BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF AMENDING CHAPTERS
11.02, AND 17.03 ICC TO IMPROVE THE CODE'S
ALIGNMENT WITH STATE FOREST PRACTICES
REQUIREMENTS

ORDINANCE NO. C-2017-18;
PLG-001-18

WHEREAS, Island County conducts planning activities in accordance with the Forest Practices Act, Chapter 76.09 RCW; and

WHEREAS, prior to 2007, RCW 76.09 required local governments deny all permit applications for non-forestry uses on land subject to a non-conversion forestry permit issued by the Department of Natural Resources ("DNR") for six years, required applicants to acknowledge the six-year moratorium and, in some cases, record the moratorium in the public property records; and

WHEREAS, RCW 76.09.060(3)(b)(i)(D) and (E) required the local government to develop a process for lifting this moratorium; and

WHEREAS, Island County adopted ICC 17.03.270 to implement the statute, specifically citing RCW 76.09.060(3)(b)(i)(D) and (E) for the process to lift the six-year moratorium; and

WHEREAS, the County has historically interpreted the statute, especially sub-subsection RCW 76.09.060(3)(b)(iii), to require mitigation for the impacts that would have been regulated by the County had the landowner stated an intent to convert at the time of the original application; and

WHEREAS, in 2007, the State Legislature substantially amended RCW 76.09.060 and changed the process of the moratorium, renamed "development prohibition"; deleting sub-subsection RCW 76.09.080(3)(b)(i) in its entirety, including the direction to local governments to deny all permits for six years, to record the moratorium in the local property records, and to adopt a process to lift the moratorium; and

WHEREAS, in the place of sub-subsection RCW 76.09.060(3)(b)(i), the State Legislature amended RCW 76.09.060(3) in relevant part such that:

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470; and

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

WHEREAS, the new RCW 76.09.470 requires that if a landowner decides to convert land to a nonforestry use within six years of non-conversion approval, they must stop all activities on the parcel subject to the proposed conversion, withdraw their Non-Conversion Forest Permit, and apply for a new conversion permit; and
WHEREAS, as stated in RCW 76.09.470(2)(b)(iii), the County must determine whether the "land in question" is in compliance with local regulations; if the land is not in compliance, mitigation "must be required for the parcel in question"; mitigation may include revegetation to "restore critical area and buffer function"; these efforts may be above and beyond any DNR reforestation requirements; and

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

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

WHEREAS, clarifying the process for lifting the moratorium (without renaming the process to "development prohibition"), providing for a conversion option harvest plan, editing the short plat/short subdivision exemption, and emphasizing the statutory mitigation requirements provides consistency with the 2007 statutory changes and the County’s current practices; and

NOW THEREFORE,

IT IS HEREBY ORDEAINEDE that the Board of Island County Commissioners adopts amendments to the Forest Practices regulations attached as Exhibit A and hereby adopts the Board’s Findings of Fact attached hereto as Exhibit B. Within Exhibit A, material stricken through is deleted and material underlined is added. The material in Exhibit A is intended to be a revision to Island County Code Chapters 11.02 and 17.03.

ADOPTED this 20th day of March, 2018 following a public hearing.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Helen Price Johnson, Chair

Richard M. Hannold, Member

Jill Johnson, Member

ATTEST:

Debbie Thompson
Clerk of the Board

APPROVED AS TO FORM:

DALTON LEE PENCE
Civil Deputy Prosecuting Attorney and
Island County Code Reviser
Exhibit A

Amendments to Island County Code Chapters:
11.02 ICC
17.03 ICC
Chapter 11.02
Clearing and Grading Requirements

11.02.270 - Standards for Class IV general forest practices permits, Class IV platted forest practices permits, and conversion option harvest plans, and for any lands harvested without a forest practices permit when a permit was required.

A. Clearing and Grading permit requirements shall be established on a case-by-case basis, following a field inspection/evaluation of slopes and their relative stability, of topography and existing natural, constructed, or planned drainage ways/systems, of soils and their susceptibility to erosion, of forest and vegetative cover as exists and planned, and of critical areas, as defined in this chapter, and regulated shoreline areas. Prior to establishing the requirements of the clearing and grading permit a determination shall be made by the director as to:

1. The presence of documented critical drainage/flooding/erosion/stability problems downstream of the development activity that may be exacerbated by the development activity if appropriate conditions are not established; and

2. The quality and use of receiving waters which may be degraded if appropriate conditions are not established.

B. Clearing and Grading permit requirements may include the preparation and implementation of drainage plans pursuant to the requirements of chapter 11.03.

