes any of the requirements or land use entitlements set forth in the Island County Zoning Code (Chapter 17.03 ICC). Nothing in this Chapter changes any of the requirements set forth in the Island County Building and Construction provisions (Title 14 ICC), the Island County Critical Areas Ordinances (Chapters 17.02, 17.02A, and 17.02B~~A~~ ICC), the Island County Shoreline Master Program Use Regulations (Chapter 17.05 ICC), the Island County Planning and Subdivision Provisions (Title 16 ICC), or the Island County Land Development Standards (Title 11 ICC). This Chapter does not apply to timber management activities conducted in accordance with RCW 84.33 or RCW 84.34.

...

Exhibit F

ISLAND COUNTY
PLANNING & COMMUNITY DEVELOPMENT

Val Hillers, Chair

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. Internet Home Page: http://www.islandcounty.net/planning/

~ *MEMORANDUM* ~

To: **Board of Island County Commissioners**

From: **Island County Planning Commission**

RE: **Findings of Fact – Amendments to the Island County Comprehensive Plan and development regulations for Fish and Wildlife Habitat Conservation Areas**

Date: **June 10, 2014**

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 January 25, 2013, the GMHB issued an order requiring Island County to review and update its Comprehensive Plan and development regulations for Fish and Wildlife Habitat conservation areas by July 24, 2013 (GMHB 12-2-0016). The GMHB subsequently extended this deadline to July 24, 2014. In order to address this order, Island County retained a consulting team led by the Watershed Company to review best available science, perform an audit of existing fish and wildlife protection standards, identify any changes necessary to comply with the GMA, and develop revised code language and comprehensive plan policies. This work is now complete, and Island County intends to adopt revised policies and regulations before July 24, 2014.

Findings

1. Island County received an order from the Washington State Growth Management Hearings Board to review and update the Island County Comprehensive Plan and development regulations for Fish and Wildlife Habitat Conservation Areas. Island County must complete this work by July 24, 2014.

2. The Planning Department developed a Public Participation Plan & Preliminary Schedule to ensure for early and continuous public participation during the Fish and Wildlife Habitat Conservation Areas update process.

3. The Planning Commission Considered the Public Participation Plan following public hearings on September 10, 2013 and September 24, 2013. The Planning Commission recommended that the Board of County Commissioners approve the Public Participation Plan & Preliminary Schedule as drafted.

4. The Board of County Commissioners approved the Public Participation Plan, following a public hearing, with Resolution C-96-13 on October 28, 2013.

5. Island County organized a Technical Advisory Group, composed of local experts on habitat conditions in Island County, to provide technical expertise during the update process.

6. The Technical Advisory Group convened seven times between September 20, 2013 and March 11, 2014. The group provided technical feedback on work products; and all meetings were open to the public.

7. Island County received a grant to assist with the update process. As part of the grant agreement, Planning & Community Development considered landscape-scale ecological processes to support the update to the protection standards for Fish and Wildlife Habitat Conservation Areas.

8. Island County attempted to use the Puget Sound Watershed Characterization model to support a watershed-based planning analysis. State agencies made adjustments to the model to account for local conditions; however, Island County Staff and the Technical Advisory Group determined that other data sets were more accurate. As a result, Island County did not use the watershed model as part of the update.

9. Island County is required to use Best Available Science (BAS) to achieve compliance with the Growth Management Act. The Best Available Science and Existing Conditions Report documents the science applicable to Fish and Wildlife Habitat in Island County and complies with the requirements of the Washington State Growth Management Act. Planning & Community Development transmitted the report to the Planning Commission for consideration at public workshops on March 25, 2014 and April 8, 2014.

10. Planning & Community Development transmitted an Audit and Policy/Regulation Framework report to the Planning Commission on March 25, 2014 and April 8, 2014. The report identifies key issues, options, and recommendations to update the Island County Fish and Wildlife Habitat Conservation Areas in a manner which is consistent with the Growth Management Act BAS.

11. The Audit and Policy document identifies a range of riparian buffers which are consistent with BAS. The Planning Commission finds that the buffer widths at the low end of the range are most appropriate for Island County because they are generally consistent with the buffers currently imposed by Island County Code and afford the highest level of land use flexibility. The Planning Commission further finds that because the buffers selected are at the low end of the range supported by BAS, no buffer averaging or buffer reduction should be allowed by the proposed regulations.

12. The SEPA responsible official reviewed the update as a non-project action which applies to all unincorporated areas of Island County not subject to the jurisdiction of the Island County Shoreline Master Program.

