TITLE XVII
ZONING

Chapters:

Chapter 17.02

Old Island County Critical Areas Ordinance

Sections:

17.02.010 Authority

This ordinance shall be known as the old Island County Critical Areas Ordinance ("Old CAO") and is hereby adopted under the authority of Chapters 36.70, 39.34, 43.21C, 58.17, 76.09, 84.33, 84.34 and 90.58 RCW.

17.02.020 Purpose

The purpose of the Island County Critical Areas Ordinance is to provide protective standards that will:

A. Achieve better use of Island County's land resources;

B. Implement the Comprehensive Plan of Island County;

C. Provide for the orderly planned use of Island County's land resources;

D. Permit developments which will provide a desirable and stable economic environment consistent with the rural characteristics of Island County and protection of its critical areas and natural features;

E. Permit flexibility that will encourage a more creative approach in the development of land, while ensuring the retention, protection and use of the County's open spaces, critical areas and natural ecosystems;

F. Ensure that the unique, fragile, sensitive and scenic areas of Island County are protected and enhanced;

G. Ensure that Island County's natural constraints are recognized and considered in planning decisions;

H. Protect the public health, safety and general welfare of the residents of Island County;

I. Provide a bonus to land owners who wish to protect and preserve certain identified lands;

J. Preserve the integrity of water resources by ensuring a balanced program controlling stormwater runoff and ground water recharge;

K. Prevent pollution of surface and subsurface water resources;

L. Protect the habitat of flora and fauna recognized by Island County as deserving of protection;

M. Preserve critical fish and wildlife habitat and encourage protection of wetlands which provide such habitat;

N. Minimize the hazards incident to development on or adjacent to steep slopes or geologically hazardous areas;

O. Protect the fundamental and inalienable right of the residents of Island County to a healthful environment and the reasonable use of their property;

P. Provide a means for every resident of Island County to participate fairly and equitably in the land use decision making process and contribute to the preservation and enhancement of the environment;

Q. Encourage in-fill of undeveloped residential lands consistent with limits imposed by natural constraints;

R. Provide for regulatory review processes which are proportional in scale, time and cost, to scope and scale and costs of development actions proposed.

17.02.030 Definitions

Agricultural: The current employment of land for the primary purpose of raising, harvesting and/or selling crops or the feeding, breeding, management and/or sale of, or the production of, livestock, poultry, fish, fur-bearing animals or honeybees or for dairying and/or the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. Agriculture includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. Agriculture also includes the growing of ornamental shrubs, Christmas trees, pulpwood and similar nursery stock.

Agricultural Activities, Existing and On-Going: Those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock. These activities include the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an on-going operation. An operation ceases to be on-going when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five (5) years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and on-going agricultural activity. Forest practices are not included in this definition.

Alteration Approval: The process and action taken by the County to grant conceptual approval for alteration of a wetland, deepwater habitat, fish and wildlife habitat conservation area or their buffers.

Alteration of a Wetland, a Deepwater Habitat or a Fish and Wildlife Habitat Conservation Area: In any wetland, deepwater habitat, or a Fish and Wildlife Habitat Conservation Area or required buffer, the placement or erection of any solid material or structure; the discharge or disposal of any dredged material or waste, including filling, grading, channelization, removing, dredging, draining, mining or extraction of any materials; the removal or harvesting of trees or other vegetation; modification for use as a storm water retention/detention facility; or other alteration.

Areas with a Critical Recharging Effect on Aquifers Used for Potable Water or Aquifer Recharge Areas: Areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water.

Artificial (Category C) Wetlands/Deepwater Habitats (Ponds): Areas that meet the definition of a wetland and/or deepwater habitat because of human action which impounded water by

means such as construction of a dam or an embankment or excavation of a depression which was planned and executed for the specific purpose of creating a wetland where no wetland before existed. Ponds created for agricultural and/or aquacultural uses are considered Category C wetlands/deepwater habitats for purposes of this Chapter.

Baseline Monitoring: Surface water quality sampling and other monitoring activities (such as vegetation surveys, etc.) designed to establish local trends and seasonal patterns necessary for the interpretation of County-wide data.

Best Management Practices: Conservation practices or systems of practices and management measures that:

(1) control soil loss and reduce water quality degradation; and

(2) minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of critical areas.

The Department shall maintain a selection of best management practices which have been approved by the Board for those uses which are subject to best management practices.

Clearing: The act of removal or destruction of vegetation by mechanical or chemical means, but does not include normal cultivation associated with an agricultural operation.

Compliance Assessment: A property or area specific evaluation of compliance with adopted Ag BMPs and other critical area requirements. Compliance Assessment will routinely be initiated if an Exceedence is identified and will typically precede Source Identification.

Conditional Use: A use allowed only upon approval of a site plan or the granting of Use Approval.

Coal Mine Hazard Areas: Areas in proximity to abandoned coal mines and associated underground mine workings. No coal mine hazard areas were found in Island County and therefore there is no risk from this hazard.

Conversion: The change of land use from a forest use to a permitted or conditional rural residential use.

Critical Areas: Wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas.

Deepwater Habitats: Any open water area that has a mean annual water depth greater than 6.6 feet, lacks soil, and/or is either unvegetated or supports only floating or submersed macrophytes and is not a lake or Category C pond as defined in this Chapter.

Differential Settlement: Differential Settlement is the uneven settlement of elements of a structure. Peat deposits are capable of large permanent deformations as a result of earthquake shaking, including differential movement and settlement of structures.

Erosion Hazard Areas: Areas of slopes greater than 15 percent and with soils identified by the Natural Resources Conservation Service as having a “severe” or “very severe” rill and inter-rill erosion hazard.

Estuarine Wetlands: Tidal wetlands that are usually semienclosed by land but have open, partly obstructed, or sporadic access to the open ocean and in which ocean water is at least occasionally diluted by fresh water runoff from the land. Estuarine wetlands have ocean-derived salinities of at least 0.05%.

Exceedence: A measured increase in a monitoring parameter above an adopted Water Quality Standard that will trigger a responsive action.

Existing: Unless otherwise expressly stated, legally established and existing on the effective date of this Chapter, October 1, 1998.

Existing Building: A structure, or portion thereof, which meets the definition of existing and was lawfully erected and maintained including those which, because of the enactment of this Chapter, no longer conforms to the land use standards or use regulations of the zone in which it is located.

Existing Lot: A lot or parcel of land which meets the definition of "existing" and was also of record and lawfully established and maintained including those which, because of the enactment of this Chapter, no longer conforms to the land use standards or use regulations of the zone in which it is located.

Existing Use: A use which meets the definitions of "existing" and was lawfully established and maintained including those which, because of the enactment of this Chapter, no longer conforms to the land use standards or use regulations of the zone in which it is located.

Fish and Wildlife Habitat Conservation Area: Land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created.

Frequently Flooded Areas: Lands in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year.

Geologically Hazardous Area or Slope: Areas consisting of Erosion, Landslide, Seismic, Volcanic, Coal Mine, and/or Tsunami Hazards.

Grading: The act of excavation or filling or combination thereof or any leveling to a smooth horizontal or sloping surface on a property, but not including normal cultivation associated with an agricultural operation.

Hydrophytic Vegetation: Plant life growing in water or in a substrate that is at least periodically deficient in oxygen as a result of excessive water content. (See "Wetland Plants of the Pacific Northwest," September, 1984, U.S. Army Corps of Engineers.)

Lake: A lake twenty (20) acres or greater in size which is subject to the provisions of the Shoreline Management Act (Goss Lake, Lone Lake, Crockett Lake, Deer Lake, Kristoferson Lake, Cranberry Lake), and three (3) unnamed lakes located in Section 24, Township 29 N, Range 2 E (26 acres); Section 6, Township 31 N, Range 1 E (25 acres); and, Section 18, Township 33 N, Range 2 E (50 acres).

Landslide Hazard Area or Steep Slopes: Areas that because of their susceptibility to erosion, sliding, or other geologic events, are generally not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns, including, but not limited to, those lands designated in the Department of Ecology Coastal Zone Atlas dated April 1979, as it may be amended or revised, as land which has had recent or historical slide activity and/or has unstable slope conditions, including those lands within one-hundred (100) feet (either top or base) thereof.

Liquefaction: Liquefaction is the temporary transformation of stable saturated loose granular soil deposits into fluid-like state similar to quicksand usually caused by the shaking of earthquake. The soils dramatically lose strength once liquefaction occurs.

Livestock: Domestic animals, fish and fowl of types customarily raised or kept on farms for profit or other purposes, but not including household pets such as dogs, cats, birds, etc.

Macrophyte: Any plant species that can be readily observed without the aid of optical magnification.

Mitigation: The recreation, replacement or enhancement of a wetland, deepwater habitat, or fish and wildlife habitat conservation area to maintain the functional characteristics and processes of a natural system proposed for alteration.

Native Wetland Species: Wetland species which are indigenous to Island County. Such species are defined in Flora of the Pacific Northwest (C. Leo Hitchcock and Arthur Cronquist, University of Washington Press).

Non-Native Wetland Species: Wetland species which have been accidentally or purposefully introduced into Island County. This Chapter shall contain a list of the principal non-native wetland species.

Non-Wetlands: Non-wetlands include uplands and lowland areas that are neither deep water aquatic habitats, wetlands, nor other special aquatic sites. They are seldom or never inundated, or if frequently inundated, they have saturated soils for only brief periods during the growing season, and, if vegetated, they normally support a prevalence of vegetation typically adapted for life only in aerobic soil conditions.

Permitted Use: A use allowed outright by the terms of the land use classification.

Planning Director: The Planning Director of Island County, Washington, or his or her authorized representative.

Protected Species: Species of flora and fauna listed by the federal government or the State of Washington as endangered, threatened or sensitive which are present in Island County and those species of flora and fauna which, while not necessarily endangered or threatened, are unique in Island County and worthy of protection, designated as Habitats and Species of Local Importance. This Chapter shall contain a list of protected species which shall be revised by amending this Chapter as new species which warrant protection are recognized or a species which has been listed no longer needs protection.

Reasonable Use: The logical or rational use of a specific parcel of land which a person can be expected to conduct or maintain fairly and appropriately under the specific circumstances.

Restoration: Measures taken to replace, recreate or otherwise return to their previous functioning condition regulated wetlands, deepwater habitats, fish and wildlife conservation areas or their buffers which have been lost or damaged through alteration activities. Restoration will be required when natural regeneration processes are found to be inadequate to restore the functions.

Routine Wetland Determination: A type of wetland determination in which office data and relatively simple outside methods are employed to determine whether or not an area is a wetland. Most wetland determinations are of this type, which usually do not require collection of quantitative data. A classification and boundary determination may be made.

Seismic Hazard Areas: Areas subject to severe risk of earthquake damage as a result of seismically induced ground shaking, differential settlement, slope failure, settlement, lateral spreading, mass wasting, surface faulting, or soil liquefaction.

Source Identification: Sampling that is specific to an identified Watershed or portion of a Watershed intended to determine the source of an exceedence in Water Quality Standards or Thresholds.

Steep Slopes: Those slopes forty percent (40%) or steeper within a vertical elevation change of at least ten (10) feet. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least ten (10) feet of vertical relief. For the purpose of this definition:

1. The toe of a slope is a distinct topographic break in slope which separates slopes inclined at less than forty percent (40%) from slopes forty percent (40%) or steeper. Where no distinct break exists, the toe of a steep slope is the lowermost limit of the area where the ground surface drops ten (10) feet or more vertically within a horizontal distance of twenty five (25) feet; and

2. The top of a slope is a distinct, topographic break in slope which separates slopes inclined at less than forty percent (40%) from slopes forty percent (40%) or steeper. Where no distinct break exists, the top of a steep slope is the upper most limit of the area where the ground surface drops ten (10) feet or more vertically within a horizontal distance of twenty five (25) feet.

Streams: Those areas where naturally occurring surface waters produce a defined channel, bed, bank or side, and where there is clear evidence of the passage of water such as bedrock channels, gravel beds, sand and silt beds and defined channel swales. The channel or bed need not contain water year-round. This definition is not intended to include irrigation or drainage ditches or swales, canals, storm or surface water run-off devices or other artificial watercourses unless they are used by salmonids or to convey streams naturally occurring prior to construction of such watercourses.

Tributary Stream: A stream, whether permanent or intermittent, which enters or exits a Category B or Category A wetland and/or deepwater habitat. This definition does not include ditches, canals, stormwater run-off devices or other entirely artificial watercourses. Provided that a stream which has been altered by man to carry naturally occurring waters is a tributary stream within this definition.

Tsunami Hazard Areas: Coastal areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of wave action generated by seismic events.

Volcanic Hazard Areas: Areas subject to lava flows, pyroclastic surges, mud flows, lahars, debris flows, debris avalanche, ash clouds, ash fall, lateral blast, ballistic debris, or flooding as a result of volcanic activity. No volcanic hazard areas were found in Island County and therefore there is no risk from this hazard.

Water Quality Standards: A specific numeric measure established for a monitoring parameter that, if exceeded, will require immediate action by the County to identify the source of the contamination. Water Quality Standards are established by Chapter 173-201A WAC.

Water Quality Thresholds: A specific numeric measure established for a monitoring parameter set at a more stringent level than a Standard that, if exceeded, will typically require some change in the monitoring program but not require immediate action.

Water Quality Trend: A detectable change over time for a monitoring parameter after Baseline Monitoring is completed. A Trend can serve as early warning that an exceedence may occur in the future.

Watersheds: Watershed boundaries are established drainage areas. Initial boundaries have been established by Island County for one hundred twenty-five (125) geographic areas. Watersheds are also referred to as "basins."

Wetland/Deep Water Boundary: The boundary between a wetland and deep water habitat lies at a depth of two (2) meters, (6.6 feet) below low water; however, if emergents, trees or shrubs grow beyond this depth at any time their deep water edge is the boundary.

Wetland Edge: The upland limit of a wetland is designated as the boundary between land with predominantly wetland vegetation cover and land without such cover.

Wetland Functions: The beneficial roles served by wetlands, including but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, historical and archaeological value protection, aesthetic value and recreation. These beneficial roles are not listed in order of priority.

Wetlands: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. Groups of two (2) or more wetlands which are hydrologically connected through surface or shallow ground water within twelve inches (12") of the surface are considered to be associated with each other.

For regulatory purposes, the total area of associated wetlands shall be considered as constituting a single wetland.

Wetland Vegetation: When hydrophytic vegetation comprises a community where indicators of hydric soils and wetland hydrology also occur, the area has wetland vegetation.

17.02.040 Critical Areas

A. **Purpose.** This section establishes general requirements and regulations for the protection of critical areas pursuant to the Growth Management Act.