C. If the proposal is within an urban growth area, the city/town shall be consulted to ensure conformance with the requirements for similar development activities within the incorporated area of the UGA.

D. Applications for Class IV forest practices and/or Conversion Option Harvest Plans shall be consistent with the requirements of ICC 17.03.270 Forest Practices and the State Forest Practices Act RCW 76.09.
E. As allowed per WAC 222-20-051 Conversion Option Harvest Plans (COHP) may be submitted for review to Island County prior to application for a Class II, III or IV Special non-conversion forestry permit from the Washington State Department of Natural Resources. COHP’s are intended for situations where a landowner wishes to maintain the option to convert forest land to a use other than commercial timber operations. Therefore the owner must plan the harvest activity to comply with all applicable local regulations, including but not limited to Chapter 17.02B ICC, Critical Area Ordinance, Chapter 11.02 ICC Clearing and Grading Ordinance, and Chapter 11.03 ICC Storm and Surface Water Ordinance. If Island County approves a Conversion Option Harvest Plan, the landowner must attach it to the forest practices application or notification. Future Conversion of forest land shall comply with all local and state regulations, including Chapter 16.14C ICC (SEPA)

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Chapter 17.03
Island County Zoning Code
...

17.03.270 - Forest practices.

A. Pursuant to RCW 76.09.060(3)(b)(i)(D) and (E) the following standards shall apply to Class IV and Conversion Option Harvest Plans (COHP) forest practices conducted in Island County.

1. The grading Clearance and Grading permit application shall contain a detailed site plan, drawn to a scale of no less than one (1) inch equals 200 feet. The site plan shall show the entire extent of the property proposed for timber harvest. The site plan shall also indicate the location of and extent of timber harvest areas and indication of whether the areas are to be thinned, harvested selectively, or clear-cut; identified or suspected wetlands; slopes in excess of thirty-five (35) percent grade; unstable slopes; shorelines, streams, drainage ways or other water features; existing and proposed roads; existing and proposed development on the subject property including utilities, septic systems, wells, structures, and existing cleared areas; and any other information necessary to evaluate the proposal.

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 (Critical area regulations) of the Island County Code.
3. When found consistent with the above requirements and upon completion of the SEPA review process, the grading**Clearing and Grading** permit shall be approved. Conditions shall be applied as necessary to ensure compliance with applicable regulations and ordinances.

4. Upon grading**Clearing and Grading** permit approval, the county will notify the applicant and DNR that the county has no objection to forest practice permit application and issuance.

B. **Conditional uses.** Prior to application to DNR for a Class IV-General or Class IV-Special forest practices permit for a property upon which a conditional use per chapter 17.03 is proposed, the applicant shall first obtain at least preliminary approval of the underlying permit application.

1. For any conditional use for which a conversion forest practice permit is required, submittal of a SEPA environmental checklist, the materials and information listed in subsection A.1. and applicable fees shall also be required upon application, whether or not the underlying permit is subject to SEPA review.

2. Upon granting of such preliminary approval of the underlying land use permit and a finding that SEPA review has been completed, the applicant and DNR shall be notified that the county has no objection to the forest practice permit application and issuance.

C. **Six-year moratorium per RCW 76.09.060(3)(b)(i).** For any lands harvested under a non-conversion forest practices permit, or for any lands harvested without a permit when a forest practices permit was required, no development permits or approvals incompatible with continued forest use or production on the land and which involve or include physical conversion of the land from continued forest growth, shall be issued for a period of six (6) years from the date of forest practice permit application, except as provided for in this policy.

*Island County will place a permitting hold in the County permit tracking data base upon receipt of a notice of issuance of a non-conversion forest practice permit by the DNR.*

1. For lands cleared without a permit, the moratorium shall run for six (6) years from the date the un-permitted clearing was discovered by DNR or the county.

