BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF AMENDING ICC 11.02, 14.02A AND
17.05A, ADOPTING A SET OF VOLUNTARY DEVELOPMENT
STANDARDS WITHIN THE SPECIAL FLOOD HAZARD AREA
ALONG THE MARINE SHORELINE THAT WILL PROVIDE A
STREAMLINED PERMITTING PROCESS FOR SHORELINE
DEVELOPMENT

ORDINANCE NO. C-18-19;
PLG-003-19

WHEREAS, in an effort to alleviate flood damage and expenditures of government funds, the federal
government adopted the National Flood Insurance Act of 1968 and subsequently the Flood Disaster
Protection Act of 1973; and

WHEREAS, while the minimum requirements of the National Flood Insurance Program protect the
public health, safety, and welfare of the community by protecting buildings from the 100-year, or 1% chance flood, the program was not intended to address other floodplain management concerns, such as riparian habitat; and

WHEREAS, on September 22, 2008, the National Marine Fisheries Service issued a biological opinion
to the Federal Emergency Management Agency (FEMA) as required under the Endangered Species Act
(ESA) for consultations concluding with Jeopardy and Adverse Modification determinations; and

WHEREAS, the biological opinion outlined for FEMA, included the availability of a reasonable and
prudent alternative to avoid violation of ESA section 7(a)(2) responsibilities (50 CFR 402.14(g)(5)); and

WHEREAS, consistent with the biological opinion, FEMA offers three ways to meet the requirements
of the ESA; and

WHEREAS, specifically, these options are to either (1) prohibit all development in the floodway and
other areas as specified by the Reasonable and Prudent Alternative, (2) enact regulations that allow
development that meets the criteria specified in the biological opinion, or (3) demonstrate compliance
with the ESA on a permit by permit basis using habitat assessments; and

WHEREAS, Island County has been historically operating under the third option, "Door 3" requiring
permit applicants within the Special Flood Hazard Area (SFHA) to demonstrate compliance with the
ESA through submittal of a habitat assessment; and

WHEREAS, Island County is proposing a new set of voluntary development standards within the
SFHA, that meet the criteria specified in the biological opinion, allowing property owners to take
advantage of the second option, "Door 2"; and

WHEREAS, Island County plans under RCW 36.70A the Growth Management Act (GMA) which
requires counties to develop policies and development regulations that protect the functions and values
of critical areas; and

WHEREAS, frequently flooded areas are one of the five critical areas identified by the GMA and are
defined as flood plains and other areas subject to flooding which perform important hydrologic functions
and may present a risk to persons and property; and
WHEREAS, the 2016 Island County Shoreline Master Program (SMP) and Critical Areas Ordinance (CAO) contain regulations and provisions designed to ensure no net loss of habitat functions and values along the marine shoreline, including within flood plains; and

WHEREAS, shoreline jurisdiction under the newly-adopted SMP includes, "the geographic areas regulated by the SMA, related rules, and the applicable master program: all shorelines and shorelines of state significance, plus lands extending landward for 200 feet in all directions, as measured on a Horizontal Plane from the Ordinary High Water Mark (OHWM) of shorelines; associated floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters subject to the SMA"; and

WHEREAS, under the SMP, shoreline development is held to strict policies and standards that ensure there will be no net loss of shoreline habitat; and

WHEREAS, the 200 ft. zone of shoreline jurisdiction is equivalent to the 200 ft. Riparian Buffer Zone (RBZ) under the model ordinance; and

WHEREAS, the regulations for Shoreline uses, adopted to implement the SMP provide the following: "All shoreline developments and uses shall be located, designed, constructed, and managed to avoid disturbance of or minimize adverse impacts to Fish and Wildlife Habitat Conservation Areas including, but not limited to, spawning, nesting, rearing and habitat areas, and migratory routes"; and

WHEREAS, the regulations also provide that "Uses and developments shall provide a level of protection equal to or better than countywide critical areas regulations and result in no net loss of ecological functions"; and

WHEREAS, buffers and setbacks vary, but the critical area regulations in Island County Code 17.02B, along with the shoreline regulations in Island County Code 17.05A, will ensure that any shoreline development or modification will protect threatened/endangered salmon species and the Southern Resident Killer Whales; and

WHEREAS, in addition to the regulations already provided for by the Island County SMP and CAO, Island County is proposing a new set of voluntary development standards within the SFHA; and