1. For a Development Proposal submitted prior to the effective date of Chapter 17.02A ICC, unless an Owner or applicant elects voluntarily to have a complete application reviewed under that Chapter, the application shall be reviewed under this Chapter.

2. Unless an Owner or applicant elects voluntarily to comply with the Critical Area requirements of Chapter 17.02A ICC, all Agricultural practices, on lands that contain or are affected by Critical Areas or Critical Area Buffers, shall comply with this Chapter.

B. **Applicability.** This section shall apply to all properties referenced in subsection A which contain or are affected by Critical Areas or Critical Areas Buffers. Designated critical areas are:

1. Wetlands. Wetlands are regulated pursuant to the Wetlands Overlay Zone, ICC 17.02.050.A, the Land Use Standards governing wetlands, deepwater habitats and their surrounding buffers, ICC 17.02.060, 17.03.260.I and the Land Development Standards, Chapter 11.01 ICC.

2. Fish and Wildlife Habitat Conservation Areas. Fish and Wildlife Habitat Conservation Areas are regulated pursuant to the Fish and Wildlife Habitat Conservation Areas Overlay Zone, ICC 17.02.050.C, the health regulations governing the design and installation of on-site sewage systems, Chapter 8.07D ICC, and the Land Development Standards, Chapter 11.01 ICC.

3. Geologically Hazardous Areas. Geologically hazardous areas are regulated pursuant to ICC 17.02.050.B, and Chapters 11.02 and 11.03 ICC. Geologically Hazardous Areas include Erosion Hazard Areas, Landslide Hazard Areas, Seismic Hazard Areas, Coal Mine Hazard Areas, Volcanic Hazard Areas, and Tsunami Hazard Areas.

4. Frequently Flooded Areas or Floodplains. Frequently flooded areas, also referred herein to as floodplains, are regulated pursuant to the Flood Damage Prevention Ordinance, Chapter 14.02A ICC.

5. Areas With a Critical Recharging Effect on Aquifers Use for Potable Water or Aquifer Recharge Areas. Areas with a critical recharging effect on aquifers used for potable water, also referred to herein as aquifer recharge areas, are regulated pursuant to sections ICC 8.09.097 and 8.09.099 of Potable Water and Supply, and the Land Development Standards, Chapter 11.01 ICC.

C. **Permitted Uses.** The Director may authorize pursuant to Chapters 16.19 and 16.14C ICC the following activities in wetlands, streams, or their buffers:

1. Roads or utilities where they are the least environmentally damaging, practical alternative, the width of the fill is limited to the minimum necessary, best management practices are implemented during construction, culverts are installed when necessary to maintain hydrology and mitigation proportionate to the impacts is provided pursuant to ICC 17.02.060 (wetlands) and ICC 17.02.050.C (streams).

2. Installation of underground utilities or moderate impact stormwater facilities, such as grass-lined swales, in the outer thirty-three percent (33%) of buffers for Type 1, Type 2, and Type 3 streams and Category A wetlands, the outer fifty percent (50%) of Type 4 streams, and the outer ten percent (10%) of Type 5 streams and Category B wetlands where topsoil is stockpiled outside of the buffer for use in restoration, and best management practices are used during construction.

3. Conservation, preservation, or enhancement projects to protect functions of critical areas. The Director shall require a Biological Site Assessment in order to determine whether the proposed activity would conserve, preserve or enhance critical areas functions.

D. **Reasonable Use - Single Family Residence on Existing Lots.** This section applies to new single family residences on existing, legal lots where application of this Chapter would preclude reasonable economic use. The Director may modify or waive the requirements pertaining to critical areas, including mitigation and buffer requirements, if he or she finds all of the following:

1. The proposal is the minimum necessary to accommodate the principal residence access and necessary appurtenances including, if necessary, well site, septic system and drainfield utilities, provided that the foundation of the principal residence and any accessory structures shall not exceed 2,800 square feet.

2. The building footprint, access and utilities are located so as to have the least impact on the critical area and its buffer.

3. The proposal does not degrade the functions of wetlands and streams beyond that needed to achieve a reasonable use.

4. Adverse impacts resulting from alterations of steep or geologically hazardous slopes are minimized.

5. The proposal includes on-site mitigation required by this Chapter to the extent possible, while allowing a reasonable use.

6. Disturbed critical areas and their buffers will be immediately restored consistent with good restoration practices.

7. This action does not allow wetlands or fish and wildlife habitat conservation areas or their buffers to be converted to lawn or residential landscaping.

E. **Exemptions.** The following activities or critical areas are exempt from the provisions of this section, ICC 17.02.050.A, 17.02.050.C and 17.02.060, where restoration of a disturbed critical area or its buffer requires planting, native species shall be used:

1. Existing and on-going agricultural activities when undertaken pursuant to best management practices to minimize impacts to critical areas. For example, by minimizing the use of motorized vehicles and machinery in such areas.

2. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practice regulations, Title 222 WAC, and which are exempt from Island County jurisdiction.

3. Maintenance or reconstruction of existing serviceable public or private roads, paths, bicycle ways, trails, bridges, and associated storm drainage facilities when undertaken pursuant to best management practices to minimize impacts to critical areas and to immediately restore any disturbed critical area or its buffer, provided that reconstruction does not involve expansion of facilities.

4. Maintenance and repair of existing serviceable drainage facilities or systems, including, but not limited to, ditches, culverts, catch basins, tidegates and outfalls when undertaken pursuant to best management practices to minimize impacts to critical areas and immediately to restore any disturbed critical area or its buffer. This exemption shall not apply to tidegates which historically drained wetlands where: (i) lack of maintenance of the tidegate for five (5) consecutive years has allowed positive indicators of wetland hydrology, hydrophytic vegetation and hydric soils to become established; and (ii) maintenance or repair of the tidegate would result in adverse alteration of wetland hydrology.

5. For the following utility activities, when undertaken pursuant to best management practices to minimize impacts to critical areas and immediately to restore any disturbed critical area or its buffer:

    a) Normal and routine maintenance or repair of existing utility facilities or rights-of-way.

    b) Installation, construction, relocation and replacement, operation, repair, or alteration of all utility lines, equipment, or appurtenances, not including substations, in improved road rights-of-way.

6. Reconstruction, remodeling, or maintenance of existing structures. The exemption shall not apply to reconstruction which is proposed as a result of structural damage associated with a critical area, such as slope failure in a Geologically Hazardous Area and does not allow further intrusion into a wetland, deepwater habitat, fish and wildlife habitat conservation area or their buffers.

7. Site investigative work. Site investigative work necessary for land use application submittals such as surveys, soil logs, and percolation tests involving no fill or use of heavy equipment in a wetland, or a fish and wildlife habitat conservation area or their buffers. Provide that disturbed critical areas and their buffers are immediately restored

and best management practices are implemented and excavation for soil logs or percolation tests filled pursuant to ICC 8.07C.110.H.3.d).

8. Emergency action. Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation. The Department shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken unless the nature of the emergency is such that it is not possible to first gain approval of the Department, in which case such review must occur within ten (10) days of the conclusion of the emergency work.

9. Artificial (Category C) wetlands/deep water habitats (ponds).

10. Flood Control. Operation, maintenance and repair of dikes, ditches, reservoirs, and other structures and facilities which were created or developed as part of normal flood control activities on or prior to December 31, 1984, except that this exemption does not extend to the permanent draining or permanent alteration of any regulated wetland.

11. Irrigation. Operation, maintenance and repair of ditches, reservoirs, ponds and other structures and facilities which were created or developed as part of normal irrigation activities on or prior to December 31, 1984.

12. Recreational Uses. Swimming, boating and fishing. Construction, placement, maintenance and repair of docks, piers, boat launches and floats in lakes (provided that the proposed action complies with the requirements of the Shoreline Management Act), in deep water habitats one (1) acre or greater in size when such activities are for recreational purposes and do not involve alteration of or construction through, over or in a regulated wetland.

13. Existing Residential Landscaping. Planting, irrigating, fertilizing, spraying, mowing and pruning and maintenance and repair of yard or garden structures when such activities are part of existing normal residential landscaping activities and no building permit is required. This exemption does not allow further intrusion into a wetland, fish and wildlife habitat conservation area, geologically hazardous area or their buffers.

14. All wetlands/deep water habitats wherein wetland vegetation is being maintained only because of man-induced water, and it can be determined that the wetland vegetation would no longer exist if the activity (for example, irrigation or pumping water) were to be terminated.

15. Removal or destruction of noxious weeds listed in Chapter 16-750 WAC is the responsibility of the landowner, provided that, the following conditions are met:

a) The removal or control of noxious weeds shall follow guidelines issued by the Island County Noxious Weed Control Board. The Island County Noxious Weed Control Board shall coordinate with the Department of Planning and Community Development (in preparation of the guidelines) for the control of noxious weeds in wetlands.

b) All herbicide applications in aquatic environments shall conform to the rules of the Department of Ecology, Department of Agriculture and Department of Natural Resources, pursuant to WAC 173-201, WAC 16-228, and WAC 222-38.

16. All Category A wetlands less than one-fourth ($1/4^{th}$) acre in size and all Category B wetlands less than one (1) acre in size are exempt from regulation by this section and 17.02.060. Provided that in the Rural (R) Zone, for Parcels that are not devoted to existing and on-going Agriculture, these size thresholds are reduced to one-eighth ($1/8^{th}$) acre for Category A wetlands and one-fourth ($1/4^{th}$) acre for Category B wetlands. Provided further there shall be no size-exemption for estuarine wetlands regardless of the zone in which it is located.

17. Wildlife Nesting Structure.

F. **Alteration.** Unless expressly authorized by sections 17.02.040.C, 17.02.040.D 17.02.050.C, or 17.02.050.A.4.b) or exempted by section 17.02.040.E, any alteration of a wetland, deep water habitat, fish and wildlife habitat conservation area or their buffer may be permitted only pursuant to the alteration standards in ICC 17.02.050.A, 17.02.060, and 17.02.260 and Chapter 16.19 or, if the application of this Chapter would preclude reasonable economic use, by a Reasonable Use Exception pursuant to ICC 17.02.040.G.

G. **Reasonable Use Exception.** If the application of this section would deny reasonable use of an existing parcel, development may be allowed which is consistent with the general purposes of this section, the public interest, and the following standards:

Nothing in this Chapter is intended to preclude reasonable economic use of property as set forth herein. If an applicant can prove that strict application of the critical areas standards will deny reasonable use, development as conditioned will be permitted if the applicant demonstrates all of the following:

1. There is no other reasonable economic use or feasible alternative to the proposed development with less impact on the critical area; and

2. The proposed development does not pose a threat to public health, safety and welfare on or off the subject property; and

3. Any alterations permitted pursuant to the requirements of this Chapter shall be the minimum necessary to allow for reasonable use of the property; and

4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition after December 31, 1984 (wetlands) or October 1, 1998 (other critical areas); and

5. The proposal mitigates the impacts on the critical area to the maximum extent possible, while still allowing reasonable economic use of the lot.

A report shall accompany a reasonable use exception proposal which provides information on the function and value of the critical area proposed for alteration, impact of development on the critical and any required buffer, what constitutes a reasonable economic use of the property, steps taken to minimize the impact of the alteration, needed modifications of the code, and other information as deemed necessary.

H. **Physically Separated and Functionally Isolated Buffers.** Areas which are both physically separated and functionally isolated from a critical area and do not protect the critical area from adverse impacts due to existing public roads, structures, or vertical separation, shall be excluded from buffers otherwise required by this Chapter. The Director shall require a Biological Site Assessment to determine whether the buffer is functionally isolated.

I. **Review Process**

1. Single Family Residence on Existing Lots. Single Family Residence on existing lots shall be reviewed under the process set forth for Type I decisions in Chapter 16.19 ICC.

2. Permitted Uses and Reasonable Use Exceptions. Permitted uses and reasonable use exceptions shall be reviewed under the process set forth in Chapter 16.19 ICC for the underlying permit decision.

3. Alterations: Alterations shall be reviewed under the process set forth for Type III decisions in Chapter 16.19 ICC.

4. For all other developments: For proposals located on property which may contain a critical area, the applicable critical areas regulations shall be applied to the underlying permit through the review process applicable to that permit.

J. **Assessment.** The Assessor's Office shall consider the protection and buffering requirements of this Title in determining the fair market value of land.

K. **Existing and On-going Agricultural Activities**

L. **Monitoring.** Monitoring water quality is important to determining whether exemptions and uses permitted under this Chapter, including Existing and On-going Agricultural Activities, are adversely affecting Critical Areas. Commencing in 2006, the Director shall implement an interdepartmental water quality monitoring program and shall report on monitoring to the public, State Agencies and the Board of Commissioners as part of the annual Comprehensive Plan review process. The Water Quality Monitoring Program shall have three components: baseline monitoring, source identification, and adaptive management. A more detailed discussion of the Monitoring Program is contained in the January 2006 Report of Dr. Paul Adamus. This Report is available from Planning and Community Development upon request.

1. Purpose. The primary focus of the County's Water Quality Monitoring Program is to detect and respond to potential sources of contamination of surface water that are adversely affecting critical areas. The sources of concern are primarily non-point source contaminants from uses allowed in the rural area of the County.

2. Guiding Principles. The following principles shall be used to guide the implementation of the Water Quality Monitoring Program and adaptive management actions that are used by the County to address Exceedences in Water Quality Standards and Thresholds that are adversely affecting designated critical areas.

    a) Monitoring of water quality shall be conducted countywide to establish baseline conditions in both Watersheds that have experienced a low level of alteration and those Watersheds that have experienced the full range of allowed rural uses.

    b) The identification of the source or sources of contamination shall generally follow after commencing monitoring to assess the baseline water quality condition of a Watershed. However, existing data may trigger Compliance Assessment and/or Source Identification when the existing data reliably documents ongoing Exceedences.

    c) Both Baseline Monitoring and Source Identification shall utilize the best available "peer reviewed" protocols for sampling and measuring contaminants, generally those recommended by the Washington State Department of Ecology (WSDOE) and the United States Environmental Protection Agency (USEPA).

    d) Except when authorized pursuant to ICC 17.03.260A, access to private property to conduct Baseline Monitoring and Source Identification shall only occur if the property owner voluntarily consents in writing to such access.

    e) If Baseline Monitoring identifies an Exceedence, the first step initiated by the County will typically be Compliance Assessment to determine whether a source or sources can be readily identified. Subsequently, the County may initiate Source Identification.

    f) All property owners must comply with State water quality standards and WSDOE is charged with the responsibility to initiate enforcement actions when such actions are required under State law. The County will use Water Quality Standards to identify Exceedences and is responsible for addressing adaptive management actions that may be required under this Chapter to ensure that Ag BMPs are effective.

    g) The monitoring program shall be conducted in a manner that encourages the involvement of property owners and voluntary compliance. Educational outreach will be the first action taken by the County after Compliance Assessment or Source Identification determines that an Exceedence is attributable to a specific source or sources.

    h) Adaptive actions initiated by the County to address non-point source contamination that is adversely affecting designated critical areas shall usually be

through legislative changes in critical area regulations typically applied county-wide and applicable to new and not Existing Uses.

i) When specifically authorized by this Chapter, the Director may order a property owner(s) to modify Best Management Practices being used by Existing and Ongoing Agriculture only when it has been determined through Source Identification that site or area specific management practices need to be modified to address water quality Exceedences that are adversely affecting designated critical areas.

j) Any order directing that best management practices be modified may be appealed as a Type I decision to the Hearing Examiner by a property owner that is required to modify management practices. Appeals will be governed by this Chapter and Chapter 16.19 ICC.

k) Enhancement or restoration projects initiated by the County to address water quality contamination from Existing Uses that is adversely affecting designated critical areas shall conform to the conditions established in the Multi-Species Salmon Recovery Plan adopted by the Board of Commissioners in May 2005.