2. For properties cleared without a forest practice permit and when DNR has notified Island County in writing that one (1) a forest practice permit was required, the county will record a notice of the moratorium against the title of the property. *place a permitting hold in the County permit tracking data base upon discovery of the unauthorized clearing.*

3. Moratorium not applicable: The above moratorium shall not be applicable to proposed short plats or short subdivisions only in the following cases:
a. The property was harvested under an approved non-conversion forest practices permit and has been successfully reforested (as confirmed by the DNR or a reforestation plan or method has been approved by the DNR) pursuant to the original forest practice permit and no further harvesting of trees or clearing of replanted/re-forested areas will occur during what would otherwise be the period of the moratorium; and

b. A commitment and disclosure is made by the owner/applicant on the face of the short plat or short subdivision that the land subject to the original forest practice permit will continue to be managed for forest production consistent with the provisions and conditions of said forest practice permit for the duration of the moratorium period, unless it is lifted pursuant to subsections D. or E. below or;

c. When completion of the short plat or short subdivision process does not require development activity that is incompatible with continued forest use or production on the parcel or include physical conversion of the parcel from continued forest growth.

D. Lifting of the moratorium for a single-family residences per RCW 76.09.060(3)(b)(i)(E).

For an application for construction of a single-family residence or accessory structures, or both, or other normal appurtenant uses and development, any of which is incompatible with continued forest use or production on all or part of a single parcel and which involve or include physical conversion of the land from continued forest growth such as garages, decks, driveways, utilities, wells, septic system(s), fences, etc. on a property subject to the moratorium established in subsection C., prior to the issuance of any development permits or approvals, a grading Clearing and Grading permit application shall be submitted and processed pursuant to subsection A. The proposed development and previous forest practice activity impacts shall be administratively reviewed through the grading Clearing and Grading permit application process, and may be approved when found consistent with applicable adopted codes, including, but not limited to critical area regulations of the county as may be applicable to the proposal.

As noted in RCW 76.09, in order to lift a development moratorium, Island County must confirm the condition of the land in question is in full compliance with County ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of County ordinances or regulations must be required for the parcel in question. Required mitigation plans must be prepared by the landowner and approved by the County. Once approved, the
mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable County regulations.

Approval of the grading/Clearing and Grading permit as described above shall result in a lifting of the moratorium for the parcel of land in question and removal of the hold in the County permitting database.

In those cases where a moratorium notice has been recorded by the county or the state against the property of the applicant, within fourteen (14) days after granting of said grading permit, the department shall issue a written notice to the applicant that the moratorium has been lifted and is no longer in effect. Said notice shall be on a document suitable for recording and specifying the recording number of the original document being rescinded. Instructions for recording of said notice by the applicant shall be included with the notice.

E. Lifting of the moratorium for developments other than a single-family residences per RCW 76.09.060(3)(b)(i)(D). For development other than one (1)-a single family residences and appurtenances per subsection D, which involve or propose conversion, the standards (including all critical area regulations) and processes applicable to such development shall be fully applied.

As noted in RCW 76.09, in order to lift a development moratorium, Island County must confirm the condition of the land in question is in full compliance with County ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of County ordinances or regulations must be required for the parcel in question. Required mitigation plans must be prepared by the landowner and approved by the County. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable County regulations.

The matter of lifting any applicable moratorium for such development shall be determined by the Island County Hearing Examiner through an open record hearing as prescribed in chapter 16.19, after a complete application for the proposed development action has been
submitted. The decision of the hearing examiner in such cases may be appealed to the Board of County Commissioners in a closed record appeal process.

F. **Public notice.** Public notice, when required, for applications made pursuant to this policy shall be provided as specified in chapter 16.19.

G. **Appeals.** Appeals of decisions made pursuant to this policy shall be filed in the manner and time frames specified in chapter 16.19.
Exhibit B

Board Findings of Fact

The Board of County Commissioners approves of and incorporates section one of the findings of fact of the Planning Commission titled, "Changes to Provide Consistency with Requirements of RCW 76.09 the Forest Practices Act." The full findings of fact of the Planning Commission is attached as Attachment "1".
Attachment 1
Planning Commission
Findings of Fact
~FINDINGS AND CONCLUSIONS~

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

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

SUMMARY

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY

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

FINDINGS OF FACT

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

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

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

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

CONCLUSION

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

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

[Signature]
Karen Krug
Vice Chair, Island County Planning Commission

Enclosures:
- Exhibit "A"—Amendments to the Island County Code Chapters 11.02, 17.02B and 17.03 ICC
- Exhibit "B" — RCW 76.09.060 The Forest Practices Act: Pre 2007 Amendment
- Exhibit "C" — RCW 76.09.080 The Forest Practices Act: Current