13. After review of a completed environmental checklist, the lead agency determined that this amendment does not have a probable significant adverse impact on the environment. The Determination of Non-significance (DNS) was issued using the integrated SEPA/GMA process identified in WAC 197-11-340. The DNS was issued on April 25, 2014, and comments on the non-project action must be submitted by June 23, 2014.

14. This update is not subject to the Annual Review Procedures of Chapter 16.26 ICC, which establishes procedures for the review and amendment of the Comprehensive Plan and implementing development regulations of Island County. The adoption of amendments to resolve an appeal filed with the Growth Management Hearings Board do not have to conform to the requirements of Chapter 16.26 ICC per ICC 16.26.020.B.

15. The Planning Commission finds that the update to the policies and regulations for Fish and Wildlife Habitat Conservation Areas will support the rural character of Island County.

16. It is in the best interest of applicants and County staff to have Critical Areas regulations condensed into a single chapter. The proposed new Chapter 17.02B ICC will create a framework for a unified Critical Areas Ordinance.

17. The Planning Commission understands that prior to the approval of an updated Shoreline Master Program by the Department of Ecology; critical areas within shoreline jurisdiction shall be regulated by locally adopted critical areas regulations rather than by Shoreline Master Program requirements. The Planning Commission further understands that upon approval of an updated Shoreline Master Program, critical areas within the jurisdiction of the Washington State Shoreline Management Act shall be regulated by the Shoreline Master Program. Island County has adopted an updated Shoreline Master Program; however, it has not yet been approved by the Department of Ecology. Accordingly, it is the intent of the Planning Commission that critical areas within shoreline jurisdiction will continue to be regulated by the provisions of Chapters 17.02 and 17.02A ICC

until such time that Island County's locally adopted Shoreline Master Program is approved by the Department of Ecology.

18. The amendments to the Island County Comprehensive Plan, attached hereto as Exhibit A, are consistent with the proposed implementing development regulations. The changes are based on Best Available Science and comply with the requirements of the Washington State Growth Management Act.

19. The regulations attached hereto as Exhibit B, are consistent with and supported by the Island County Comprehensive Plan and the Washington State Growth Management Act. The changes are based on Best Available Science and are sufficient to meet the requirements of the Washington State Growth Management Hearings Board order. The Planning Commission finds that these regulations should be included in Island County Code as a new Chapter 17.02B ICC.

20. The amendments to Title III, Title XVI, and Title XVII, attached hereto as Exhibit C, are not substantive in nature and are necessary to achieve consistency with the amendments to Chapter 17.02B ICC and to fully implement the proposed changes to the Island County Comprehensive Plan.

21. The Planning Commission finds that the five year time limit for maintaining an existing and ongoing agricultural practice identified in ICC 17.02B.300.A should be extended to six years and six months, and further finds that the final draft of the proposed code forwarded to the BOCC should be amended to reflect this change.

22. During the adoption process concern was expressed by some members of the public that the proposed changes to the Island County Comprehensive Plan and critical areas regulations do not adequately protect prairies, oak woodlands, and rare plants. The Planning Commission concurs with the Planning Department and finds that the requirements of the Growth Management Act are satisfied by protecting only those plant species and plant communities which provide habitat for fish or wildlife species. However, the Planning Commission acknowledges that some ambiguity may exist with respect to the required scope of GMA critical area protection standards and the definition of the term "wildlife". The Planning Commission further acknowledges that certain plants and plant communities may be important to the public and worthy of further consideration for protection regardless of whether or not the plant species or plant community provides habitat for fish or wildlife, and hereby directs the Planning Department to fully evaluate the potential for protecting these features during the 2016 periodic comprehensive plan update.

23. Given the significant public interest in this project, the Planning Commission recommends that the Board of Commissioners provide an opportunity for public comment prior to taking final legislative action on this matter.

Conclusion

The Island County Planning Commission has reviewed the proposed changes to the Island County Comprehensive Plan and implementing development regulations; and hereby recommends that the Board of County Commissioners adopt an ordinance to incorporate the proposed amendments, attached hereto as Exhibit A, Exhibit B, and Exhibit C into the Island County Comprehensive Plan.