3. Baseline Monitoring. The goal of the County will be to establish baseline surface water quality conditions countywide within five (5) years of the commencement of the Water Quality Monitoring Program.

a) Monitoring parameters used by the County to establish baseline conditions shall include:

(i) Dissolved Oxygen;

(ii) Fecal Coliform;

(iii) Nitrate;

(iv) pH;

(v) Phosphorus;

(vi) Temperature;

(vii) Turbidity;

(viii) Conductivity;

(ix) Hardness; and

(x) Vegetation

b) The parameters listed in subsection 3.a) may be changed by the Board from time to time based on data from Baseline Monitoring; changed standards of State or Federal agencies; or the need to assess the potential adverse effect of unlisted parameters on critical areas.

4. Source Identification.

a) Generally, Source Identification will be initiated after Baseline Monitoring has identified contaminants that exceed County adopted Water Quality Standards or Thresholds.

b) Before Baseline Monitoring is completed, the County may initiate Source Identification in some Watersheds, based on existing data that identifies Exceedences and using as a guide the Watershed ranking methodology set forth in the Adamus Report.

c) Types of Source Identification shall include in order of typical use:

(i) Increase the compilation and analysis of existing data;

(ii) Increase the number and changing the location of monitoring sites;

(iii) Increase the frequency and changing the timing of monitoring; and

(iv) When the above actions prove insufficient, utilize new monitoring methods such as DNA analysis and optical brighteners, tracing or other specialized methods.

5. Water Quality Standards, Thresholds and Trends

a) Water Quality Standards are specific measures for a monitoring parameter that, if exceeded, will require immediate action by the County to identify the source of the contaminant. Compliance Assessment will typically be the first step taken after an Exceedence is identified. Source Identification will usually be the second step.

b) Water Quality Thresholds are also specific for a monitoring parameter and are set at a more stringent level than a Standard. Exceedence of a Threshold can also result in Source Identification. Not all monitoring parameters will have adopted thresholds.

c) Water Quality Trends are established through monitoring a parameter over time. Typically, data are assessed to determine whether a trend exists in a particular Watershed after Baseline Monitoring in that Watershed has been completed. Not all monitoring parameters will have adopted trends. A worsening trend may serve as a basis for initiating Source Identification, while an improving trend may serve as a basis to reduce regulations.

d) The Water Quality Standards and Thresholds for perennial streams set forth in Table I shall be used to guide implementation of the Water Quality Monitoring Program.

TABLE I

Water Quality Parameter	Water Quality Standard	Water Quality Threshold	Water Quality Trend
Dissolved Oxygen	>8.0 mg/L	>9.5 mg/L	---
Fecal Coliform	<200 colonies/100 ml	<100 colonies/100 ml	---
Nitrate	<10 mg/L	< 5 mg/L	---
pH	6.5 to 8.5	6.7 to 8.3	---
Phosphorus	---	0.0350 mg/L (for lakes)	---
Temperature	< 18° C	< 17.5° C	---
Turbidity	< 10 NTU over background when background is 50 or less, or a 20% increase when background is >50	< 5 NTU over background when background is 50 or less, or a 10% increase when background is >50	---

e) Additions and changes to Table I will be made by the Board of Commissioners based on the following criteria:

(i) Values appropriate for lakes, wetlands and intermittent streams;

(ii) Adopted water quality standards for the State of Washington and/or as promulgated by the USEPA;

(iii) Values supported by peer-reviewed scientific literature;

(iv) Values for the Monitoring Parameter associated with water quality conditions in relatively unaltered contributing areas and Watersheds;

(v) Values for the Monitoring Parameter derived from the entire water quality data set for Island County; and

(vi) A multiyear trend indicating worsening conditions for the Monitoring Parameter, relative to trends in Reference Watersheds.

6. Adaptive Management. Baseline Monitoring and Source Identification provide information used by the County to assist in determining the effectiveness of the County's critical area regulations and BMPs applicable to Existing and Ongoing Agriculture. The adaptive actions that may be triggered could be to make County regulations and BMPs more stringent, less stringent or leave them unchanged. All three outcomes are possible. Adaptive management actions to address Exceedences

that are adversely affecting designated critical areas shall conform to the guiding principles set forth in Section L. 2 and shall follow the steps set forth below:

a) Step 1 - Compliance Assessment/ Source Identification. Compliance Assessment is the first adaptive management action the County will initiate after a Water Quality Standard or Threshold has been exceeded. The purpose of the assessment is to determine whether there is compliance with applicable critical area regulations and/or BMPs are being used. When Compliance Assessment shows that required BMPs have been implemented and are in conformance with critical area requirements, then Source Identification will be initiated to determine the source or sources of the Exceedence.

b) Step 2 - Education. If the County determines that an Exceedence in a Water Quality Standard or Threshold is, at least in part, attributable to non-compliance with applicable critical area regulations or failure to implement BMPs, the County will initiate actions to secure voluntary compliance.

c) Step 3 - Enforcement. If reasonable efforts to achieve voluntary compliance are not successful, then the County will initiate enforcement actions under ICC 17.02.050 D and 17.03.260.

d) Step 4 - Site Specific Change in BMPs. If specifically authorized by ICC 17.02.050, the Director may require a property owner or owners to modify BMPs applicable to Existing and Ongoing Agriculture.

    (i) This step may be taken when the County determines that specific site conditions on a specific property require a change in BMPs.

    (ii) This Step shall be taken only when adopted Water Quality Standards are exceeded and the Exceedence is adversely affecting designated critical areas. Any action to initiate site or area specific modification of AG BMPs will be based on recommendations from Conservation Districts, NRCS and/or a certified farm planner.

    (iii) This Step shall be limited to modifications of BMPs that have been required by this Chapter.

    (iv) An order of the Director to modify BMPs may be appealed as a Type I decision to the Hearing Examiner by the affected party and, if appealed, the County shall have the burden of demonstrating that the change(s) in BMP(s) is needed to address the Exceedence in adopted Water Quality Standards. Appeals will be governed by Chapter 16.19 ICC.

e) Step 5 - Modification of Critical Area Regulations. This step shall be initiated when monitoring indicates that Water Quality Standards or Thresholds are being exceeded; the Exceedence is adversely affecting designated critical areas; and, a change in regulations that are applicable countywide is needed to address the Exceedence. Any modification of critical area regulations will be based on best available science.

7. Reporting. The County will produce annual reports and make them available to the public and State Agencies. These reports will include all Baseline Monitoring data, summary statistics, an assessment of the accuracy and completeness of the data, and a description of data collection issues, if any, identified during the reporting period as well as the following additional information:

    a) A description of all Compliance Assessments and Source Identification actions taken during the reporting period.

    b) A description of educational outreach actions as well as enforcement actions taken during the reporting period.

    c) A description of any actions taken to modify BMPs on a site or area specific basis.

    d) A discussion of watershed monitoring priorities for the next reporting period.

17.02.050 Overlay Zones

A. **Wetlands (w).** Wetlands have been initially identified in Island County through the use of the National Wetlands Inventory Mapping System developed by the U. S. Fish and Wildlife Service. This process serves to notify both the property owner and the County of the existence of a wetland. It does not classify the wetland nor identify its boundaries.

In making any determination regarding a wetland, the text of the ordinance is always controlling. The State Wetlands Identification and Delineation Manual (March 1997) as it may be amended shall serve as the technical resource guides for all technical questions concerning wetland delineation.

Wetlands, deep water habitats, and their buffers shall be regulated in Island County pursuant to the regulations contained herein. An applicant should be aware that Section 404 of the Federal Clean Water Act and other federal and state statutes may also apply.

1. Permitted Uses.

    a) Uses permitted in the underlying zone are allowed in a wetland, deep water habitat, or surrounding buffers subject to the requirements of this Chapter; and

    b) All wetlands/deep water habitats regulated by this Chapter may be used in an emergency situation to provide water to meet fire flow requirements without permission from Island County.

2. Conditional Uses.

    a) Uses conditionally permitted in the underlying zone are allowed in a wetland, deep water habitat, or surrounding buffers subject to the requirements of this Chapter;

    b) Alteration of Category A wetlands/deep water habitats or their buffers.

    Unless otherwise provided in ICC 17.02.040.F, alteration of a Category A wetland, deep water habitat, or their buffers may be allowed only upon Approval of an Alteration when it is determined that:

(i) Substantial public benefit will accrue through the alteration; and

(ii) The public benefit accruing substantially outweighs the public loss occurring through the alteration of the wetland; and

(iii) There is no reasonable alternative to making the alteration; and

(iv) All conditions for modifying a Category B wetland can be met.

c) Alteration of Category B wetlands/deep water habitats or their buffers.

Unless otherwise provided in ICC 17.02.040.F alteration of a Category B wetland, deep water habitat or their buffers may be allowed only upon Approval of an Alteration when it is determined that:

(i) The alteration is solely to provide access to a deep water habitat or to expand an existing water-dependent use and does not act to degrade the functions of the wetland; or the degradation can be fully mitigated; or

(ii) Alteration will preserve, improve or protect the functions; and

(iii) Alteration will comply with the Land Use Standards ICC 17.02.060; and

(iv) Use of the parcel will comply with all applicable terms and conditions of this Chapter and with other pertinent requirements of the Island County Code; and

(v) The applicant irrevocably commits to restoration should alteration, in fact, not preserve, improve or protect the functions.

d) While it is not the intent of this Chapter to regulate Category C wetlands or Category C deep water habitats (ponds), should any alteration have an adverse impact on a regulated wetland, such alteration is prohibited in the absence of a valid authorization to make the resulting alteration to the regulated wetland.

e) Mitigation may be required as a condition to the approval of any alteration.

3. Designation Criteria - Wetlands. Wetlands shall be designated Category A, Category B or Category C according to the criteria in subsections a), b), and c) below. As used in this section, the term “regulated wetlands” shall refer to Category A and Category B wetlands.

a) Category A: A wetland is assigned the Category A rating if it is not a Category C wetland, and it meets the following criteria:

(i) Presence of a protected species or an outstanding habitat for a protected species; or

(ii) The wetland is an estuarine wetland; or

(iii) Predominance of native wetland species over non-native wetland species; and

(1) The wetland is one-fourth ($1/4^{th}$) of an acre or greater in size; or

(2) The wetland is one-eighth ($1/8^{th}$) of an acre or greater in size and located in the Rural (R) Zone.

b) Category B: A wetland is assigned the Category B rating if it meets the following criterion:

(i) The wetland does not meet the criteria for Category A or Category C; and

(ii) The wetland is one (1) acre or greater in size; or

(iii) The wetland is one-fourth ($1/4^{th}$) acre or greater in size and located in the Rural (R) Zone;

(iv) Any Category B wetland that is enhanced through an authorized alteration or mitigation process so that it meets the Category A designation criteria shall continue to be designated as a Category B wetland.

c) Category C: A wetland and/or deep water habitat (pond) may be designated as Category C by the Planning Director on a positive showing through documentation, photographs, statements and/or other evidence, that it was created through human actions that were carried out purposefully to create the wetland or deep water habitat where no wetland before existed. Wetlands created for mitigation purposes will not be considered as Category C.

d) For purposes of establishing buffers pursuant to 17.02.050.A., a single wetland shall be classified into more than one (1) category if distinct areas exist in the wetland which clearly meet the designation criteria of separate categories.

4. Setbacks.

a) The following buffers shall be established adjacent to all wetlands:

(i) Category A Wetlands. Not less than one-hundred (100) feet.

(ii) Category B Wetlands. Not less than twenty-five (25) feet, provided the buffer shall be not less than fifty (50) feet for lots or parcels located in the Rural (R) Zone.

b) Minimum Setback: Any use permitted in the underlying zone shall preserve the above stated undisturbed buffer unless the Island County Planning Director determines the proposed use would preserve, improve or protect the wildlife habitat, natural drainage and/or other valuable functions of the wetland or deep water habitat and would be consistent with 17.02.060 and the purposes of this Chapter, whereupon such buffer width may be modified. This determination may be made upon review of a study completed by a biologist, plant ecologist or similarly qualified professional. The study shall be prepared at the applicant's cost. Provided that the Planning Director may also administratively authorize a modification of up to fifty percent (50%) of the buffer width to provide a reasonable buildable area for a single-family residence or accessory building on a lot legally established prior to the effective date of this Chapter.

c) Increased Setback: The width of the wetland buffer may be increased over the required minimum under the following condition:

(i) When the wetland is especially sensitive, a wider buffer of native vegetation should be provided.

d) General Provisions: The following general provisions shall apply to wetlands or their buffers:

(i) The buffer width shall be measured perpendicular at any point to the wetland edge.

(ii) No new lot shall be created that is wholly comprised of wetlands or that would require alteration of a regulated wetland or its buffer to provide a buildable area unless a conservation easement encompassing the lot is established and recorded.

(iii) In the case of existing lots which encroach into the required buffer, clearing, grading and placement of structures shall respect the required buffer if possible.

(iv) The wetland edge within the boundaries of the applicant's property shall be shown on all plats, short plats, site plans or PRDs, together with any conservation easement(s) and appropriate covenants. The applicant shall be responsible for such delineation. Such delineation may be based on findings by the Planning staff or, if the applicant disagrees with such findings, on the results of a study by a biologist, plant ecologist or similarly qualified professional which have been certified through the appeal process specified in Chapter 16.19.