WHEREAS, proposed development within the SFHA that is able to meet these voluntary development standards will satisfy the requirement to submit a Habitat Assessment; and

WHEREAS, if the voluntary standards cannot be met, the applicant shall still be required to submit a Habitat Assessment; and

WHEREAS, the voluntary standards include, requiring mitigation if the project exceeds 10% of the existing footprint, requiring applicants to retain 65% of the existing native vegetation on the site, requiring applicants to replace hard armorng with soft armorng or retain the natural shoreline, and requiring applicants to infiltrate all storm water on-site or limit new impervious surfaces to 10% of the area within the SFHA; and

WHEREAS, on January 3, 2019, regional representatives from FEMA indicated that these proposed standards upon adoption, in addition to the current standards contained in the County's SMP and CAO,
satisfy FEMA's procedural requirements for their review and allow for property owners in the SFHA in Island County to take advantage of the second option, "Door 2" of the biological opinion; and

WHEREAS, on February 11, 2019 the Planning Commission held a public hearing and recommended that the Board of County Commissioners adopt an ordinance(s) to incorporate the proposed amendments to Island County Code Chapters 11.02, 14.02A, and 17.05A; and

NOW THEREFORE,

IT IS HEREBY ORDAINED that the Board of Island County Commissioners adopts amendments to Island County Code Chapters 11.02, 14.02A, and 17.05A attached as Exhibit A, and hereby adopts the Boards Findings of Fact attached hereto as Exhibit B. Within Exhibit A, material stricken through is deleted and material underlined is added.

BE IT FURTHER ORDAINED that revisions to Chapters 11.02, 14.02A, and 17.05A ICC related to voluntary development standards within the Special Flood Hazard Area shall have immediate effect.

ADOPTED this 11th day of June, 2019 following a public hearing.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Jill Johnson, Chair

Janet St. Clair, Member

Helen Price 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
14.02A ICC
17.05A ICC
Chapter 11.02
Clearing and Grading Requirements

11.02.030 - Definitions.

Unless the context clearly requires otherwise, the definitions in this chapter apply to all clearing and grading in unincorporated Island County. Clearing and grading within proposed or existing public rights-of-way shall follow the standards of the 1998 Standard Specifications for Road, Bridge and Municipal Construction, or most recent addition.

Applicant means a property owner, or any person or entity designated or named in writing by the property owner to be the applicant, in an application for a development proposal, permit, or approval.

Critical areas, as used in this chapter, means fish and wildlife habitat conservation areas, wetlands, flood hazard areas, geologically hazardous areas, and their buffers, as applicable.

Development means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, alteration of natural site characteristics, paving, excavation, drilling operations or storage of equipment or materials, or removal of substantial amounts of vegetation.

Development activity means any proposal which will result in construction, development, earth movement, clearing, or other site disturbance and requires a permit, approval, or authorization from the county or is proposed by a public agency.

Landslide hazard areas are potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. Landslide areas include any areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors.

Low Impact Development (LID) means a storm water management strategy that emphasizes conservation and the use of existing natural site features by integrating them with distributed, small-scale storm water controls to mimic natural hydrologic patterns. LID is more than on-site infiltration of storm water (e.g., through rain gardens and pervious surfaces). LID also captures and stores water for later reuse, filters out pollutants, and reduces water velocities during storm events. Thus, even where infiltration is not feasible, other LID techniques are still able to be used. For Low Impact Development Practices see the Low Impact Development Technical Guidance Manual for Puget Sound (January 2005) or as amended.

Professional inspection means the inspection required by this Code to be performed by the civil engineer, geotechnical engineer, geologist, or engineering geologist licensed by the State of Washington with appropriate training and experience. Such inspections include that performed by persons supervised by such engineers or geologists and shall be sufficient to form an opinion relating to the conduct of the work.
Chapter 14.02A
Flood Damage Prevention Ordinance

14.02A.020 - Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

Accessory structure means a one-story detached structure used as parking or limited storage with an area of 625 square feet or less accessory to a home.

Critical facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

Development means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, alteration of natural site characteristics, paving, excavation or drilling operations, or storage of equipment or materials, or removal of substantial amounts of vegetation located within the area of special flood hazard.

Existing mobile/manufactured home park or subdivision means a mobile/manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the mobile/manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by Island County.

14.02A.040 – Administration.

