



**ISLAND COUNTY
PLANNING & COMMUNITY DEVELOPMENT**

ISLAND COUNTY PLANNING COMMISSION

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~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 armoring with soft armoring 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, 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 _____ day of _____, 2019 by,

Darin Hand

Chair, Island County Planning Commission