

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

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 _____ day of _____, 2014 following a public hearing.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Jill Johnson, Chair

Helen Price Johnson, Member

Aubrey Vaughan, Member

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.