A. Establishment of development permit.

1. Development permit required. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in section 14.02A.030.B. The permit shall be for all structures including manufactured homes, as set forth in the "definitions", and for all development including fill and other activities, also as set forth in the "definitions".

2. Application for development permit. Application for a development permit shall be made on forms furnished by the Island County Permit Center and may include but not be limited to; plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Specifically, the following information is required: a. Elevation in relation to mean sea level, of the bottom edge of the lowest floor (including basement) of all structures; b. Elevation in relation to mean sea level to which any structure has been flood-proofed; c. Certification by a registered professional engineer or architect that the flood-proofing methods for any nonresidential structure meet the flood-proofing criteria in section 14.02A.050.B.2.; and d. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development if applicable.
3. **Issuance of development permit.** In addition to meeting the other requirements of Island County Code, the applicant must record a Notice on Title that the property contains land within the Riparian Habitat Zone and/or 100-year floodplain before a permit for a subdivision of land or a new or substantially improved structure may be issued.

**...**


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**F. Coastal high hazard areas.** Located within areas of special flood hazard established in section 14.02A.030.B. are coastal high hazard areas, designated as zones V1-V30, VE and/or V. These areas have special flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting all provisions of this chapter, the following provisions shall also apply:

...  

**G. FEMA Biological Opinion (BiOp) programmatic review.** Development proposals that meet the following performance standards can be reviewed under the Federal Emergency Management Agency’s Biological Opinion programmatic approach for shoreline development permits. Development proposals that meet the following performance standards are not required to submit a Habitat Assessment, however Biological Site Assessments for the purposes of review under the Critical Areas Ordinance, Chapter 17.02B ICC, may still be required. Development proposals that cannot meet the following performance standards shall require the submittal of a Habitat Assessment.


2. Mitigation shall be required for improvements, repairs, or expansions of existing buildings in the Special Flood Hazard Area which exceed 10 percent of the existing footprint.

3. Development proposals are required to retain 65 percent of the existing native vegetation within the Special Flood Hazard Area.

4. Hard armoring must be replaced with soft armoring or in instances where the property does not have armoring, the natural shoreline must be left intact.

5. All storm water must be infiltrated on site, or the creation of new impervious surfaces shall not exceed 10 percent of the surface area of the portion of the lot within the Special Flood Hazard Area.

...
Chapter 17.05A
Shoreline Master Program Regulations and Procedures

17.05A.090 – Shoreline use and development regulations.

L. Flood hazard reduction.

11. Solid waste shall not be stored in areas subject to flooding unless it can clearly be demonstrated that complete and effective flood-proofing of structures or equipment can be accomplished.

12. All new development proposals must select the least impactful area for development. Where feasible, development should be located outside of the Special Flood Hazard Area.
Exhibit B

Board Findings of Fact

The Board of County Commissioners approves of and incorporates in full the findings of fact of the Planning Commission, attached as Attachment 1.
~FINDINGS AND CONCLUSIONS~

TO: Board of Island County Commissioners
FROM: Island County Planning Commission
DATE: February 4, 2019

REGARDING: Proposed amendments to ICC 11.02, 14.02A and 17.05A, adopting a set of voluntary development standards within the Special Flood Hazard Area along the marine shoreline that will provide a streamlined permitting process for shoreline development.

SUMMARY

The 2016 Island County Shoreline Master Program (SMP) and Critical Areas Ordinance (CAO) contain regulations and provisions designed to ensure no net loss of habitat functions and values along the marine shoreline. In addition, Island County is proposing a new set of voluntary development standards within the Special Flood Hazard Area (SFHA) to satisfy the Federal Emergency Management Agency’s (FEMA) procedural requirements for their review under the biological opinion issued in 2008 by the National Marine Fisheries Service.

The biological opinion outlines a "Door 2" programmatic option for compliance with the Endangered Species Act (ESA). Proposed development within the SFHA that is able to meet these voluntary development standards will satisfy the requirement to submit a Habitat Assessment.
FINDINGS OF FACT

Background

1. In an effort to alleviate flood damage and expenditures of government funds, the federal government adopted the National Flood Insurance Act of 1968 and subsequently the Flood Disaster Protection Act of 1973.

2. While the minimum requirements of the National Flood Insurance Program protect the public health, safety, and welfare of the community by protecting buildings from the 100-year, or 1% chance flood, the program was not intended to address other floodplain management concerns, such as riparian habitat.