Respectfully submitted through the Island County Planning Department to the Board of Island County Commissioners, pursuant to RCW 36.70.430, this 17th day of June, 2014 by,

Mike Joselyn,
Acting Chair, Island County Planning Commission

Attachments:

Exhibit "A" – Amendments to the Island County Comprehensive Plan
Exhibit "B" – New Island County Code Chapter 17.02B
Exhibit "C" – Amendments to Title III, Title XVI, and Title XVII

Exhibit G

Board of Island County Commissioners
Findings of Fact

Background and Project Summary

1. The Washington State Growth Management Act (GMA) requires that local governments designate and protect critical areas (RCW 36.70A.170 & 36.70A.060 (2)) and critical areas are defined as including the following areas and ecosystems: wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas (RCW 36.70A.030 (5)).

2. The GMA requires local governments to periodically review, and if necessary, update their comprehensive plans and development regulations (RCW 36.70A.130). This review process is intended to ensure that local plans and regulations are up-to-date and take into consideration changing conditions and advances in technical and scientific knowledge.

3. Island County previously updated its comprehensive plan and development regulations in 2005. During this update Island County reviewed all aspects of its comprehensive plan and development regulations except those dealing with Fish and Wildlife Habitat Conservation Areas (FWHCAs).

4. On January 25, 2013 the Western Washington Growth Management Hearings Board (WWGMHB) issued a decision ordering Island County to review and update the Island County Comprehensive Plan and development regulations for Fish and Wildlife Habitat Conservation Areas (WWGMHB Case No. 12-2-0016). Island County has actively worked to comply with this order.

5. Following the WWGMHB order, Island County immediately took steps to complete the required review and update. Island County listed the FWHCA update on the Annual Review Docket for 2013 and 2014 in accordance with the procedures set forth in Chapter 16.26 of the Island County Code. This work was also identified as a priority item on the 2013 and 2014 Annual Review Docket. The Island County Planning Commission and the Board of Island County Commissioners directed the Department of Planning and Community Development to consider this the highest priority for the long range planning work program.

6. On January 24, 2013 Island County applied for a National Estuary Protection (NEP) Grant to fund work on the FWHCA update. This grant was subsequently awarded in March of 2013.

7. Because the Island County Planning Department has limited staffing resources, the Department retained a professional consulting team to assist with the FWHCA update process. The consultant selection process began with the issuance of a Request for Proposals (RFP) on April 15, 2013. The deadline for firms to respond to the RFP was May 2, 2013. After reviewing proposals and interviewing a number of consulting firms, Island County selected the Watershed Company to provide the necessary technical and administrative assistance.

8. Island County was committed to ensuring that the process for updating protection standards for Fish and Wildlife Habitat Conservation Areas was transparent and easily accessible to interested parties and members of the general public.

9. The GMA requires that local governments take steps to ensure early and continuous public participation in the development and update of plans and regulations. Because of this mandate and the County's commitment to ensuring an open and transparent process, the Planning Department developed a Public Participation Plan & Preliminary Schedule. This document created a timeline for significant actions and decisions and identified essential public participation strategies; these strategies were then employed throughout the update process.

10. The Planning Commission Considered the Public Participation Plan following public hearings on September 10, 2013 and September 24, 2013. The Planning Commission recommended that the Board of County Commissioners approve the Public Participation Plan & Preliminary Schedule as drafted.

11. The Board of County Commissioners approved the Public Participation Plan, following a public hearing, through Resolution C-96-13, on October 28, 2013.

12. Planning & Community Development created an email notification list so that interested members of the public could remain informed about developments during the planning process. Planning & Community Development also created a project webpage with links to relevant materials produced throughout the update process. Documents transmitted to the Planning Commission and Board of Commissioners were also posted on the project website.

13. The GMA requires that local governments include "Best Available Science" (BAS) in the development of policies and regulations to protect the functions and values of critical areas (RCW 36.70A.172, WAC 365-190-080, & WAC 365-195-900). Island County has addressed this requirement by:

a. Retaining a consulting firm to provide qualified scientific experts to assist with the FWHCA update and compilation of BAS as recommended by WAC 365-195-905(3); and

b. Utilizing a Technical Advisory Group comprised of local experts to review, and assist in the selection of BAS material; and

c. Producing a BAS synthesis report which summarizes the BAS material considered during the update process and analyzes the current conditions of habitats and species in Island County; and

d. Producing an Audit and Policy/Regulation Framework document to integrate the findings of the BAS report into the development of specific policies and regulations;

e. Using the Audit and Policy/Regulation Framework document to develop updated comprehensive plan policies and development regulations. Specifically, this document was used to develop revisions to the Land Use Element of the Island County Comprehensive Plan and to develop an entirely new code chapter focused on protection standards for FWHCAs (Chapter 17.02B ICC).

14. Island County organized a Technical Advisory Group, comprised of local experts on habitat conditions in Island County, to provide technical expertise during the update process.

