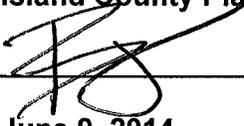




ISLAND COUNTY PLANNING & COMMUNITY DEVELOPMENT

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TO: Island County Planning Commission

FROM:  Brad Johnson, Senior Planner

DATE: June 9, 2014

SUBJECT: Fish and Wildlife Habitat Conservation Areas Update

Commissioners:

At the May 27, 2014 meeting of the Island County Planning Commission a number of issues were raised by members of the public. Specifically a number of individuals expressed concern that the proposed policies and regulations would not adequately protect the Western Toad, prairies, oak woodlands, including some species of rare plants associated with these landscape features; key to all of these issues is the question of what Island County is required to protect by the GMA. As the Planning Commission is aware, the project before them is a limited review of the Fish and Wildlife protection standards which were scheduled to be reviewed and updated during the 2005 periodic update. In an attempt to bring closure to these issues we have reviewed applicable GMA requirements, technical data, and the process used to develop the proposed policies and regulations.

Under the Washington State Growth Management Act (GMA) local governments are required to periodically review, and if necessary, update their comprehensive plans and development regulations (RCW 36.70A.130). This review process is intended to insure that local plans are up-to-date and take into consideration changing conditions and advances in technical or scientific knowledge. Island County previously updated its comprehensive plan in 2005. During that update, Island County reviewed all aspects of its comprehensive plan and development regulations except for those dealing with Fish and Wildlife Habitat Conservation Areas (FWHCAs). As a result of the County's failure to review this section of its Comprehensive Plan, the Western Washington Growth Management Hearings Board ordered the County to complete the required update.

The GMA requires that local governments designate and protect critical areas (RCW 36.70A.170 & 36.70A.060(2)). Under the GMA, the term "critical areas" encompasses a number of distinct natural features and conditions including, wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and

wildlife habitat conservation areas (RCW 36.70A.030(5)). During the 2005 periodic update Island County addressed each of these critical areas, with the exception of "fish and wildlife habitat conservation areas". Much of the recent discussion regarding the alleged inadequacies of the proposed updates to the County's fish and wildlife protection standards has revolved around what, exactly, must be protected in order to comply with the GMA's requirement to protect fish and wildlife habitat.

During the last Planning Commission session some individuals suggested that the GMA imposes a duty on the County to protect rare plants and plant communities. Planning and Community Development disagrees with this assertion and believes that plants and plant communities should only be protected when it can be shown that they provide critical habitat for wildlife. Under GMA regulations (WAC 365-190-030) "fish and wildlife habitat conservation areas" are defined as follows:

"Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridor; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species."

The Growth Management Act regulations enumerated in WAC 365-190-130 provide further guidance by listing those fish and wildlife habitat conservation areas which must be protected:

"Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

- (a) Areas where endangered threatened, and sensitive species have a primary association;*
- (b) Habitats and species of local importance, as determined locally;*
- (c) Commercial and recreational shellfish areas;*
- (d) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;*
- (e) Naturally occurring ponds, under 20 acres that provide fish or wildlife habitat;*
- (f) Waters of the state*
- (g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and*
- (h) State natural area preserves, natural resource conservation areas, and state wildlife areas.*

A key component of the definition and features listed above is their relationship to fish and wildlife. During the development of the proposed policies and regulations the question of the extent to which the County is required to protect plants and plant

communities was raised. At Island County's request, technical guidance was provided by the Washington State Department of Fish and Wildlife (WDFW). WDFW stated that in answering this question it is necessary to first determine whether or not endangered, threatened, or sensitive species have a primary association with the plants or plant communities in question. This, in turn, raises the question of what "wildlife" is. While the GMA does not define "wildlife", the term is commonly understood to cover only animal species. The department of Fish and Wildlife, an agency charged with protecting and managing wildlife in the State of Washington, defines the term as follows:

"Wildlife means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates." (RCW 77.08.010(75))

Based on the analysis presented above, as well as the technical guidance received from WDFW, it is Planning and Community Development's belief that plants and plant communities, such as prairies and oak woodlands, must be protected only when it can be demonstrated that a endangered, threatened, or sensitive *fish or wildlife* species has a primary association with them. Because the issue of protecting prairies and oak woodlands has become a topic of intense public interest, Island County's Critical Areas Planner reviewed WDFW data, the BAS report, and information submitted by the public and concluded that no threatened, endangered, or sensitive species are present in Island County that have a primary association with prairies or oak woodlands (see attachment "A"). While the U.S. Fish and Wildlife Service has recently listed the Taylor's Checkerspot butterfly as an endangered species and designated a number of important habitat units in Island County, the butterfly is not believed to be present in Island County; further, nearly all of the designated habitat areas are owned by federal, State, or non-profit conservation organizations.

Finally, it has been suggested that proposed policies and regulations do not adequately protect the Western Toad, a WDFW species of concern. Island County's consulting team has reviewed the toad's habitat needs and Island County's proposed regulations and determined that since the toad's breeding and egg development habitat is associated with wetlands and streams, and since these areas are already protected by wetland regulations and riparian buffers, no additional regulations are required at this time (see attachment "B").