(v) Development within the buffer shall be limited to passive recreation such as trails or scientific uses and fences or other barriers necessary to protect habitat, unless otherwise approved or exempted under the provisions of 17.02.050.A.4.a).

(vi) Conveyance of wetlands identified as part of project review to a land trust, the Audubon Society, the Nature Conservancy, the Trust for Public Land or similar organization or governmental agency is encouraged when such conveyance will ensure the long-term protection of the wetlands.

5. Environmentally Sensitive Areas: Wetlands are hereby declared to be "environmentally sensitive areas" pursuant to WAC 197-11-748 and 197-11-908.

B. **Geologically Hazardous Areas (gh)**. The primary purpose of the geologically hazardous areas overlay zone is to promote the public health, safety and general welfare by minimizing the hazards incident to development on or adjacent to steep slopes or geologically hazardous areas.

1. Geologically Hazardous Areas are defined pursuant to WAC 365-190-080 and are regulated pursuant to the following:

a) Erosion Hazard Areas shall comply with Chapters 11.02 and 11.03 ICC.

b) Landslide Hazard Areas shall comply with Chapters 11.02 and 11.03 ICC.

c) Seismic Hazard Areas shall comply with the International Residential Code and/or the International Building Code.

d) Coal Mine Hazard Areas have not been identified in Island County.

e) Volcanic Hazard Areas have not been identified in Island County.

f) Tsunami Hazard Areas shall comply with Chapter 14.02A ICC.

2. Development on steep slopes or geologically hazardous areas shall be site-and use-specific and shall comply with Chapter 11.02 and 11.03 ICC.

3. Environmentally Sensitive Areas. Steep slopes or geologically hazardous areas are hereby declared to be "environmentally sensitive areas" pursuant to WAC 197-11-748 and 197-11-908.

C. **Fish and Wildlife Habitat Conservation Areas (fw)**

1. Designation. The following are designated as Fish and Wildlife Habitat Conservation Areas:

a) Areas with which endangered, threatened, and sensitive species listed by the federal or state government have a primary association.

b) Streams.

c) Commercial and recreational shellfish beds.

d) Kelp and eelgrass beds.

e) Herring and smelt spawning areas.

f) State natural area preserves.

g) State natural resource conservation areas.

h) Species and Habitats of Local Importance. Any person may nominate for designation a species or habitat of local importance. Nominations will be processed pursuant to Chapter 16.26 ICC.

(i) The person making the nomination shall provide information demonstrating that the species or habitat is native to Island County existing on or prior to December 1, 1998.

(ii) Nominated species must satisfy the following criteria:

(1) Local populations which are in danger of extirpation based on existing trends since January 1, 1985.

(2) The species is sensitive to habitat manipulation.

(3) The species or habitat has commercial, game, or other special value such as locally rare species.

(iii) Habitats nominated to protect a particular species must satisfy the following criteria:

(1) Where a habitat is nominated to protect a species, the use of the habitat by that species is documented or is highly likely or the habitat is proposed to be restored with the consent of the affected property owner so that it will be suitable for use by the species; and

(2) Long term persistence of the species is dependent on the protection, maintenance or restoration of the habitat.

(iv) Areas nominated to protect a particular habitat must represent either high-quality native habitat or habitat that has an excellent potential to recover to a high quality condition and which is either of limited availability or highly vulnerable to alteration.

(v) The nomination shall indicate the specific habitat features to be protected (for example, nest sites, breeding areas, nurseries, etc.).

(vi) The nomination shall include management strategies for the species or habitats. Management strategies must be supported by best available science, and where restoration or habitat is proposed, a specific plan for restoration must be provided prior to nomination.

(vii) Pursuant to ICC 16.19.060, the Planning Department shall determine whether the proposal is complete. For proposals which are complete, it shall evaluate the proposal for compliance with the standards enumerated in subsection (ix) and make a recommendation to the Planning Commission based on those standards. Management strategies must be supported by best available science and where restoration is proposed a specific plan to finance the restoration is available.

(viii) The Planning Commission will hold a Public Hearing for proposals found to be complete, and make a recommendation to the Board of Commissioners based on the standards enumerated in subsection (ix).

(ix) Following the recommendation of the Planning Commission, the Board of Commissioners shall designate a Habitat or Species of Local Importance that:

(1) Satisfies the nomination criteria in subsection h)(ii) and includes the information required in subsections h)(iii) and (iv); and

(2) Includes best available science; and

(3) Protection by other county, state or federal policies, laws, regulations or non-regulatory tools is not adequate to prevent degradation of the species or habitat in Island County; and

(4) For which management strategies are practicable; and

(5) Without protection, there is a likelihood that the species will not maintain and reproduce over the long term.

(x) Approved nominations will be subject to the provisions of this Title.

i) Flora species included in the Protected Species list.

j) All areas designated by the Department of Natural Resources ("DNR") through the Washington Natural Heritage Program as high quality wetland ecosystems and high quality terrestrial ecosystems and shown on a Map prepared by Island County dated October 11, 1999.

2. Site Assessment Requirements. When a development proposal is located on lands which may contain, based upon maps and other information maintained by the Department, a habitat for a Protected Species, other than Bald Eagle nesting territories or when the applicant proposes to alter, decrease or average the standard buffer, a Biological Site Assessment (BSA) shall be required. A BSA shall be prepared by the County or a qualified professional biologist, plant ecologist, or similarly qualified professional with experience assessing the relevant species and/or habitats. The level of detail in a BSA should be proportionate to the location, size and impacts of the project proposal. Unless modified by the Director, a BSA shall include:

a) A site plan indicating all Fish and Wildlife Habitat Conservation Areas falling on or within one-hundred (100) feet of the portion of the subject property proposed for development. For heron and osprey the distance shall be as follows:

i) Heron - One thousand (1,000) feet for non-residential development, three-hundred (300) feet for residential development; and

ii) Osprey - Six hundred (600) feet for non-residential development, two-hundred (200) feet for residential development.

b) Descriptions of all Fish and Wildlife Habitat Conservation Areas shown on the site plan;

c) Description of the proposed project, including, but not limited to, associated earthwork (grading, excavation, filling), structures, utilities, and existing habitat other than Fish and Wildlife Habitat Conservation Areas (wetlands, other vegetated areas, including areas which may act as corridors, ravines or steep slopes, etc.);

d) Analysis of impacts to the protected species or habitats. A discussion of impacts to all Fish and Wildlife Habitat Conservation Areas must be included;

e) Regulatory summary, identifying other agencies with jurisdiction;

f) If adverse impacts to protected species or habitats are likely to occur, a conceptual mitigation plan, including an analysis of feasible mitigation alternatives that would mitigate adverse impacts of the project. The effectiveness of the proposed mitigation measures shall be compared to other

feasible alternatives. Mitigation alternatives shall be presented in the following order (in accordance with WAC 197-11-766):

(i) Avoiding the impact by not taking a certain action or parts of an action;

(ii) Minimizing impacts by limiting the degree of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(iii) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(iv) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(v) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;

(vi) Monitoring the impact and taking appropriate corrective measures.

g) Best Management Practices, including a discussion of on-going maintenance practices that will assure protection of all Fish and Wildlife Habitat Conservation Areas on-site after the project has been completed. If monitoring is required, this section shall include a description of proposed monitoring criteria, methods, and schedule.

h) The recommendations of the BSA, once approved, shall be included as conditions of approval of the underlying permit.

TABLE 17.02.050.C
Water Typing Criteria, WAC 222-16-030

Water Type	1	2	3	4	5
Channel Width	N/A	20’ or greater between ordinary high water marks (OHWM)	Anadromous fish: 5’ or wider between OHWM. Resident game fish: 10’ or wider between OHWM.	2’ or wider between OHWM	< 2’ between OHWM.
Gradient	N/A	< 4% (<5% for off-channel drainages)	Anadromous fish: <12%. Not upstream of a falls > 10’ high. Resident game fish: <12%	N/A	N/A
Flow	N/A	N/A	Anadromous fish: N/A. Resident game fish: > 0.3 CFS at summer low flow.	N/A	N/A
Impoundment	N/A	Water surface area of 1 acre or greater at seasonal low flow.	Anadromous fish: Surface area < 1 acre at seasonal low flow. Resident game fish. Surface area < 0.5 acres at seasonal low flow.	N/A	N/A
Fisheries	N/A	Used by substantial numbers of anadromous or resident game fish for spawning, nesting, and migration.	Used by substantial numbers of anadromous or resident game fish for spawning, nesting, and migration.	Not used by significant numbers of fish.	Not used by significant numbers of fish.
Diversion	N/A	Domestic use for 100 or more residences or campsites, accommodation facility for 100 or more persons – includes upstream reach of 1500 feet or until the drainage area is < 50%, whichever is less.	Domestic use for 10 or more residences or campsites, accommodation facility for 10 or more persons – includes upstream reach of 1500’ or until the drainage area is < 50%, whichever is less.	N/A	N/A
Other	All water within OHWM inventoried as “Shorelines of the State” excluding related wetlands (typically 20 CFS).	Streams flowing through campgrounds available to the public having 30 campsites or more.	Contributes > 20% of the flow to a Type 1 or 2 water. Anadromous fish impoundments have outlet to stream with anadromous fish.	All natural waters not classified as Types 1, 2, or 3 and for the purpose of protecting downstream waters.	All natural waters not classified as Type 1, 2, 3, or 4, or seepage areas, ponds, and drainage ways having short run-off periods.

3. Protection Standards: Streams

a) Standard Buffers and Classification. Streams as defined in 17.02.030 shall be classified in accordance with the Washington Department of Natural Resources classification system (WAC 222-16-030) shown in Table 17.02.050.C. Protective buffers shall be required to preserve stream/riparian functions. Buffer distances shall be measured horizontally from the ordinary high water mark of the stream. The following standard buffers apply to streams regulated under this Title.

Stream Type	Buffer (ft)
1	150
2	100
3- reach without anadromous fish present	75
3- reach with anadromous fish present	100
4 and 5	50

b) Increasing Buffer Widths. The Director has the authority to increase the standard buffer widths on a case-by-case basis based on the intensity of the proposed use, the functions of the stream and the characteristics of the existing buffer when a larger buffer is determined to be necessary to protect stream water quality or a Protected Species. For example, stream buffers that are unstable slopes may require larger buffer widths; PRDs using density bonuses may warrant increased buffer widths. However, an applicant may enhance any such buffer (such as through bioengineering using native plants) to maintain the standard buffer width following submittal, review and approval of a BSA which demonstrates that the enhancement will provide a buffer which protects stream water quality or a Protected Species, as applicable.

c) Decreased Buffer Widths. Decreased buffer widths will be allowed only if the applicant demonstrates that all of the following criteria are met:

(i) Decreasing the buffer width will not adversely affect fish and wildlife habitat functions and values; and

(ii) If a portion of a buffer is reduced, an area of the remaining buffer equal to two (2) times the area removed from the standard buffer shall be enhanced using native vegetation and/or installed habitat features. For example, if a buffer is reduced by 1,000 square feet, then 2,000 square feet of remaining buffer shall be enhanced; and

(iii) The perimeter of the reduced buffer must be screened with dense vegetation or barrier fencing (other measures necessary to provide adequate protection for fish and wildlife habitat should be identified in the BSA); and

(iv) The buffer width shall not be reduced by more than 33% of the standard buffer width for Type 1 and Type 2 streams, 50% for Type 3, Type 4 and Type 5 streams for which a 50 foot buffer is required. For all other Type 5 streams the buffer shall not be reduced by more than 10%.

d) Averaging Buffer Widths. Buffer widths may be modified by "averaging." Buffer width averaging shall be allowed only where the applicant demonstrates through an approved BSA that the following criteria are met:

(i) A decrease in a portion of the buffer is necessary to accomplish the purpose of the proposed project and no reasonable alternative is available; or

(ii) Averaging would allow the applicant to establish a corridor of native vegetation between natural systems; and

(iii) Decreasing the buffer width will not adversely affect fish and wildlife habitat functions and values; and

(iv) If a portion of a buffer is reduced through averaging, an area of additional buffer, contiguous with the existing buffer, shall be designated that is equal in size to the reduced portion of the standard buffer so that the total buffer area remains unchanged; and

(v) The buffer width shall not be reduced by more than 33% of the standard buffer width for Type 1 and Type 2 streams, 50% for Type 3 and Type 4 and Type 5 streams for which a 50 foot buffer is required. For all other Type 5 streams the buffer shall not be reduced by more than 10%.

e) Allowed Uses in Buffers. Low impact uses that are consistent with the purpose and intent of this Ordinance, and that do not detract from the buffer's ability to preserve stream and riparian functions may be permitted. Examples of low-impact uses and activities that are permitted in buffers include pedestrian (pervious) trails, interpretive signs, fencing, and viewing platforms.

4. Protection Standards: Commercial and Recreational Shellfish, Kelp and Eelgrass Beds, Herring and Smelt Spawning Areas. The following standards apply to property adjacent to or containing commercial or recreational shellfish areas, kelp or eelgrass beds or herring or smelt spawning areas.

a) On-Site Sewage Systems. The design of new and the replacement of existing on-site sewage systems shall comply with Chapter 8.07 ICC.

b) New Development

(i) Residential and Non-Residential

(1) Applications for residential subdivisions, or for construction of any new non-residential facility, shall require preparation, submittal, and approval of a storm water collection, treatment, and disposal system

designed by a Professional Engineer and reviewed pursuant to Chapter 11.01 ICC. Infiltration of storm water shall be encouraged, except where this practice would be injurious or potentially injurious to the quality of ground water in designated Aquifer Recharge Areas.

(2) All applications for residential subdivisions and development or for construction on lots created after October 1, 1998 or any new non-residential facility shall provide a seventy-five (75) foot buffer to protect commercial and recreational shellfish, kelp and eelgrass beds, and herring and smelt spawning areas. The buffer applies to all non-water-dependent portions of the application and shall be measured from the ordinary high water mark.

(3) For lots created on or before October 1, 1998, located in a series of four (4) or more consecutive lots that are one hundred (100) feet or less in width and proposed for single family residential development, the seventy-five (75) foot buffer required in subsection (2) may be reduced by review and approval of the Director but shall not be less than the shoreline setback required by Chapter 17.05 ICC, and shall comply with the County-adopted best management practices and shall meet the following standards (see figure A for illustrative purposes):

(a) The shoreline frontage of the building lot and adjacent lots is one hundred (100) feet or less; and

(b) The building lot is low bank (less than ten (10) feet in elevation); and

(c) either one of the following:

(i) For lots where existing single-family waterfront residences encroach on the required buffer on both sides of the proposed building lot, the required buffer may be reduced to the average of the setbacks of the existing residences located on the adjacent parcels; or

(ii) The end lot buffer may be reduced by averaging the existing buffer of the residence on the adjacent one hundred (100) feet or less wide lot and seventy-five (75) feet.