15. The Technical Advisory Group (TAG) convened seven times between September 20, 2013 and March 11, 2014. The group provided technical feedback on work products. All meetings were open to the public and agendas were posted on the project website.

16. Island County produced a BAS bibliography and presented it to the Island County Planning Commission on December 10, 2013. This bibliography identified sources of scientific information that were then included in the development of a BAS synthesis report.

17. The County's consulting team produced a BAS synthesis report, titled "Best Available Science and Existing Conditions Report for Island County's Fish and Wildlife Habitat Conservation Areas"; developed in consultation with the TAG and reviewed by the Island County Planning Commission at public workshops on March 25, 2014 and April 8, 2014.

18. Groups or agencies who reviewed the scientific literature and BAS report included the Department of Ecology, the Department of Fish and Wildlife, and the Department of National Resources, the Orca Network, Polymer Land Consultants, Skagit River System Cooperative, Tulalip Tribes, Whidbey

Audubon Society, Whidbey Environmental Action Network, Whidbey Island Conservation District, and Whidbey Watershed Stewards.

19. Island County attempted to use the Puget Sound Watershed Characterization model to support a watershed-based planning analysis, an element of the grant funding for the project. State agencies made adjustments to the model to account for local conditions; however, Island County staff and the Technical Advisory Group determined that the model was unreliable given Island County's unique conditions and circumstances. Problems were also encountered with the parcel-level land use data used in development of the model. As a result, Island County did not use the watershed model as part of the update, and instead, employed a more conventional approach to identifying and protecting FWHCAs.

20. The Board of Island County Commissioners finds that the scientific literature and professional opinions contained in the BAS report meet the requirements of RCW 36.70A.172 and the criteria set out in WAC 365-195-900 through WAC 365-195-925 for determining which information can be considered best available science.

21. Planning & Community Development transmitted an Audit and Policy/Regulation Framework report to the Planning Commission on March 25, 2014 and April 8, 2014. The report identified key issues, options, and recommendations to update the Island County's FWCHA protection standards taking into account the findings of the BAS report and GMA requirements. This document was developed in consultation with the TAG and reviewed by the groups identified above.

22. The Audit and Policy document identified a range of riparian buffer widths that were consistent with the findings contained in the BAS report. The Planning Commission reviewed the range of acceptable buffers widths and determined that employing buffers at the low end of the range was the most appropriate solution for Island because such buffer widths are generally consistent with the buffers currently imposed by Island County Code.

23. The Planning Commission further found that because the selected buffer widths were at the low end of the range supported by BAS, the buffer averaging and reduction provisions which had originally been proposed should be eliminated in order to ensure an acceptable level of environmental protection. The Planning Commission felt this was the best method of balancing property rights and flexibility in land use regulations with the need to protect fish and wildlife habitat conservation areas. The Board of Island County Commissioners supports this approach and concurs with the Planning Commission's findings with respect to buffer widths and the elimination of buffer averaging and reduction allowances.

24. During the FWHCA update process a number of concerns were expressed by advocacy groups, members of the public, and TAG members. These concerns can be categorized as follows:

    a. The need to accommodate the unique characteristics of Existing and On-going Agricultural Activities, particularly with regard to regulated streams that also serve as improved agricultural drainage facilities.

    b. The elimination of certain habitats and species of local importance from the list of protected habitats and species.

    c. The need to include additional protection standards for prairies and rare plants.

    d. Prohibitions on the construction of "throughput transmission facilities" (oil and gas pipelines).

    e. Exemptions allowing for beaver and beaver dam removal.

Agricultural Drainage Facilities

25. The GMA establishes 13 specific goals which must be considered and balanced in the development of local comprehensive plans and development regulations. These goals are not prioritized and local governments have wide discretion to balance the competing demands imposed by these goals in order to accommodate local circumstances; however, the GMA does require that special consideration be given to protecting anadromous fish species.

26. The Board of Island County Commissioners finds that the following GMA planning goals are particularly relevant, and that special consideration should be given to balancing these goals in the development and adoption of FWHCA regulations:

    a. Goal Five, Economic Development. *Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.*

    b. Goal Six, Property Rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

c. Goal Eight, Natural Resource Industries. *Maintain and enhance natural resource based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.*

d. Goal Nine, Open Space and Recreation. *Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.*

e. Goal Ten, Environment. *Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.*

f. Goal 11, Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

27. The Board of Island County Commissioners has expressed a desire to accommodate, promote, and develop agricultural businesses, as well as those businesses which are directly related to, and supportive of agricultural businesses. Island County is predominantly rural and the transportation barriers imposed by its island setting make pursuing traditional economic development strategies less viable. Tourism, craft industries, and resource based activities, such as small scale agricultural operations and local food production are crucial to Island County's long term economic health. Accordingly, all rural land use policies, including critical area protection standards, should be consistent in their recognition of the importance and unique needs of these activities.

