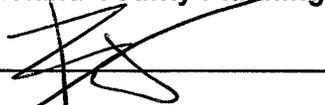




ISLAND COUNTY PLANNING & COMMUNITY DEVELOPMENT

PHONE: (360) 679-7339 ■ from Camano (360) 629-4522, Ext. 7339 ■ from S. Whidbey (360) 321-5111, Ext. 7339
FAX: (360) 679-7306 ■ 1 NE 6th Street, P. O. Box 5000, Coupeville, WA 98239-5000
Internet Home Page: <http://www.islandcounty.net/planning/>

TO: Island County Planning Commission
FROM:  Brad Johnson, Senior Planner
DATE: May 23, 2014
SUBJECT: Fish and Wildlife Habitat Conservation Areas Update

Commissioners:

At the May 13, 2014 Meeting of the Island County Planning Commission our office presented you with a variety of materials including draft changes to the Island County Code and Comprehensive Plan, public comments, and findings of fact. We also indicated that in order to implement the proposed Fish and Wildlife Habitat protection standards it would be necessary to make a number of changes to other sections of Island County Code and requested that the meeting be continued on May 27th.

Based on public comments made during the May 13th meeting, as well discussions with members of the public and the Board of Island County Commissioners, our office is proposing a number of changes. Specifically, we have made changes to clarify the relationship between the proposed regulations and the Washington State Forest Practices Act and to extend the time existing and ongoing agricultural practices may remain dormant before being considered abandoned. In addition, several members of the Board of Island County Commissioners expressed concern that the proposed riparian buffer widths are unduly restrictive and unwarranted. In order to address this concern we have prepared two alternative code drafts for the Planning Commission to evaluate.

To guide the Planning Commission in their decision making process we have outlined the outstanding issues below:

Concerns:

As currently written, the exemption in ICC 17.02B.300.A dealing with forest practices regulated by Chapter 76.09 RCW (exemption number two) is not clearly written and does not achieve the intent of exempting timber harvests covered by a Washington

State Department of Natural Resources forest practice permit from Island County critical areas regulations.

Our department agrees that as currently written this exemption is unclear. Accordingly, we have made changes to the exemption language and also included an additional code provision in ICC 17.02B.400 (relationship to other regulations) specifying that forest practices regulated by, and conducted in accordance with, the Washington State Forest Practices Act are not subject to the proposed critical area regulations.

The exemption which treats existing and ongoing agricultural uses as abandoned after a five year period is unduly restrictive and does not account for real life circumstances which frequently cause agricultural uses to remain idle for more than five years, such as a death in the family or difficulty in selling/leasing the agricultural operation.

At the request of the Planning Commission we have rephrased the exemption so that the five year period may be extended in order to account for extenuating circumstances.

The proposed regulations should be reviewed by the WSU Extension.

At the outset of this process the WSU Extension was invited to join the Technical Advisory Group (TAG) but they were unable to do so. In order to provide insight into the relationship between agricultural practices and critical areas, the Whidbey Island Conservation District was also asked to participate. Their representative, Sara Cassatt, has substantial experience and expertise dealing with the relationship between water quality and agricultural practices and was able to provide valuable input throughout the TAG process. In addition, Tim Lawrence from the WSU Extension has provided some thoughts and comments which we have attached as exhibit "G". While our department appreciates Mr. Lawrence's comments, they fall more in the realm of design standards for new agricultural ditches rather than regulations for existing drainage facilities; as such, we don't feel this information can be incorporated into the update.

The proposed riparian buffers are unnecessarily restrictive.

The Audit and Policy document prepared by Island County's consulting team identified a range of buffer widths which are supported by the Best Available Science (BAS) review (see page 39 of the Audit and Policy document). The low end of this range generally corresponds with the buffers currently employed by Island County, while the high end of the range is consistent with the buffer widths required by the updated Island County Shoreline Master Program (SMP).

Our staff had recommended using the buffers at the high end of the range for two reasons: (1) these buffers would be the same as the buffers in the SMP resulting in one consistent set of riparian buffers for the entire county, and (2) employing buffers at the high end of the range would allow for some site specific flexibility through the buffer averaging and buffer reduction provisions in the code. However, some concern was

expressed that increasing the buffers by such a large extent was not necessary since the smaller buffers were supported by BAS.

Because any buffer width within the range identified in the Audit and Policy document can be supported by BAS, the final choice of an appropriate buffer width is essentially a policy matter which balances ecological protection against development flexibility and property rights; this is a choice the Planning Commission will need to make. To that end, the Planning Department has prepared two options for the Planning Commission to consider:

Buffer Option "A": This option utilizes buffers at the low end of the range identified in the Audit and Policy document. These buffers would essentially be the same as the buffers currently employed by Island County. This option does however, eliminate the buffer averaging and buffer reduction provisions. This change was necessary because using buffers at the low end of the range means that further reductions would fall below the acceptable range identified in Audit and Policy document and would not be supported by BAS. This option offers the greatest amount of land use flexibility while resulting in a slightly reduced level of ecological protection.

Buffer Option "B": This option retains the buffers as originally proposed, would be consistent with the riparian buffers in the updated SMP, and arguably affords the highest level of ecological protection.

The proposed update does not contain adequate protection standards for prairies habitats.

The issues regarding prairie habitats were fully explored by the TAG. No documentation was submitted during this process showing a link between protected fish and wildlife species and prairie habitat in Island County. The memo attached as exhibit "E" provides more detail with respect to this issue.

Final Documents:

Attached you will find the following documents:

1. *Exhibit "A"* – Proposed code update showing changes made since the last Planning Commission meeting in underline and strike-through format. This exhibit contains both an option "A" and option "B". Option "A" includes the reduced buffer widths and eliminates the buffer averaging and reduction provisions, while option "B" retains the buffer widths discussed at the last Planning Commission meeting, along with the buffer averaging and reduction provisions.
2. *Exhibit "B"* – Proposed Changes to the Island County Comprehensive Plan.

3. *Exhibit "C"* – Findings of Fact, including two versions, one in support of buffer option "A" and the other in support of buffer option "B".
4. *Exhibit "D"* – Changes to other sections of Island County Code necessary to implement the update Fish and Wildlife Habitat protection standards
5. *Exhibit "E"* – Memo from the Watershed Company outlining prairie habitat issues, regulatory requirements, and options for protection.
6. *Exhibit "F"* – Public comments received after the last Planning Commission meeting.
7. *Exhibit "G"* – Comments received from the WSU Extension.