(4) The Director has the authority to increase the standard buffer widths on a case-by-case basis when a larger buffer is determined to be necessary to protect commercial and recreational shellfish, kelp and eelgrass beds, and herring and smelt spawning areas. For example, areas landward of these protected areas that are unstable slopes may require larger buffer widths. However, an applicant may enhance any such buffer (such as through bioengineering using native plants) to maintain the standard buffer width following submittal, review and

approval of a BSA which demonstrates that the enhancement will provide a buffer which protects the commercial and recreational shellfish, kelp and eelgrass beds, and herring and smelt spawning areas.

(ii) Agricultural Facilities and Livestock

(1) If construction of agricultural facilities in the CA Zone is proposed within the shoreline jurisdiction, preparation, submittal, and approval of farm plans and compliance with best management practices shall be required.

(2) Construction of new agricultural facilities or activities involving the raising or keeping of livestock in the RA Zone shall require compliance with water quality BMPs.

5. Protection Standards: Bald Eagle

Bald Eagle habitats shall be protected pursuant to the Washington State Bald Eagle Protection Rules (Chapter 232-12-292 WAC). If the Director determines that the scope or timing of the proposal may create an adverse impact or adversely affect the eagle nest territory, he shall require the preparation of a Habitat Management Plan which must be approved by the Department of Fish and Wildlife and signed by the landowner prior to any clearing or construction whenever activities that alter habitat are proposed near a verified nest territory.

6. Protection Standards: Washington Natural Heritage Program Areas

a) South Camano and Keystone. South Camano is inventoried as a significant plant community dominated by Big Leaf Maple (Acer macrophyllum). Keystone is inventoried as a significant plant community dominated by Douglas Fir, Western Hemlock and Swordfern. Natural vegetation between the ordinary high water mark and the top of banks and bluffs ten (10) feet or higher shall be retained, except for removal of hazardous, diseased or damaged trees and to allow for pedestrian waterfront access. Removal of invasive non-native species is authorized. Trimming but not removal for view enhancement is authorized.

b) Grasser's Hill. Grasser's Hill is inventoried as a significant plant community including white-top aster (Aster curtus), a Protected Species. A Biological Site Assessment shall be prepared pursuant to ICC 17.02.050.C.2 and a habitat management plan (HMP) shall be prepared pursuant to ICC 17.02.050.C.8 to ensure protection of the white-top aster.

c) West Beach and Ebey's Landing. West Beach and Ebey's Landing are inventoried as a significant plant community including golden indian paintbrush (Castileja levisecta), a Protected Species. A Biological Site Assessment shall be prepared pursuant to ICC 17.02.050.C.2 and a habitat management plan (HMP) shall be prepared pursuant to ICC 17.02.050.C.8 to ensure protection of the golden indian paintbrush.

d) All other Areas. Requests for permit approval by Island County will be acted on only after consultation with the Washington Natural Heritage Program.

7. Protection Standards: Habitats of Local Importance. Property owners within these areas are required to comply with Chapter 17.02 ICC, the Island County Critical Areas Ordinance; Chapter 17.03 ICC, the Island County Zoning Ordinance; Chapter 11.02 ICC, the Island County Clearing and Grading Ordinance; the Island County Shoreline Master Program; and all other applicable Federal, State and County regulations.

8. Protection Standards: All other Fish and Wildlife Habitat Conservation Areas shall be protected on a case-by-case basis. In addition to a Biological Site Assessment required by ICC 17.02.050.C.2, a Habitat Management Plan (HMP) shall be prepared.

9. Habitat Management Plan. HMPs shall be prepared by a professional ecologist, biologist or similarly-qualified professional, submitted, and approved. The HMP may be combined with the BSA. The HMP must consider Management Recommendations adopted by the Washington Department of Fish and Wildlife, and the specific attributes of the affected properties, such as, but not limited to, property size and configuration, surrounding land use, and the practicability of implementing the HMP, and the adaptation of the species to human activity.

10. Protection Standards: Standard Habitat Management Plan (HMP)

The County has developed a standard Habitat Management Plan for the bald eagle. From time to time as the lists of Protected Species and Species of Local Importance are amended, the County may develop additional standard HMPs, modify adopted standards; and/or delete HMP requirements. Where the County has developed a standard HMP, the applicant may either accept and sign the standard HMP or prepare his or her own HMP pursuant to subsection 9.

D. **Penalties and Enforcement**

Any violation of 17.02.040 and 17.02.050 shall be enforced by the Planning Director and shall be subject to the enforcement provisions of Chapter 17.03 ICC.

E. **Scenic Corridors (sc) (Reserved)**

F. **Water Resources (wr) (Reserved)**

G. **Critical Drainage (cd) (Reserved)**

H. **Historic (h) (Reserved)**

17.02.060 Alteration of Wetlands, Deepwater Habitats, Fish and Wildlife Habitat Conservation Areas and Their Surrounding Buffers

A General standards: These standards shall apply to all applications for an alteration pursuant to ICC 17.02.040.F of a regulated wetland, deep water habitat, fish and wildlife habitat conservation areas or their buffers, unless modified by the Planning Director upon a determination that the anticipated alteration will preserve, improve and/or protect the

wildlife habitat, natural drainage and/or other natural functions of the wetland, deep water habitat or fish and wildlife habitat conservation areas and will be consistent with the purposes of this Chapter without strict application of said standards. This determination may be made upon review of a study completed by a biologist, plant ecologist or similarly qualified professional. The study shall be prepared at the applicant's cost. As used in this section, wetlands shall refer to Category A and Category B wetlands.

1. Water quantity and quality. Uses permitted adjacent to wetlands and deep water habitats shall control stormwater runoff and protect the natural movement of water according to the following provisions:

    a) General provisions:

        (i) All surface water directed into wetlands and deep water habitats shall be passed through a vegetated detention pond or other stormwater management system incorporating a grass-lined swale approved by the Island County Engineer in order to remove sediments;

        (ii) The best available treatment practices shall be used to remove toxic wastes, petrochemicals or other pollutants from stormwater before it enters any wetland or deep water habitat;

        (iii) The velocity of stormwater runoff entering a wetland or deep water habitat shall be limited to pre-development levels;

        (iv) Where possible, natural water level fluctuations in wetlands or deep water habitats shall be minimized during spring breeding season (April through June);

        (v) Category A and Category B wetlands shall not be modified to function as stormwater retention/detention sites.

    b) Category A wetlands. In wetlands rated Category A with no natural point of inflow (i.e., stream), any surface water directed towards the wetland as a result of an approved drainage plan shall filter through the water table or a drain field to avoid erosion and excess nutrient inflow.

2. Human access. The following provisions shall apply to controlling human access and encouraging appropriate use in wetlands:

    a) No motorized vehicles shall be allowed within a wetland, fish and wildlife habitat conservation area or its buffer, except when allowed through Use Approval or as provided in section 17.02.050.A.4 and/or as the wetland or buffer may be traversed by a public or private roadway which existed on or before December 31, 1984 and the fish and wildlife habitat conservation area may be traversed by a public or private roadway which existed on or before October 1, 1998;

    b) Any trails within a wetland shall be constructed with minimum disruption to habitat.

3) Corridors. Where possible, wetlands should be connected to streams, to other wetlands or to undeveloped areas such as forest or Puget Sound by undisturbed corridors.

B. Alteration Approval standards. Alteration of a wetland, a deep water habitat, fish and wildlife habitat conservation area or their buffers may be permitted only by Alteration Approval unless otherwise authorized in this Chapter. If such development is permitted, the following development standards shall apply:

1. If alteration in fact will not preserve, improve or protect the functions of the wetland, deep water habitat, fish and wildlife habitat conservation area or their buffers, then a determination shall be made that mitigation or restoration is feasible, and that the mitigation or restoration requirements of ICC 17.02.060 and/or 17.03.260 pertaining to a plan, monitoring and a bond or other security can be met; if such determination cannot be made, no alteration shall be authorized.

2. When mitigation is required as a condition of approval of a wetland fish and wildlife habitat conservation areas alteration, the following requirements shall apply:

a) An ecological assessment of the wetlands or fish and wildlife habitat conservation areas to be lost or adversely altered shall be made, at the expense of the applicant, to determine the gross area of loss and the functions, habitat, and types, sizes and quantities of vegetation lost.

b) A mitigation plan shall be prepared by the applicant and approved by the Planning Director, and in the event the construction of a new wetland is included as a part of that plan, the earth moving, hydrology and vegetation planting requirements of the plan will be completed prior to the commencement of the proposed alteration. The Planning Director may call on state or other agencies to provide technical support in evaluating the plan. The mitigation plan shall include but not be limited to, the following:

(i) Statements of goals. Such statements shall include a discussion of the functions and values lost and those planned for replacement;

(ii) Methods. Information discussing “what, where, when and how,” i.e., acreage of mitigation, wetland or other habitat types to be constructed/restored, location, dates for beginning and completing the project, methods of construction and maintenance requirements shall be included.

(iii) Standards of success. A qualitative and, to the extent possible, a quantitative description of what will be considered a successful, functioning wetland or fish and wildlife habitat conservation area shall be provided.

c) Monitoring. Same as requirements set forth in 17.03.260.I.2.

d) Contingency plan. A plan which complies with the requirements of 17.03.260.I.1 may be required by the Planning Director to outline restorative measures to be taken should the mitigation fail or only partially succeed.

e) Bonding. A performance bond or other security in an amount to enable the County to carry out the mitigation plan should the applicant fail to do so shall be required.

3. The project should be located or designed to avoid habitats including wintering, breeding, rearing, feeding and nesting habitats and migration routes;

4. Native vegetation to replace lost habitat for a particular species shall be planted;

5. Artificial resting, hiding and breeding sites to replace losses shall be constructed;

6. Aquatic substrate may be altered to produce an increase in fish, waterfowl, and shorebird organisms to replace losses;

7. Dredge and/or fill of a wetland, a deep water habitat, stream, or their buffers shall not be permitted unless:

   a) The benefits of the proposed use outweigh the impacts associated with the proposed use or the proposed use is water-dependent; and,

   b) Mitigation areas will be provided which have greater value as a wetland, stream, or habitat than the area lost; and,

   c) The amount dredged or filled is the minimum necessary to accomplish the proposed use; and,

   d) Dredging is not solely for the purpose of obtaining fill; and,

   e) Leachate from polluted dredge spoil will be treated and will not enter surface waters; and,

   f) The project is timed to avoid interference with fish and wildlife migrations, rearing, spawning or nesting.

8. Habitat replacement should provide an insurance factor to take into account the risk of mitigation and the loss of fish and wildlife until the mitigation site becomes productive;

9. Cumulative impacts of the proposed development shall be considered. Thus development shall not be considered a precedent allowing further development; and,

10. Where possible, development should be located in the buffer rather than the wetland or fish and wildlife habitat conservation areas.

17.02.070 Severability

If any provision or provisions of this Chapter or its/their application to any person or circumstances is held invalid, the remainder of this Chapter or the application of the provision or provisions to other persons or circumstances shall not be affected.

PROTECTED SPECIES

	Common Name	Classification
Fauna:		
Eumetopias jubatus	northern sea lion	threatened
Haliaeetus leucocephalus	bald eagle	threatened
Pandion haliaetus	peregrine falcon	endangered
Eschrichtius glaucus	gray whale	sensitive
Brachyramphus marmoratus marmoratus	marbled murrelet	threatened
Flora:		
Agroseris elata	tall agroseris	sensitive
Aster curtus	white-top aster	sensitive
Castilleja levisecta	golden indian paintbrush	endangered
Circuta bulbifera	bulb bearing water hemlock	sensitive
Fritillaria camschatcensis	black lily	sensitive
Meconella oregana	white meconella	
Puccinella nutkaensis	Alaska alkaligrass	sensitive

NON-NATIVE WETLAND SPECIES

Iris pseudocorus repens	Yellow Iris
Juncus effusius	Soft Rush
Myriophyllum spicatum	Eurasian Millfoil
Ranunculus repens	Creeping Buttercup
Phalaris arundinacea	Reed Canarygrass

SPECIES OF LOCAL IMPORTANCE

	Common Name	Protected Habitat
Fauna:		
Ardea herodias	great blue heron	nests
Gavia immer	common loon	nests
Pandion haliaetus	osprey	nests
Dryocupus pileatus	pileated woodpecker	nests
Cygnus buccinator	trumpeter swan	

HABITATS OF LOCAL IMPORTANCE

Bos Lake	Newman Road Lakes	Penn Cove
Crockett Lake	Cultus Bay Flats	Hastie Lake

Deer Lagoon Whidbey Island Game Farm Useless Bay

Chapter 17.02A
New Island County Critical Areas Ordinance

Sections:

17.02A.010 Authority

A. This Chapter shall be known as the New Island County Critical Areas Ordinance (New CAO) and is hereby adopted under the authority of Chapters 36.70, 36.70A, 39.34, 43.21C, 58.17, 76.09, 84.33, 84.34 and 90.58 RCW.

B. The New CAO is to be administered flexibly with attention to site-specific characteristics of Critical Areas. The New CAO shall not make any parcel or Lot unusable; or deny an Owner Reasonable Use; or prevent the provision of needed public transportation and utility projects.

17.02A.020 Designated Critical Areas

This Chapter shall apply to all properties located in Island County that contain or are affected by designated Critical Areas or Critical Area Buffers. Designated Critical Areas are:

A. Wetlands. Wetlands are regulated by this Chapter, Chapters 17.02 and 17.03 ICC; the health regulations governing the design and installation of on-site sewage systems; the

Land Development Standards Ordinance, Chapter 11.01 ICC; the Clearing and Grading Ordinance, Chapter 11.02.ICC; the Storm Water Management Ordinance, Chapter 11.03 ICC; and the Shoreline Master Program, Chapter 17.05 ICC.

B. Fish and Wildlife Habitat Conservation Areas. Fish and Wildlife Habitat Conservation Areas are regulated by Chapters 17.02 and 17.03 ICC; the health regulations governing the design and installation of on-site sewage systems, Chapter 8.07D ICC; and the Land Development Standards, Chapter 11.01 ICC.

C. Geologically Hazardous Areas. Geologically hazardous areas are regulated by Chapters 11.02 and 11.03 ICC.

D. Frequently Flooded Areas or Floodplains. Frequently flooded areas, also referred to herein as floodplains, are regulated by the Flood Damage Prevention Ordinance, Chapter 14.02A ICC.