28. The Board of Island County Commissioners believes that by recognizing the importance and unique needs of agricultural uses, and by considering such needs in the development of policies and regulations, the objectives of GMA Planning Goals Five and Eight can be realized, along with the open space objective of GMA Planning Goal Nine.

29. The Board of Island County Commissioners understands and supports the need to protect water quality and fish and wildlife habitat in Island County. The Board is also conscious of the environmental protection objectives expressed in GMA Planning Goals Nine and Ten, as well as the specific requirements of RCW 36.70A.170 & 36.70A.060(2), and the special mandate to protect anadromous fish species imposed by RCW 36.70A.172.

30. In certain areas of Island County, modified streams have traditionally been used as agricultural drainage systems. These modified streams must be

regularly maintained in order to preserve their value as drainage systems; however, they must also be regulated and protected through Island County's critical area protection standards in order to preserve water quality, protect fish and wildlife habitat, and to ensure that special consideration has been given to anadromous fish species reliant on such water passages.

31. Traditional buffer and mitigation strategies may be incompatible with existing agricultural drainage systems because the required mitigation plantings and natural vegetation areas would need to be periodically cleared in order to maintain agricultural drainage functions. The Board finds that in such instances it is appropriate to allow Natural Resource Conservation Service (NRCS) conservation practices regarding drainage maintenance to be used in place of traditional mitigation strategies and in addition to Island County's Best Management Practices. The Board further finds that when limited to Existing and On-going Agricultural Activities, and when subject to review and approval by the Island County Department of Planning and Community Development, such an approach balances the economic development considerations of GMA Planning Goal Five, the agricultural preservation objectives of GMA Planning Goal Eight, and the open space preservation objectives expressed by GMA Planning Goal Nine, with the environmental protection objectives of GMA Planning Goals Nine and Ten.

Habitats and Species of Local Importance

32. During the comment period concern was expressed that Island County had deleted a number of habitats and species of local importance from the list of protected habitats and species. Notably, the habitats and species of local importance which have been deleted from the list of protected habitats and species either occur exclusively within the jurisdiction of the Shoreline Management Act (SMA) or are adequately regulated by Island County's wetland protection standards (Chapter 17.02A ICC).

33. The GMA states that local governments shall protect critical areas within the jurisdiction of the Shoreline Management Act (SMA) through their critical area regulations until they complete a comprehensive update of their local Shoreline Master Program (SMP), and this update is approved by the Washington State Department of Ecology (DOE) (RCW 36.70A.480(3)(b)). The GMA further states that once an updated SMP is approved by DOE, critical areas within SMA jurisdiction shall be regulated by a local SMP, and not their critical areas regulations (RCW 36.70A.480(3)(d)).

34. Island County has completed a comprehensive update of its SMP. This SMP has been given preliminary approval at the local level and is currently being reviewed by DOE. Upon approval by DOE, Island County will need to take final legislative action adopting the SMP.

35. Because RCW 36.70A.480(3)(d) requires that critical areas within SMA jurisdiction be regulated and protected through the provisions of locally adopted SMPs which have been updated, and approved by DOE, pursuant to the requirements of RCW 90.58.080; and because Island County has prepared an updated SMP which DOE is currently reviewing, those habitats and species of local importance which occur exclusively within SMA jurisdiction have been deleted from the list of habitats and species of local importance.

36. The Board of Island County Commissioners notes that the provisions of RCW 36.70A.480(3)(d) do not become effective until DOE approves the County's preliminarily-approved SMP and Island County then takes final legislative action adopting the SMP. However, at this time DOE has not completed its review. This will not, however, result in a gap in protection standards. The updated FWHCA regulations contain a provision which specifically states that FWHCAs within SMA jurisdiction shall continue to be protected through the provisions of Chapter 17.02 ICC until such time that DOE completes its review and approves Island County's updated Shoreline Master Program and Island County then takes final legislative action.

37. Two other Habitats of Local Importance were also excluded from the updated list of protected habitats and species, Newman Road Lakes and Hastie Lake, which are large wetlands protected and regulated through the provisions of Chapter 17.02A ICC. This approach is consistent with the process for designation, and de-designation of habitats and species of local importance described in ICC 17.02B.500.A. This code section notes that de-designation may occur if a listed habitat is protected through other means.