3. On September 22, 2008, the National Marine Fisheries Service issued a biological opinion to the Federal Emergency Management Agency (FEMA) as required under the Endangered Species Act for consultations concluding with Jeopardy and Adverse Modification determinations. The biological opinion outlined for FEMA, the availability of a reasonable and prudent alternative to avoid violation of ESA section 7(a)(2) responsibilities (50 CFR 402.14(g)(5)).

4. Consistent with the biological opinion, FEMA offers three ways to meet the requirements of the ESA. Specifically, to either (1) prohibit all development in the floodway and other areas as specified by the Reasonable and Prudent Alternative, (2) enact regulations that allow development that meets the criteria specified in the biological opinion, or (3) demonstrate compliance with the ESA on a permit by permit basis using habitat assessments.

5. Island County has been historically operating under the third option, “Door 3” requiring permit applicants within the SFHA to demonstrate compliance with the ESA through submittal of a habitat assessment.

6. Island County is proposing a new set of voluntary development standards within the SFHA, that meet the criteria specified in the biological opinion, allowing property owners to take advantage of the second option, “Door 2.”

7. Additionally, Island County plans under RCW 36.70A the Growth Management Act (GMA) which requires counties to develop policies and development regulations that protect the functions and values of critical areas.

8. Frequently flooded areas are one of the five critical areas by the GMA and are defined as flood plains and other areas subject to flooding which perform important hydrologic functions and may present a risk to persons and property.

9. The 2016 Island County SMP and CAO contain regulations and provisions designed to ensure no net loss of habitat functions and values along the marine shoreline, including within flood plains.

10. Shoreline jurisdiction under the newly-adopted SMP includes “the geographic areas regulated by the SMA, related rules, and the applicable master program: all shorelines and shorelines of state significance, plus lands extending landward for 200 feet in all directions, as measured on a Horizontal Plane from the Ordinary High Water Mark (OHWM) of shorelines; associated floodways and contiguous floodplain areas landward
two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters subject to the SMA.

11. Under the SMP, shoreline development is held to strict policies and standards that ensure there will be no net loss of shoreline habitat. The 200 ft. zone of shoreline jurisdiction is equivalent to the 200 ft. Riparian Buffer Zone (RBZ) under the model ordinance.

12. The regulations for Shoreline uses, adopted to implement the SMP provide the following: "All shoreline developments and uses shall be located, designed, constructed, and managed to avoid disturbance of or minimize adverse impacts to Fish and Wildlife Habitat Conservation Areas including, but not limited to, spawning, nesting, rearing and habitat areas, and migratory routes." The regulations also provide that "Uses and developments shall provide a level of protection equal to or better than countywide critical areas regulations and result in no net loss of ecological functions."

13. Buffers and setbacks vary, but the critical area regulations in Island County Code 17.02B, along with the shoreline regulations in Island County Code 17.05A, will ensure that any shoreline development or modification will protect threatened/endangered salmon species and the Southern Resident Killer Whales.

14. In addition to the regulations already provided for by the Island County SMP and CAO, Island County is proposing a new set of voluntary development standards within the SFHA. Proposed development within the SFHA that is able to meet these voluntary development standards will satisfy the requirement to submit a Habitat Assessment. If the voluntary standards cannot be met, the applicant shall still be required to submit a Habitat Assessment.

15. The voluntary standards include, requiring mitigation if the project exceeds 10% of the existing footprint, requiring applicants to retain 65% of the existing native vegetation on the site, requiring applicants to replace hard armor with soft armor or retain the natural shoreline, and requiring applicants to infiltrate all storm water on-site or limit new impervious surfaces to 10% of the area within the SFHA.

16. On January 3, 2019, regional representatives from FEMA indicated that these proposed standards upon adoption, in addition to the current standards contained in the County's SMP and CAO, satisfy FEMA's procedural requirements for their review and allow for property owners in the SFHA in Island County to take advantage of the second option, "Door 2" of the biological opinion.

CONCLUSION

The Island County Planning Commission has reviewed the proposed changes to Island County Code Chapters 11.02, 14.02A, and 17.05A, and hereby recommends that the Board of County Commissioners adopt an ordinance(s) to incorporate the proposed amendments, enclosed 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 25th day of February 2019 by,

Darin Hand
Chair, Island County Planning Commission