E. Areas with a Critical Recharging Effect on Aquifers Used for Potable Water or Aquifer Recharge Areas. Areas with a critical recharging effect on aquifers used for potable water, also referred to herein as aquifer recharge areas, are regulated by sections ICC 8.09.097 and 8.09.099 of Potable Water Source and Supply regulations and the Land Development Standards, Chapter 11.01 ICC.

17.02A.030 Definitions

Unless expressly noted otherwise, words and phrases that appear in this Chapter shall be given the meaning attributed to them by this section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural and the plural the singular; the word “shall” is always mandatory and the words “may” and “should” indicate a use of discretion in making a decision. Capitalized words and phrases identify a term defined in this Chapter; other Chapters of Title 17; or Chapters contained in Title 16.

Accessory Use or Structure: A Use or Structure customarily considered incidental to or secondary to a Permitted Use or an approved Conditional Use on a Lot or on adjacent Lots under the same ownership. Examples of Accessory Structures include, but are not limited to, sheds, shops, garages, greenhouses, barns, Guest Cottage, etc.

Adaptive Management: A systematic process for continually improving management policies, regulations and practices by learning from the outcomes of previous policies, regulations and practices.

Administrative Determinations: A decision under this Chapter by the Director or Department for which an appeal has not otherwise been provided, including decisions that establish Wetland Type and location; Wetland Classification; Land Use Intensity and Mitigation.

Agricultural: The current employment of land for the primary purpose of raising, harvesting and/or selling crops or the feeding, breeding, management and/or sale of, or the production of, livestock, poultry, fish, fur-bearing animals or honeybees or for dairying and/or the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any

combination thereof. Agriculture includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. Agriculture also includes the growing of ornamental shrubs, Christmas trees, pulpwood and similar nursery stock.

Agricultural Activities: Uses and practices currently existing or legally allowed including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities when the replacement facility is no closer to a Critical Area than the original facility; and maintaining agricultural lands under production or cultivation. Regulations for Agricultural Activities are found in ICC 17.02A.050.F.

Alteration of a Wetland, a Deepwater Habitat or a Fish and Wildlife Habitat Conservation Area: In any Wetland, Deepwater Habitat, or a Fish and Wildlife Habitat Conservation Area or required Buffer, the placement, erection or expansion of any solid material or Structure; the discharge or disposal of any dredged material or waste, including filling, grading, channelization, removing, dredging, draining, mining or extraction of any materials; the removal or harvesting of trees or other vegetation; and modification for use as a storm water retention/detention facility.

Anadromous Fish Stream: A fresh water Stream that has been determined by the County to contain anadromous fish. Anadromous fish are those that are born in fresh water, migrate to the ocean to grow and mature and return to freshwater as adults to reproduce. Maxwelton, Glendale and Kristoferson Creeks have been designated Anadromous Fish Streams.

Anadromous Fish Stream Wetland: A Wetland that has a Wetland Outlet that connects the Wetland directly to an Anadromous Fish Stream or is within 500 feet of an Anadromous Fish Stream in an uphill direction and within the same Watershed.

Animal Unit: One animal unit equals 1000 lbs. of livestock, according to NRCS nutrient management conservation standards for livestock species.

Areas with a Critical Recharging Effect on Aquifers Used for Potable Water or Aquifer Recharge Areas: Areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water.

Baseline Monitoring: Surface water quality sampling and other Monitoring activities (such as vegetation surveys, etc.) designed to establish local trends and seasonal patterns necessary for the interpretation of County-wide data.

Best Management Practices (BMPs): Conservation practices or systems of practices and management measures that:

(a) control soil loss and reduce water quality degradation; and

(b) minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of Critical Areas.

The Department shall maintain a selection of Best Management Practices which have been approved by the Board for those uses which are subject to Best Management Practices.

Bog: A relatively undisturbed Wetland with at least seventy percent (70%) ground cover of mosses; or with water with a pH of less than 5.0; or with more than thirty percent (30%) cover of Sitka Spruce, Western Red Cedar, Western Hemlock or Lodgepole Pine; and a preponderance of plants that are listed as bog species in Table 3 of the *2004 Wetland Rating System* prepared by the Washington State Department of Ecology; and having Peat or Muck soils at least sixteen (16) inches deep. Many Bogs are fed largely by precipitation. County maps identify the location of some but not all Bogs. *See* also Relict Bog.

Buffer: The area adjacent to the outer boundary of a Critical Area, measured in feet, which protects the Critical Area from Alterations caused by a Development Proposal. Buffers for Wetlands will be established based on Land Use Intensity, the sensitivity of a Wetland to adverse impacts to Wetland Functions, and Wetland Type. Wetland Buffers are presumed to be well vegetated with Native and Non-Native Plant Species that are adequate to protect Wetland Functions.

Cleared Area: The surface area on a Lot that is or will be Cleared or otherwise Altered by a Development Proposal. All areas that have been or are proposed to be Altered are considered Cleared Area including building site(s), drain field, well site, lawns, landscaping, driveways and access roads. *See*, Land Use Intensity.

Clearing: The act of removal or destruction of vegetation by mechanical or chemical means, but does not include normal cultivation associated with an agricultural operation or the selective removal of vegetation as provided in ICC 17.02A.060.G.

Coastal Lagoon: A shallow water body adjacent to marine waters that is partly or completely separated from Puget Sound by a barrier beach. A Coastal Lagoon receives periodic influxes of salt water which may occur from storm surges or flow through porous beach sediments. The water in a Coastal Lagoon is saline or brackish (>0.5 ppt measured near the bottom) during most of the year. The general locations of Coastal Lagoons have been mapped by the County.

Coastal Lagoon Wetland: An Estuarine Wetland located within a Coastal Lagoon.

Compliance Assessment: A property or area-specific evaluation of compliance with adopted Critical Area requirements. Compliance Assessment will routinely be initiated if a worsening Water Quality Trend is identified and will typically precede Source Identification.

Contingency Plan: A plan outlining actions that would be triggered if Monitoring reveals a problem that will prevent the Mitigation from attaining its stated goals and benchmarks. Contingency Plans are a form of Adaptive Management. *See*, Mitigation Plan.

Contributing Area: The land and/or water area uphill from a Wetland that drains into that Wetland. Boundaries for a Contributing Area have been determined by the Department for all known Wetlands and are depicted in map format. Contributing Area is used to determine the sensitivity of a Wetland to adverse water quality impacts and the size of the water quality Buffer needed to protect Wetland Functions.

Creation: An action or actions that develop a Wetland on a Lot where a Wetland did not exist previously. *See,* Mitigation.

Critical Areas: Wetlands, areas with a critical recharging effect on aquifers used for potable water, Fish and Wildlife Habitat Conservation Areas, Frequently Flooded Areas and Geologically Hazardous Areas.

Deepwater Habitats: Any open water area that has a mean annual water depth greater than 6.6 feet, lacks soil, and/or is either unvegetated or supports only floating or submerged macrophytes and is not a Lake.

Delta Estuary: An area of alluvial deposits from the Skagit or Stillaguamish Rivers where the surrounding marine water is measurably diluted by fresh water from these rivers. The general location of the Delta Estuary has been mapped by the County.

Delta Estuary Wetland: An Estuarine Wetland located directly adjacent to or within a Delta Estuary.

Department: The Island County Department of Planning and Community Development.

Development Proposal: Any activity that requires authorization from Island County for a Lot that contains or is affected by a Critical Area or Critical Area Buffer. Development Proposals include Subdivisions, Short Subdivisions, PRDs, Conditional Use Permits, Site Plan Approvals, Boundary Line Adjustments, Septic Permits and Clearing/Grading Permits.

Enhancement: An action or actions that heighten, intensify or improve some of the processes, structure and/or Functions of a Wetland or Wetland Buffer but can result in a decline in other Wetland Functions and/or a loss of Wetland area. *See,* Mitigation.

Estuarine Wetlands: Tidal Wetlands containing emergent vegetation that are usually semi-enclosed by land but have open or partly obstructed access to Puget Sound.

Exceedence: A measured increase in a Monitoring parameter above an adopted Water Quality Threshold that will trigger a responsive action.

Exemptions: Specific activities or Uses allowed by the County to be conducted in a Critical Area or Critical Area Buffer if it complies with the standards established in ICC 17.02A.060.

Existing: Unless otherwise expressly stated, legally established, created or erected.

Existing Building: A structure, or portion thereof, which meets the definition of “Existing” and was lawfully Maintained.

Existing Lot: A Lot or parcel of land which meets the definition of “Existing”.

Existing Use: A Use which meets the definitions of "Existing" and was lawfully established and Maintained.

Farm Management Plan, Custom: A custom plan is site specific and is developed for a specific property owner/operator. A custom plan provides a farm management system that implements NRCS BMPs. The County requires a custom plan for Medium Intensity Agriculture. Conservation Districts as well as Island County, consultants, property owners and, with the consent of an owner, lessees are all eligible to prepare farm plans if the preparer is certified by NRCS and the document is determined by the County to meet NRCS standards.

Farm Management Plan, Standard: A standard plan implements NRCS BMPs for Low Intensity Agriculture. A standard plan is prepared and adopted by the County. There are two types of standard plans. The first type applies BMPs to protect Critical Areas and is used, on a county-wide basis, by Low Intensity Agriculture. The second type applies BMPs to protect Critical Areas for Low Intensity Agriculture located in the following drainage basins with salmon bearing streams or potential salmon bearing streams: Maxwelton, Glendale, Onamac and Triangle Drainage Basins.

Farmed Wet Meadows: Shall mean those Wetlands whose vegetative cover has been sufficiently modified in the past as a result of grazing, seeding, cutting for hay or other agricultural practices, such that they are dominated by a pasture species (such as blue grass, orchard grass, fescue, clovers, reed canary grass, etc.) and invasive wetland species indicative of continuous disturbance. They often are saturated or have standing water during the wet season and part of the Growing Season but are often dry during the summer months.

Fish and Wildlife Habitat Conservation Area: Land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created.

Frequently Flooded Areas: Lands in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year.

Geologically Hazardous Area or Slope: Areas that because of their susceptibility to erosion, sliding, or other geologic events, are generally not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns, including, but not limited to, those lands designated in the Department of Ecology Coastal Zone Atlas dated April 1979, as it may be amended or revised, as land which has had recent or historical slide activity and/or has unstable slope conditions, including those lands within one-hundred (100) feet (either top or base) thereof.

Grading: The act of excavation or filling or combination thereof or any leveling to a smooth horizontal or sloping surface on a property, but not including normal cultivation associated with an agricultural operation.

Growing Season: The time of year where natural conditions permit the growth of vegetation. Typically the Growing Season begins in mid to late February and ends by October 31.

Habitat: The physical location or type of environment in which a species lives or occurs. One Wetland Function is to provide Habitat for Wetland Dependent Species.

Habitat Management Plan: For Wetlands, a site-specific plan for Maintaining, Re-establishing, Rehabilitating, Enhancing, Creating or Preserving Habitat for a Wetland Dependent Species. For Fish and Wildlife Habitat Conservation Areas, specific requirements for a Habitat Management Plan (HMP) are set forth in Chapter 17.02 ICC.

Habitat of Local Importance: An area designated by the County pursuant to Chapter 36.70A RCW. Once designated a Habitat of Local Importance the area becomes a Critical Area. The procedure and criteria for such designations are set forth in Chapter 17.02 ICC and the areas that have been designated are listed in Appendix A to that Chapter.

Habitat Rating System: The procedure for assigning a Habitat score to a Wetland, as defined by the *Washington State Wetland Rating System for Western Washington – Revised* or a comparable procedure established by the County.

High Intensity Agriculture: Shall mean existing and on-going agriculture including dairies, animal feeding operations and concentrated animal feeding operations as those terms are used in federal and state regulations and livestock operations with an Animal Unit density greater than three (3) per acre.

Highly Erodible Soils: Soils that show extensive ongoing erosion as a result of land uses, or that have a "severe" or "very severe" susceptibility to erosion from water according to the NRCS. These include the following mapped soil series:

Alderwood fine sandy loam (Ab)
Alderwood fine sandy loam (Ac)
Alderwood gravelly sandy loam (Af)
Bow loam (Bc)
Bozarth fine sandy loam (Be)
Carbondale muck (Ca)
Casey fine sandy loam (Cc, Cd)
Casey loam (Cf, Cg)
Coveland loam (Cn, Co)
Everett gravelly sandy loam (Ee)
Greenwood peat (Ga)
Hovde sand (Ha)
Hoypus coarse sandy loam (Hd)
Hoypus gravelly loamy sand (Hg)
Indianola loamy sand (Ib, Ic)
Keystone loamy sand (Kd, Ke)
Mukilteo peat (Mb, Mc)
Pondilla fine sand (Pa)
Rifle peat (Ra, Rb)
Semiahoo muck (Sc, Sd)
Swantown loam (Sm)

Tanwax peat (Tb)
Townsend sandy loam (Tf)
Townsend sandy loam (Tg)

Maps showing the locations of these soils are available from the NRCS and the County. Location may also be established through a field survey by a qualified soil scientist. For sloped Lots, Wetland Buffers may be increased by the Planning Director as provided in ICC 17.02A.090.G when Highly Erodible Soils are not found to be present in the sloped area between the Development Proposal and the Wetland.

Hydrophytic Vegetation: Plant life growing in water or in a substrate that is at least periodically deficient in oxygen as a result of excessive water content. (See "Wetland Plants of the Pacific Northwest," September, 1984, U.S. Army Corps of Engineers.)

Invasive Plant Species: A Non-Native plant Species that can displace Native plant Species if allowed to proliferate. *See*, Non-native Plant Species.

Lake: A body of water twenty (20) acres or greater in size which is subject to the provisions of the Shoreline Management Act (Goss Lake, Lone Lake, Crockett Lake, Deer Lake, Kristoferson Lake, Cranberry Lake), and three (3) unnamed lakes located in Section 24, Township 29 N, Range 2 E (26 acres); Section 6, Township 31 N, Range 1 E (25 acres); and Section 18, Township 33 N, Range 2 E (50 acres).

Land Use Intensity: A determination by the Director for every Development Proposal regulated by this Chapter. Intensity shall be based on the type, character, density and location of the proposed Use or Structure, Cleared Area and Impervious Surfaces (as defined in Chapter 17.03 ICC) proposed by the Development Proposal and potential adverse impact that may be caused by the Development Proposal. Land Use Intensity is used to determine the size of a Wetland Buffer.