Protection Standards for Prairies and Rare Plants

38. During the public comment period concern was expressed by some members of the public that the proposed changes to the Island County Comprehensive Plan and critical areas regulations do not adequately protect prairies, oak woodlands, and rare plants. Ultimately the Planning Commission concluded that the requirements of the GMA were satisfied by protecting only those plant species and plant communities that provide critical habitat for fish and wildlife species. However, the Planning Commission also stated that they felt there was some ambiguity with respect to the required scope of GMA mandated critical area protection standards and the definition of the term "wildlife". The Board of Island County Commissioners does not believe any ambiguity exists; rather, the Board finds the GMA is specific with respect to some FWHCAs which must be protected, while providing a greater degree of local discretion with respect to other FWHCAs.

39. The GMA requires that local governments designate and protect critical areas (RCW 36.70A. & 36.70A.060(2)). The GMA defines critical areas as including

a number of distinct natural features and conditions including wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas (RCW 36.70A.030(5)). Pursuant to state guidance in WAC 365-190-130, Fish and Wildlife Habitat Conservation Areas are to include the following:

> *(a) Areas where threatened, endangered, and sensitive species have a primary association;*
> *(b) Habitats and species of local importance, as determined locally;*
> *(c) Commercial and recreational shellfish areas;*
> *(d) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;*
> *(e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish and wildlife habitat;*
> *(f) Waters of the state;*
> *(g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and*
> *(h) State natural area preserves, natural resource conservation areas, and state wildlife preserves.*

The Board of Island County Commissioners finds that this list makes it clear that prairies and rare plants need not be protected unless it is either: (a) determined that a threatened, endangered, or sensitive species of fish or wildlife present in Island County has a primary association with prairies or rare plants; or, (b) it is locally determined that prairies and rare plants should be designated as habitats and species of local importance. In order to further clarify the Board's position, each of the fish and wildlife habitat conservation areas identified in WAC 365-190-130 has been individually addressed below to show how it has been addressed and how it is related to prairies or rare plants.

WAC 365-190-130(2)(a) – Areas where threatened, endangered, or sensitive species have a primary association

a. These areas are adequately protected by the proposed FWHCA regulations. The Board notes that ICC 17.02B.200.A.1 specifically designates for protection all areas which have a primary association with endangered, threatened, and sensitive species, including those species of fish or wildlife designated by the U.S. Fish and Wildlife Service or Washington State Department of Fish and Wildlife (WDFW) as being endangered, threatened, or sensitive.

b. The areas described above are classified as critical areas and the proposed FWHCA regulations contain protection and evaluation standards applicable to development occurring within 1,000 feet of a habitat associated with a protected species or a designated critical area. In such

instances a biological site assessment (BSA) must be submitted(ICC 17.02B.410.A & B), buffers must be established based on site specific evaluations and WDFW Priority Habitats and Species (PHS) data (ICC 17.02B.430.E), and any potential impacts identified in the BSA must be addressed through the preparation of a Habitat Management Plan (HMP) (ICC 17.02.B.430.F & G).

c. During the public comment period it was suggested that prairies must be protected because they provide habitat with which threatened, endangered, or sensitive species have a primary association, most notably the Taylor's Checkerspot butterfly, a state and federally listed endangered species.

d. The Island County Critical Areas Planner addressed the question of whether or not there are any endangered, threatened, or sensitive species of fish or wildlife currently found in Island County that have a primary association with prairies, herbaceous balds, or Oregon Oak woodlands by reviewing WDFW Priority Habitats and Species data and comparing this information to lists of species known to exist in Island County. Based on this review, it was his opinion that there are no threatened, endangered, or sensitive species present in Island County that have a primary association with prairies or oak woodlands. The Critical Areas Planner did note however, that several areas in Island County have been identified as suitable habitat for the Taylor's Checkerspot butterfly should it be reintroduced, but further noted that most of these areas are in federal or state ownership or managed for conservation purposes.

e. Although there are no known threatened, endangered, or sensitive species that have a primary association with prairies or oak woodlands currently present in Island County, should any such species be discovered, its habitat would be protected by the regulatory provisions identified above.

f. Pursuant to WAC 232-12-297, the phrase "endangered, threatened, and sensitive species" includes only animals classified as a species or subspecies as commonly accepted by the scientific community.

g. The GMA requires that local governments protect a number of critical areas, one of which is fish and wildlife habitat. While the GMA does not define the term "wildlife", the Department of Fish and Wildlife, an agency with expertise, defines wildlife as "*all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates…*" (RCW 77.08.010(78)). Because the phrase "endangered, threatened, or sensitive species" includes only animals, and because the term wildlife includes only animals, the Board of Island County

Commissioners finds that plants and plant communities must only be protected when it can be shown that a species of fish or wildlife has a primary association with a plant or plant community.