In conclusion, Planning and Community Development would like to remind the Planning Commission that this project was originally conceived and intended to be a project of limited scope, and was only intended to address the most immediate and pressing requirements raised by the Hearing Board's order. While prairies and oak woodlands may be important landscape features worthy of consideration for further protection, our analysis indicates that no additional regulatory changes are necessary to meet the minimum requirements of the GMA.

Island County is currently in the early phases of its GMA mandated 2016 comprehensive plan update. This will involve a comprehensive evaluation and update of

the County's critical area regulations and land use standards. A significant amount of funding has been secured to complete this work. Planning and Community would like to encourage the Planning Commission and other interested parties to revisit any outstanding concerns during the 2016 update process when a broad range of issues can be addressed in a comprehensive fashion.

Attachments:

Exhibit "A" – Critical Areas Planner Memo, Taylors Checkerspot

Exhibit "B" – Watershed Memo, Western Toad

"A"

Brad Johnson

From: Jamie Hartley
Sent: Thursday, June 05, 2014 4:02 PM
To: Brad Johnson
Subject: Wildlife Species associated with prairies, herbaceous balds and western Oregon white oak woodlands.

Brad,

I have looked into the question of whether any endangered threatened or sensitive fish or wildlife species currently found in Island County have a primary association with native prairies, herbaceous balds or western Oregon oak woodlands. Of all the fish and wildlife species known to have a primary association with these three habitats, to my knowledge, none are found in Island County at this time.

As you know, Dan Nichols of Watershed Company provided us with information that somewhat less than 500 acres of Island County have been designated by the federal government as critical habitat for Taylor's Checkerspot butterfly, a state and federally listed endangered species. Though Taylor's Checkerspot is not known to occur in Island County currently, portions of Deception Pass State Park, and areas of central Whidbey Island, including the western coast and Smith Prairie, are considered as critical habitat in the event reintroduction ever occurs.

The areas of federally designated critical habitat within Deception Pass State Park are very unlikely to be developed in the future. Almost all of the listed areas along the western side of central Whidbey are owned by Washington State, the federal government, Seattle Pacific University, the Nature Conservancy or the Whidbey Camano Land Trust and are also very unlikely to undergo development that would impact potential Taylor's Checkerspot habitat should reintroduction ever occur. The area of Smith Prairie designated as critical habitat corresponds to the boundary the AuSable property (Pacific Rim Institute), which will continue to be a Habitat of Local Importance under the proposed Fish and Wildlife Habitat.Conservation Area code.

Jamie Hartley

Critical Areas Planner
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LAND USE SUBMITTAL BY APPOINTMENT ONLY MONDAY-THURSDAY. CALL (360) 678-7800

" B "

TECHNICAL MEMORANDUM



Date: May 30, 2014
To: Brad Johnson, Island County Planning and Development
From: Dan Nickel and Sarah Sandstrom, The Watershed Company
Lisa Grueter, BERK
Jennifer Thomas, Parametrix
Project Number: 130420
Project Name: Island County Fish and Wildlife Habitat Conservation Areas

Subject: Summary Regarding Western Toad

The following memorandum summarizes the background, discussion, and current status regarding the Western Toad as part of the regulatory update of Fish and Wildlife Habitat Conservation Areas.

The Western Toad is currently federally listed as a Species of Concern. It is currently a candidate for listing by the Washington Department of Fish and Wildlife (WDFW) and has been given a conservation status of S3 (Vulnerable). While it is known to have a large range in most of Washington and can be common in some areas, it is not locally common, with one documented occurrence in Island County by WDFW. Declining populations have occurred in many areas across the range for unknown reasons, even in relatively pristine environments.

The Best Available Science and Existing Conditions Report (January 2014), noted the state status of the Western Toad in Table A-1 which listed species of potential conservation concern in Island County. The Western Toad is not a federal or state listed endangered, threatened, or sensitive species, and thus was not included in the Best Available Science and Existing Conditions Report.

The Technical Advisory Group (TAG) discussed whether to suggest the addition of the Western Toad as a species of local importance during their March 11, 2014 meeting. The following items were noted:

- There is only 1 documented mapped occurrence by WDFW in their Priority Habitats and Species database. It was noted that PHS maps can be inaccurate and a single mapped occurrence would not represent sufficient information on which to base designation of a species of local importance.
- Another potential occurrence was noted by a TAG member by personal observation.

- Western toads can occupy a variety of upland habitats, but rely on open water for breeding and egg development. Aquatic habitats are required for tadpole development through metamorphosis, which takes approximately two months, depending on temperature and food availability. Western toads occur in a variety of terrestrial habitat types ranging from prairies to forests to Oregon oak habitat. Following metamorphosis, thousands of toadlets disperse from the aquatic habitat into the adjacent upland terrestrial habitat. Island County's wetland and wetland buffer protections encompass breeding habitat for the Western Toad, but upland habitats outside of wetland or stream buffers would not be protected by existing or proposed FWHCA provisions.

The TAG discussion noted that much of the Western Toad potential habitat would be protected by the County's existing wetland and wetland buffer protections under 17.02A and that given the lack of documented occurrences within the County, including additional provisions for Western Toad habitat protections at this time was not warranted.