Large Ponded Wetland: A non-estuarine Wetland with visible evidence of at least five (5) acres of standing surface water in any part of the Wetland during most of the Growing Season for a normal year. Most, but not all, Large Ponded Wetlands have been mapped by the County.

Livestock: Domestic animals, fish and fowl of types customarily raised or kept on farms for profit or other purposes, but not including household pets such as dogs, cats, birds, etc.

Lot: A fractional part of divided lands having fixed boundaries. The term shall include Tracts or Parcels, including Existing Tracts or Parcels. The term Lot, as used in this Chapter, shall include both a standard section subdivision and also the corresponding equivalent fractional part of a section, for example, 1/128 of a section shall also mean five (5) acres.

Low Impact Development: A site design and/or Structures that incorporate specific measures to reduce and compensate for adverse water quality or quantity impacts to Critical Areas or Critical Area Buffers. Land Use Intensity may be reduced by incorporating Low Impact Development techniques into a Development Proposal. *See*, Land Use Intensity. Low impact development techniques include measures that reduce the quantity and improve the quality of storm water runoff. Specific suggested techniques are described in more detail in the Rural Stewardship Guide.

Low Intensity Agriculture: Shall mean existing and on-going agriculture including livestock management with an Animal Unit density of less than one (1) per acre; seasonal hay mowing and related activities and horticulture involving one (1) acre or less of cultivated land. For livestock, the amount of acreage shall be determined by the amount of grazed or mowed acreage where manure or compost made from manure is applied.

Macrophyte: Any plant species that can be readily observed without the aid of optical magnification.

Maintenance: An action or actions to prevent a decline, lapse or cessation of a Use, Structure, Critical Area or Critical Area Buffer.

Mature Forested Wetland: A Wetland one (1) acre or larger in size in which the tree canopy within the vegetated part of the Wetland is comprised predominantly of trees having diameters eighteen (18) inches or larger measured at 4.5 feet above ground level or the oldest trees are 80-200 years old; crown cover may be less than 100%; and, decay, decadence, number of snags and quantity of downed material is generally less than found in old-growth forests. County maps will identify Mature Forested Wetlands as they are located through review of Development Proposals.

Medium Intensity Agriculture: Shall mean existing and on-going agriculture including livestock operations with an Animal Unit density of one (1) but not greater than three (3) per acre and all horticultural operations larger than one (1) acre of cultivated land.

Mitigation: An action taken to compensate for the Alteration of a Critical Area or Critical Area Buffer. Re-establishment, Rehabilitation, Enhancement, Preservation or Creation are all forms or types of Mitigation. *See,* Mitigation Plan and Wetland Report.

Mitigation Banks: A site where Wetlands are Re-established, Rehabilitated, Enhanced, Preserved or Created expressly for the purpose of providing Mitigation in advance of any specific Development Proposal. Mitigation Banks must qualify and be certified under Chapter 173 WAC before they can be established and used in Island County.

Mitigation Plan: A detailed plan that describes and explains actions that are needed to compensate for Alterations to a Critical Area or Critical Area Buffer. A Mitigation Plan will usually include a plan for management of the Critical Area as well as a Monitoring and Contingency Plan. A Mitigation Plan is prepared when a Wetland or Fish and Wildlife Conservation Area is proposed to be Altered.

Monitoring: The repetitive measurement of some aspect of a natural resource and/or human activity using ecological indicators as the basis for identifying changes to that resource.

Mosaic Wetland: A group of two or more Wetlands, each less than one (1) acre in size; located, on average, less than one hundred (100) feet apart; and at least fifty percent (50%) of the surface area of Wetland and upland, taken together, is comprised of Wetlands. The group of Wetlands, including the upland area between the Wetlands, will be regulated as one Wetland.

Native Plant Wetland: A Wetland with visible evidence that at least a majority of its vegetated surface area is covered by Native Species at some time of the year. County maps identify some but not all Native Plant Wetlands.

Native Species: Plants and animals which are indigenous to Island County. Plant species are defined in *Flora of the Pacific Northwest* (C. Leo Hitchcock and Arthur Cronquist, University of Washington Press).

Non-Native Plant Species: Plant species which have been introduced into Island County. For plants, Non-Native Species are defined in *Flora of the Pacific Northwest* (C. Leo Hitchcock and Arthur Cronquist, University of Washington Press).

Non-Residential: Describes the Use of a Structure for Commercial, Institutional, Light Manufacturing or similar Uses. Non-Residential is not used to characterize Agricultural or Forest Uses.

NRCS BMPS: Shall mean the current adopted and recommended farm management practices of the Natural Resource Conservation Service.

Planning Director: The Planning and Community Development Director of Island County, Washington, or his or her authorized representative, referred to herein as Director or Planning Director.

Practical: As used herein, appropriate; useful; sensible; or likely to be effective.

Preservation: A Mitigation action or actions that remove a threat to or prevent the decline of a Category A, B or C Wetland that would otherwise be Altered by a Development Proposal. Preservation is also referred to as protection or maintenance. *See*, Mitigation.

Protected Species: Species of flora and fauna listed by the federal government or the State of Washington as endangered, threatened or sensitive which are present in Island County and those species of flora and fauna which, while not necessarily endangered or threatened, are determined by Island County to be worthy of a higher level of protection than other species and are designated as Species of Local Importance under Chapter 17.02 ICC.

Re-establishment: An action or actions that return natural or historic Functions to a former Wetland or Wetland Buffer. *See*, Mitigation.

Reasonable: As used herein, rational; logical; realistic; in accordance with common sense; or not expecting more than is possible or achievable.

Reasonable Use: The logical or rational use of a specific Parcel of land which a person can be expected to conduct or maintain fairly and appropriately under the specific circumstances, considering the size of the Lot, the type of Use or Structure proposed and similar Uses and Structures in the general vicinity of the Lot, that are Permitted Uses consistent with and conforming to current regulations.

Rehabilitation: An action or actions that repair or revitalize natural or historic Functions of a degraded Wetland or Wetland Buffer. *See*, Mitigation.

Relict Bog: A Wetland comprised predominantly of plants that are listed as Bog species in Table 3 of the *2004 Wetland Rating System* prepared by the Washington State Department of Ecology but otherwise does not meet the definition of Bog.

Resident Salmonid Stream: A fresh water Stream that has been determined by the County to contain resident salmonids. A Resident Salmonid is a member of the salmonid family whose life history, *i.e.*, spawning, rearing and maturation, occurs in freshwater. Cutthroat trout and steelhead trout are members of the salmonid family. North Bluff, Dugualla and Chapman Streams have been designated Resident Salmonid Streams. County maps identify the location of these Resident Salmonid Streams.

Resident Salmonid Stream Wetland: A Wetland that has a Wetland Outlet that connects the Wetland directly to a Resident Salmonid Stream or is within 500 feet of a Resident Salmonid Stream in an uphill direction and within the same Watershed.

Residential: Describes the Use of a Structure by a Family as a Dwelling Unit and may also include Home Occupation, Accessory Uses, or Structures. Residential is also used to describe a geographic area where Permitted Uses are typically Residential in character.

Restoration: An action or actions to repair, revitalize or otherwise return to their previous functioning condition Critical Areas or Critical Area Buffers. Restoration is required for Critical Areas or Critical Area Buffers when it is not Practical and Reasonable to avoid or reduce a proposed Alteration or which have been lost or damaged through unauthorized Alteration activities and natural regeneration processes are found to be inadequate to restore the functions of the Critical Area or Critical Area Buffer. Restoration requirements for unauthorized Alterations are found in ICC 17.03.260.I.

Rural Stewardship Plan: A detailed site plan prepared voluntarily by or for an Owner that establishes the location for authorized Permitted Uses, the location and classification of Critical Areas and Critical Area Buffers and Best Management Practices for the long term Use of the property. A Rural Stewardship Plan is a voluntary option available to all Owners of Lots one (1) acre or larger in size.

Single-Family Dwelling: A Structure designed or used for residential purposes by not more than one (1) family and containing one (1) Dwelling Unit. A Mobile Home or Mobile/Manufactured home, including a Modular Home, shall be considered a Single-Family Dwelling.

Slope Gradient: The average slope, expressed as a percent, found within a Contributing Area measured from Wetland Edge to the nearest part of the Development Proposal. LiDAR imagery available from the Department may be used in this determination.

Small Contributing Area: A Contributing Area for a Wetland that is less than 10 times the surface area of the Wetland. A Wetland with a Small Contributing Area will require a larger Wetland Buffer because it is likely to be more sensitive to changes in water quality**.**

Small Ponded Wetland: A non-Estuarine Wetland with visible evidence of water forming a contiguous surface area of at least one (1) acre in any part of the Wetland during most of the Growing Season for a normal year. *See,* Large Ponded Wetland.

Source Identification: Sampling that is specific to an identified Watershed or portion of a Watershed intended to determine the source of an Exceedence in Water Quality Standards or Thresholds or the source of any other impairment of a Wetland.

Species of Local Importance: Plants or animals designated by the County pursuant to Chapter 36.70A RCW. The procedure and criteria for such designations are set forth in Chapter 17.02 ICC and the designated Species of Local Importance are listed in Appendix A to that Chapter.

Steep Slopes: Those slopes forty percent (40%) or steeper within a vertical elevation change of at least ten (10) feet. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least ten (10) feet of vertical relief. For the purpose of this definition:

a) The toe of a slope is a distinct topographic break in slope which separates slopes inclined at less than forty percent (40%) from slopes forty percent (40%) or steeper. Where no distinct break exists, the toe of a steep slope is the lowermost limit of the area where the ground surface drops ten (10) feet or more vertically within a horizontal distance of twenty five (25) feet; and

b) The top of a slope is a distinct, topographic break in slope which separates slopes inclined at less than forty percent (40%) from slopes forty percent (40%) or steeper. Where no distinct break exists, the top of a steep slope is the upper most limit of the area where the ground surface drops ten (10) feet or more vertically within a horizontal distance of twenty five (25) feet.

Streams: Areas where naturally occurring surface water produces a defined channel, bed, bank or side, and where there is clear evidence of the passage of water such as bedrock channels, gravel beds, sand, silt beds and defined channel swales. The channel or bed need not contain water year-round. This definition is not intended to include irrigation or drainage ditches or swales, canals, storm or surface water run-off devices or other artificial watercourses unless they are used by salmonids or to convey Streams naturally occurring prior to construction of such watercourse.

Structure: A Building that is defined as a Structure under the Uniform Building Code (UBC).

Tributary Stream: A Stream, whether permanent or intermittent, which enters or exits a Wetland and/or Deepwater Habitat. This definition does not include ditches, canals, storm water run-off devices or other entirely artificial watercourses. Provided that a Stream which has been Altered by man to carry naturally occurring waters is a Tributary Stream within this definition.

Use: The purpose or activity for which land or any Structure thereon is designed, arranged, occupied or Maintained.

Water Quality Standards: A specific numeric measure established for a monitoring parameter that, if exceeded, will require immediate action by the County to identify the source of the contamination. Water Quality Standards are established by Chapter 173-201A WAC.

Water Quality Thresholds: A specific numeric measure established for a Monitoring parameter set at a more stringent level than a standard that, if exceeded, will typically require some change in the Monitoring Program but not require immediate action.

Water Quality Trend: A detectable change over time for a Monitoring parameter after Baseline Monitoring is completed. A Trend can serve as early warning that an Exceedence may occur in the future.

Watershed: The land and water area that drains to a particular Stream, estuary, or other water body. A Watershed is also referred to as a basin or sub-basin. The Department has mapped all Watersheds of Island County.

Wetland Category: Wetlands in Island County have been grouped or classified into five Wetland Categories, A through E.

Wetland/Deep Water Boundary: The boundary between a Wetland and Deep Water Habitat lies at a depth of two (2) meters, (6.6 feet) below low water; however, if emergents, trees or shrubs grow beyond this depth at any time their deep water edge is the boundary.

Wetland Dependent Species: A plant or animal species that requires a Wetland for some part of its life cycle and whose population in the County would decline if a particular Wetland Type is unavailable; or, the species occurs disproportionately in Wetlands compared to other Habitats.

Wetland Edge: The upland limit of a Wetland established using the Washington State Wetland Identification and Delineation Manual (1997).

Wetland Functions: The beneficial roles served by Wetlands in Island County are primarily water quality protection and enhancement including groundwater recharge and discharge and Habitat for Wetland Dependent Species. These beneficial roles are not listed in order of priority.

Wetland Identification Guide: A document prepared by the County. The Guide contains a Field Indicators Worksheet; a Land Use Intensity Worksheet; and a Wetland Buffer Worksheet.

Wetland Maps: Site-specific maps prepared and maintained by the Department that depict the general location and Type of Wetlands.

Wetland Outlet: The location or locations where there is visible evidence of the discharge of surface water from a Wetland at any season of the year. The size of the Buffer needed to protect a Wetland is based in part on whether the Wetland has a Wetland Outlet. A Wetland with no Wetland Outlet will require a larger Wetland Buffer because it is more sensitive to changes in water quality. When the presence of an Outlet is unclear or uncertain, the Wetland will be presumed to not have an Outlet.

Wetland Professional: A person with both professional education typically a B.S. or higher degree in biology, environmental studies or related field, as well as training and experience in Wetland technical issues such as experience performing Wetland classification and delineations, assessing Wetland Functions, analyzing impacts to Wetlands, and designing

Mitigation. A Wetland Professional should be a certified professional Wetland scientist or have a minimum of five (5) years of experience in Wetland technical issues.

Wetland Report: A study prepared by a Wetland Professional.

Wetland Type: A determination made by the County or a Wetland Professional that is based upon the natural characteristics of a Wetland.

Wetland Vegetation: Plant species characteristically adapted for prolonged saturation and anoxic soil conditions and listed by the US Army Corps of Engineers, US Fish and Wildlife Service or the Washington State Department of Ecology as Wetland indicator plants.

Wetlands: Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of Wetland Vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial Wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those Wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands include those artificial Wetlands intentionally created from nonwetland areas created to mitigate conversion of Wetlands.

Wetlands Associated with a Bog, Coastal Lagoon or Delta Estuary: A Wetland that has a Wetland Outlet that connects the Wetland directly to a Bog, Coastal Lagoon or Delta Estuary, or is within 500 feet of a Bog, Coastal Lagoon or Delta Estuary in an uphill direction and within the same Contributing Area.

17.02A.040 Critical Area Administration

A. Critical Area Review

1. The New CAO applies to all Development Proposals. Unless expressly stated otherwise, Existing Uses are not affected by this Chapter. Before any new Development Proposal for a Lot that contains or is affected by a Critical Area or Critical Area Buffer may be approved by the County, a Critical Area review shall be completed by the Department as set forth below.