WAC 365-190-130(2)(b) - Habitats and species of local importance, as determined locally.

a. The GMA requires local governments to identify, classify, and designate locally important habitats and species, but allows the local government to exercise discretion in determining which habitats and species should be designated as habitats and species of local importance.

b. Both the current and proposed FWHCA regulations contain a list of habitats and species which have been determined to be locally important. Island County does not think the current list needs to be expanded. Furthermore, Island County's current FWHCA regulations contain provisions that allow any citizen or organization to nominate a habitat or species for designation as a habitat and species of local importance (ICC 17.02.050.C.1(h), and these provisions were revised to make them more specific and binding (ICC 17.02B.500).

c. It has been suggested that Island County should designate prairies as habitats and species of local importance at this time. The Board of Island County Commissioners finds that such a designation is not warranted at this time because: (1) large areas of Island County's remaining native prairies are owned by public entities or by private organizations and managed for conservation purposes, and are therefore not in any immediate risk of being lost or destroyed, (2) several large prairie remnants are protected by existing or proposed programs, policies and regulations, (3) this topic was discussed at a Technical Advisory Group (TAG) meeting and most members were not in favor of developing specific protection standards for prairies at this time, and (4) Island County is currently in the process of updating its comprehensive plan and development regulations, this will provide an opportunity to address concerns about prairies in a more comprehensive fashion by considering a full range of potential programs, policies, and regulations.

d. The Board finds that while prairies have not been added to the list of habitats and species of local importance, the proposed regulations do protect several large prairie remnants. The proposed FWHCA regulations identify high quality terrestrial ecosystems designated by the Department of Natural Resources as critical areas (ICC 17.02B.200.A.4). The prairies mapped through this program include: Ebey's Bluff, Smith Prairie, Goose Rock, and a small bald in Deception Pass State Park. State Natural Area Preserves, State Natural Resource Conservation Areas, and State Wildlife Areas are also designated as critical areas pursuant to ICC

17.02B.200.A.3. This designation included the Nass (Admiralty Inlet) Natural Area Preserve. In addition, the existing list of habitats and species of local importance includes the Whidbey Island Game Farm/Au Sabel Institute property. This property contains a portion of Smith Prairie and is actively managed for conservation and prairie restoration purposes.

WAC 365-190-130(2)(c) – Commercial and recreational shellfish areas

e. These areas are entirely within shoreline jurisdiction and will be regulated by the updated Island County SMP. Potential water quality impacts have been addressed through the proposed riparian buffers. These areas do not include prairies or rare plants.

WAC 365-190-130(2)(d) – Kelp and eelgrass beds; herring, smelt, and forage fish spawning areas

f. These areas are entirely within shoreline jurisdiction and will be regulated by the updated Island County SMP. Upland development in inappropriate locations can lead to the construction of bulkheads or shoreline armoring. These structures can, in turn, lead to a loss of forage fish spawning habitat. Accordingly, upland development adjacent to, but outside of SMA jurisdiction has been addressed in the proposed FWHCA regulations (ICC 17.02B.450.D). These areas do not include prairies or rare plants.

WAC 365-190-130(2)(e) – Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat

g. These areas are regulated as wetlands if less 6.6 feet deep and are protected through the provisions of Chapter 17.02A ICC. Ponds greater than 6.6 feet are protected by the proposed FWHCA regulations under ICC 17.02B.420.D. These areas do not include prairies or rare plants.

WAC 365-190-130(2)(f) – Waters of the State

h. Streams and Waters of the State are designated as critical areas by the proposed FWHCA regulations (ICC 17.02B.200.A.2). Waters of the State do not include prairies or rare plants.

WAC 365-190-130(2)(g) – Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity

i. Ponds or lakes larger than twenty acres are subject to the jurisdiction of the Shoreline Management Act and will be regulated by the updated Island County SMP. Streams and rivers have been designated as critical areas under the proposed FWHCA regulations and specific protection

standards have been included (ICC 17.02B.420). These areas do not include prairies or rare plants.

