



**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: 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 IMPROVE ALIGNMENT 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 improve the alignment of](#) Island County's Forest Practices [p](#)Provisions (chapters 11.02 and 17.03 ICC) [and, with](#) the State Forest Practices Act (RCW 76.09, [FPA](#)) as amended in 2007.

FINDINGS OF FACT

1. Prior to 2007, RCW 76.09 mandated 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\(3\)\(b\)\(i\)\(D\) and \(E\) required the local government to develop an administrative 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 development prohibition ~~(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 ~~avoided if the landowner~~ regulated by the County had the landowner ~~had~~ 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~~ ~~or~~ "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 ~~and renumbered, in part,~~ 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. ~~instead of establishing a formal and recorded six-year "moratorium," converting landowners must comply with the newly adopted sections RCW 76.09.460 and 76.09.470.~~

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

7. The ~~revised~~ new RCW 76.09.470 FPA 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.

~~910. In other words, significant m~~ Consistent with prior County practice, mitigation and revegetation at the local level ~~is~~ 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.](#)

11.04. The Planning Commission finds that clarifying the process for lifting the [moratorium](#) ~~(without renaming the process to “development prohibition”–(moratorium),~~ providing for a conversion option harvest plan, editing the short plat/short subdivision exemption, and emphasizing the statutory mitigation requirements ~~increases~~ [provides](#) consistency with the 2007 statutory changes and the County’s current practices.

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 August 23, 2017, Island County Board of Commissioners adopted Ordinance C-86-17, PLG-009-17, completing the review and update of the County’s Critical Area Ordinance, Chapter 17.02B ICC, as required by RCW 36.70A.130(1), Growth Management Act. Notice of adoption of Ordinance C-86-17 was published on August 23, 2017.~~

~~2. On October 23, 2017, Whidbey Environmental Action Network (WEAN) filed a Petition for Review with the Western Washington Growth Management Hearings Board (GMHB), challenging Ordinance C-86-17 (Petition). The case is titled *Whidbey Environmental Action Network v. Island County*, Case No. 17-2-0008. In a subsequently Amended Petition for Review, WEAN raised ten numbered issues.~~

~~3. On October 25, 2017, the GMHB issued its Notice of Hearing for Case No. 17-2-0008, which included an express expectation that the Parties engage in at least one settlement discussion.~~

~~4. Pursuant to the GMHB direction, the Parties have engaged in discussions such that WEAN has agreed to dismiss its Amended Petition should the County adopt certain clarifying amendments to Ordinance C-86-17 and Chapter 17.02B ICC. In the interest of conserving public resources and to bring greater clarity to the Island County Code, the County is considering the proposed clarifying amendments.~~

5. 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](#)ing to process [certain](#)the proposed clarifying amendments [to the critical areas ordinance, Chapter 17.02B, and its amending Ordinance C-86-17.](#)

6. There has been confusion on the part of the public, landowners, and loggers about the interaction of the County critical area regulations and forest practices. 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.

7. 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.

8. 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 mitigating restoring damage to any areas previously logged under the Non-Conversion Forest Permit sufficient to prevent a net loss of critical area function and value.

9. 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 ~~in no way concedes to any claim that Ordinance C-86-17 and/or~~ Chapter 17.02B ICC and/or its amending Ordinance C-86-17. The Planning Commission finds that the proposed changes are ~~not~~ 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 _____ day of _____, 2018 by,

Darin Hand
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 76.09.060 The Forest Practices Act: Current