WAC 365-190-130(2)(h) – State natural preserves, natural resource conservation areas, and State wildlife areas

j. These areas are designated as critical areas under the proposed FWHCA regulations (ICC 17.02B.200.A.3). The Naas (Admiralty Inlet) natural area preserve contains prairies and these areas are subject to the evaluation and protection standards established by the proposed FWHCA regulations.

Throughput Transmission Facilities (oil and gas pipelines)

40. Island County received numerous comments advocating for prohibitions on throughput transmission facilities. Although the previous FWHCA regulations did not contain a prohibition on such facilities, Island County's wetland and zoning regulations (Chapters 17.02A & 17.03 ICC) prohibit or strongly discourage the construction of such facilities. The Board of Island County Commissioners finds that there is no compelling reason to allow fish and wildlife habitat conservation areas to be altered or impacted in order to permit the construction of throughput transmission facilities. Therefore, the FWHCA regulations approved by the Island County Planning Commission have been amended to prohibit these facilities in critical areas.

Beaver Control

41. The Board of Island County Commissioners finds that in order to protect property and agricultural operations from flooding and damage it is necessary to amend the FWHCA regulations approved by the Island County Planning Commission to allow for the control and removal of beavers and beaver dams. The board further finds that provided no permanent alteration of a critical area occurs, and provided the activity is authorized by the Washington State Department of Fish and Wildlife, the functions and values of critical areas will be adequately protected.

Procedural Findings

42. This update is not subject to the Annual Review Procedures of Chapter 16.26 ICC, which governs amendments to the comprehensive plan and development regulations. The adoption of amendments to resolve an order from the Growth Management Hearings Board is exempt from these procedural requirements pursuant to ICC 16.26.020.B.

43. It is in the best interest of permit applicants and County staff to have critical area regulations condensed into a single code chapter. The proposed new

Chapter 17.02B ICC will create a framework for a unified critical areas ordinance. Island County intends to complete this work through the 2016 Comprehensive Plan update process.

44. Prior to the approval of an updated Shoreline Master Program by the Department of Ecology and subsequent final legislative action taken by this Board to adopt the SMP; critical areas within shoreline jurisdiction shall be regulated by locally adopted critical area regulations rather than by Shoreline Master Program requirements. Upon approval of an updated Shoreline Master Program, critical areas within the jurisdiction of the Washington State Shoreline Management Act shall be regulated by the Shoreline Master Program. Island County has adopted an updated Shoreline Master Program; however, it has not yet been approved by the Department of Ecology. Accordingly, it is the intent of the Board of Island County Commissioners that critical areas within shoreline jurisdiction will continue to be regulated by the provisions of Chapters 17.02 and 17.02A ICC until such time that Island County takes final legislative action to adopt the Shoreline Master Program after it is approved by the Department of Ecology.

45. The amendments to the Island County Comprehensive Plan, attached hereto as Exhibit A, are consistent with the proposed implementing development regulations. The changes are based on Best Available Science and comply with the requirements of the Washington State Growth Management Act.

46. The critical area regulations attached hereto as Exhibit B, are consistent with and supported by the Island County Comprehensive Plan and the Washington State Growth Management Act. The changes are based on Best Available Science and are sufficient to meet the requirements of the Washington State Growth Management Hearings Board order. The Board of County Commissioners finds that these regulations should be included in Island County Code as a new Chapter 17.02B ICC.

47. The amendments to Title III, attached hereto as Exhibit C, Title XVI, attached hereto as Exhibit D, and Title XVII, attached hereto as Exhibit E, are necessary to achieve internal consistency with the amendments to Chapter 17.02B ICC and to fully implement the proposed changes to the Island County Comprehensive Plan.

48. The Board of County Commissioners finds that the time limit for maintaining an Existing and Ongoing Agricultural Activity identified in ICC 17.02B.300.A should be 5 years rather than the 6.5 year period proposed by the Island County Planning Commission. The exemption for Existing and On-going Agricultural Activities includes language allowing for a limited extension of the five year period due to unavoidable and unintentional events which make agricultural use of the land impossible.

49. As part of the 2016 Update, the County plans to review, update, and codify a local set of BMPs (originally adopted as Exhibit B to Ordinance C-151-99) using the NRCS conservation practice standards as a reference source adhering to best available science requirements in their development.

50. The Board of County Commissioners recognizes the importance of prairie remnants and other rare plant communities, but finds that it is more appropriate to provide protection through other measures which can be considered during the 2016 Comprehensive Plan update. Protective measures could include prioritizing these communities for funding under the Conservation Futures program, or providing non-regulatory incentives for protection under the Island County Public Benefit Rating System.