2. Unless an Owner or applicant voluntarily elects otherwise, Development Proposals that have been reviewed and approved under prior Critical Area regulations (December 31, 1984 for Wetlands and October 1, 1998 for other Critical Areas) shall be governed by any conditions and restrictions established by the County for the approved Development Proposal.

3. Unless an Owner or applicant voluntarily elects otherwise, all Agricultural Activities shall comply with the Old CAO, Chapter 17.02 ICC, and not this Chapter.

4. Unless an Owner or applicant voluntarily elects otherwise, Development Proposal applications that have been submitted prior to the effective date of this Chapter, shall

be reviewed under the Critical Area regulations in effect on the date the application was determined to be complete.

5. The County shall apply the following Critical Area review criteria, for all other Development Proposals on Lots that contain or are affected by a Critical Area or Critical Area Buffer that are not covered by ICC 17.02A.060 and that propose an Alteration of the Critical Area or Critical Area Buffer.

   a) Avoidance. When Practical and Reasonable, Alteration of a Critical Area or Critical Area Buffer shall be avoided; and

   b) Reduction. When avoidance of a Critical Area or Critical Area Buffer is not Practical and Reasonable, then the Alteration shall be reduced in scale or magnitude. The following actions are examples of techniques that may be used to reduce the scale or magnitude of a Development Proposal:

      (i) reducing the size of the Development Proposal;

      (ii) relocating the Use or Structure(s) on the site;

      (iii) modifying the timing of construction of the Use, Structure or Clearing activities;

   c) Restoration. When avoidance or reduction of the scale or magnitude of a Development Proposal is not Practical and Reasonable, then the impacts of the Alteration shall be rectified by Restoring the area affected by the Alteration; and

   d) Compensation. When action under subsections a), b) or c) is not Practical and Reasonable, then compensation for the Alteration shall be achieved through Mitigation.

6. As depicted in Figure 1, after the effective date of this Chapter, the Critical Area review of Development Proposals for activities and Uses that are not covered by ICC 17.02A.050 and ICC 17.02A.060, shall include:

   a) Determining whether a Critical Area or Areas is/are located on or affect the Lot;

   b) If a Buffer is required, initially establishing the appropriate Buffer for the Critical Area;

   c) Applying the Critical Area review criteria set forth in ICC 17.02A.040.A.5, determining whether the Development Proposal will require approval of an Alteration of the Critical Area or Critical Area Buffer;

   d) Establishing final Buffers and for Wetlands determining whether Buffers need to be increased, whether Buffers may be decreased or whether Buffer averaging is appropriate;

   e) If an Alteration is required, establishing the Mitigation needed to compensate for the Alteration; and

   f) After final approval, recording conditions of approval.

7. If any provision of this Chapter conflicts with any other provision of this Chapter or any other ordinance adopted by the Island County Board of Commissioners, Critical Area review shall be based on the more stringent requirement, regulation, restriction standard or limitation.

8. For any Development Proposal that proposes an Alteration, the Alteration shall not be granted if the need for the Alteration is due to action(s) by the applicant or owner after December 31, 1984 (Wetlands) or October 1, 1998 (other Critical Areas) that:

    a) Were regulated under this Chapter but did not receive County authorization; or

    b) Were not regulated under the County's Land Division regulations, Chapter 16.06 ICC.

9. For any Development Proposal, the Planning Director may reduce development standards required by Chapter 11.01 and 17.03 ICC when the modification will reduce the otherwise required Alteration. Such modifications shall be considered before reducing standards that protect Critical Areas and may be allowed without requiring a Variance.

    a) Zoning Setbacks may be modified as follows:

        (i) One hundred (100) foot Front Yard and fifty (50) foot Side and Rear Yard Setbacks may be reduced up to fifty percent (50%); and

        (ii) All other required Front and Rear Yard Setbacks may be reduced up to ten percent (10%).

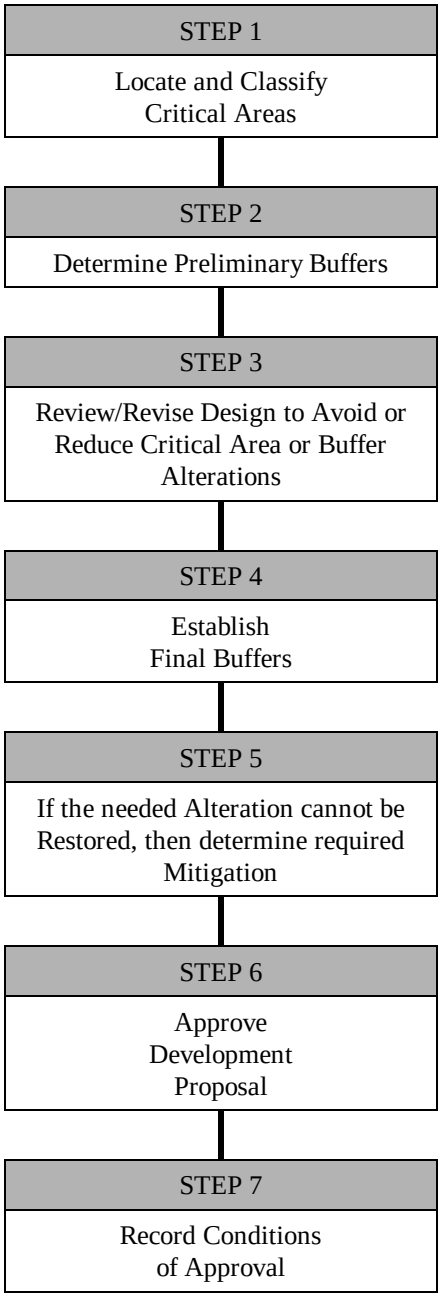
    b) Other Development Standards may be modified when public health or safety is not impaired.

10. No new Lot shall be created that is wholly comprised of wetlands or that would require alteration of a regulated wetland or its Buffer to provide buildable area unless a conservation easement encompassing the Lot is established and recorded.

FIGURE 1

CRITICAL AREA REVIEW PROCESS

(For Development Proposals that are not covered by ICC 17.02A.050 and ICC 17.02A.060)



B. Critical Area Protection

1. Critical Areas and Critical Area Buffers shall be shown on all plats, short plats, site plans, or PRDs, and any conservation easement(s) and approved covenants.

2. Critical Area Buffers shall be measured horizontally and perpendicularly to the edge of the Critical Area on all sides.

3. Markers. The Planning Director may require that the outer edge of a Critical Area or Critical Area Buffer be permanently identified by markers that are clearly visible, durable and permanently affixed to the ground.

4. Construction Activity Setback. For clearing and grading activities, all Wetland Buffers shall be temporarily marked when they are within one-hundred (100) feet of identified and approved clearing limits. For construction of new Structures, all Wetland Buffers shall be temporarily marked as required by the Planning Director. Temporary markers shall be removed upon completion of the approved Development Proposal.

5. Fencing. Temporary construction fencing shall be required when vegetation is to be retained in an undisturbed condition within the Critical Area or Critical Area Buffer.

6. Notice on Title. For all approved Development Proposals regulated under this Chapter and for all approved Rural Stewardship Plans, the Department shall record a notice with the Island County Auditor. Said notice shall describe the Type of Critical Area found on the property and/or whether any restrictions or conditions have been imposed by the Planning Director. Notice shall also be recorded when a Rural Stewardship Plan has been approved.

7. Unless otherwise noted expressly, all Development Proposals may be approved by the County only after the County has applied the Critical Area review criteria set forth in ICC 17.02A.040.A.5.

C. Rural Stewardship Plans

1. The goals of a Rural Stewardship Plan are to:

   a) Improve the stewardship of land resources through voluntary actions;

   b) Maintain and/or improve natural hydrologic systems and Critical Area Functions;

   c) Promote Rural Character and rural lifestyles; and

   d) Maintain and/or improve Habitat for Protected Species and Species and Habitats of Local Importance.

2. Rural Stewardship Plans and amendments to adopted Plans may be approved by the Planning Director for Lots one (1) acre and larger in size when the Plan is consistent with the Rural Stewardship Guide prepared by the County. The Guide shall be prepared by the Planning Director and approved by the Board of Commissioners as a Type IV decision under Chapter 16.19 ICC.

3. A Rural Stewardship Plan is not effective until approved by the Planning Director. Before approval, the County may conduct a site inspection to verify that the Plan is reasonably likely to accomplish the goals for Rural Stewardship Plans.

4. Once approved by the County, a notice will be recorded by the County that the Plan has been approved. Thereafter, all Uses, Structures and activities conducted on the property shall be consistent with the Plan as approved. Any change in Uses, Structures or activities governed by the Plan that the approved Plan does not allow, must first be authorized by a Plan amendment approved by the Planning Director.

5. A Rural Stewardship Plan allows an Owner to be eligible for:

   a) A reduction in property tax through the County's Public Benefit Rating System; or

   b) A reduction in the Land Use Intensity that would otherwise be assigned to the Uses and Structures included in the Plan; and

   c) An expedited approval process for all Uses and Structures included in the Plan that require County approval of a Development Proposal.

6. When a reduction in Land Use Intensity is allowed based on a Rural Stewardship Plan, the Plan shall include a monitoring program that:

   a) Specifies standards and time periods that will be used to judge the implementation and effectiveness of approved rural stewardship practices in achieving the goals of the Plan and preventing degradation of Critical Area functions; and

   b) Allows the County reasonable access to the Parcel to determine that the Rural Stewardship Plan is being followed and Critical Areas functions are not being degraded.

   The frequency of monitoring reports and the monitoring time period shall be established by the Director based on the type of Use for which a reduction in Land Use Intensity is requested and the type of Critical Area subject to the Rural Stewardship Plan.

   Monitoring plans shall be prepared by the applicant and submitted at the frequency described in the preceding paragraph.

D. Review Process

1. Single Family Dwellings on Existing Lot and Reasonable Use. A Single Family Dwelling on an Existing Lot shall be reviewed under the process set forth for Type I decisions in Chapter 16.19 ICC. All Reasonable Use requests shall be reviewed under the process set forth for Type II decisions in Chapter 16.19 ICC.

2. Base Density Exceptions. Base Density Exceptions shall be reviewed under the process set forth for Type III decisions in Chapter 16.19 ICC.

3. All Other Development Proposals. For all other Development Proposals located on property which contains or is affected by a Critical Area or Critical Area Buffer, the applicable Critical Areas regulations shall be applied to the underlying permit through the review process applicable to that permit.

4. Wetland Map Corrections. Requests to correct a Wetland Map shall be reviewed under the process set forth for Type I decisions in Chapter 16.19 ICC.

5. Rural Stewardship Plan. A Rural Stewardship Plan shall be reviewed under the process set forth for Type I decisions in Chapter 16.19 ICC. Provided, if the Plan is submitted with a Development Proposal, then the Plan will be reviewed through the review process applicable to the Development Proposal.

6. Improvement and Restoration Plans. Voluntary Wetland Improvement Plans shall be reviewed under the process set forth for Type I decisions in Chapter 16.19 ICC. Compliance Restoration Plans required by an Enforcement Order will be reviewed under the review process set forth for Type II decisions in Chapter 16.19 ICC.

7. Administrative Determination. Administrative determinations made under this Chapter by the Planning Director or Department, that are not otherwise reviewable, shall be reviewed under the process for Type I decisions in Chapter 16.19 ICC.

E. Alteration of Critical Areas

Specific standards are established for some Uses in ICC 17.02A.050 and some Uses and activities are covered by ICC 17.02A.060. For all other Uses and activities, no Alteration of a Category A Wetland is permitted and Alteration of all other Wetlands or Wetland Buffers may be permitted only pursuant to ICC 17.02A.090.

F. Property Assessment

The Assessor's Office shall consider the protection and Buffering requirements of this Chapter in determining the fair market value of land.

G. Penalties and Enforcement

The Planning Director shall prosecute violations of this Chapter pursuant to the enforcement provisions of Chapter 17.03 ICC. Restoration shall be required for any unauthorized Alteration of a Critical Area or Critical Area Buffer pursuant to ICC 17.03.260.I

17.02A.050 Specific Use Standards

A. Single Family Dwellings on Existing Lot

For a new Single Family Dwelling and Accessory Structures or the expansion of Existing Single Family Dwellings or Accessory Structures on an Existing Lot, a Wetland or Fish and Wildlife Habitat Conservation Area Buffer Alteration that cannot be avoided as required by ICC 17.02A.040.A.5 shall be approved when:

1. Buffer Alteration has not and will not exceed cumulatively 2,800 square feet;

2. The Development Proposal is a Reasonable Use of the Lot and the Alteration of the required Buffer has been reduced as required by ICC 17.02A.040.A.5.

3. Adverse impacts resulting from Alterations of a Steep Slope or Geologically Hazardous Area are minimized;

4. If the Alteration cannot be Restored as required by ICC 17.02A.040.A.5, the proposal includes Mitigation required by this Chapter;

5. Temporary disturbance of Critical Areas and their Buffers will be immediately repaired; and

6. This action does not allow Wetlands or Fish and Wildlife Habitat Conservation Areas or their Buffers to be converted to lawn or residential landscaping.

B. Reasonable Use

Nothing in this Chapter is intended to preclude Reasonable Use of property. Strict application of the Critical Area regulations contained in this Chapter shall not cause the denial of Uses allowed under Chapter 17.03 ICC including a Single Family Dwelling that does not qualify for review under Section A. A Development Proposal that proposes an Alteration of a Critical Area or Critical Area Buffer that cannot be avoided as required by ICC 17.02A.040.A.5 shall be approved when:

1. A report on Reasonable Use has been prepared. The report shall include:

   a) A description of the function and condition of the Critical Area and/or Critical Area Buffer that would be Altered;

   b) An analysis of the affect of the Development Proposal on the Critical Area and or Critical Area Buffer;

   c) A description of actions that can be taken to modify the Development Proposal to avoid or reduce the Alteration of the Critical Area and/or Critical Area Buffer and a discussion of whether these modifications are Practical and Reasonable;

   d) An explanation of why the Development Proposal should be considered a Reasonable Use; and

   e) If the Alteration cannot be Restored as required in ICC 17.02A.040.A.5, a Mitigation Plan.

2. The Development Proposal is a Reasonable Use of the Lot and the Alteration has been reduced as required by ICC 17.02A.040.A.5; and

3. The Development Proposal includes Mitigation required by this Chapter.

C. Public Transportation and Utility Projects

Nothing in this Chapter is intended to preclude the installation of a public transportation or utility project. Alteration of a Critical Area or Critical Area Buffer for a public

transportation or utility project that cannot be avoided as required by ICC 17.02A.040.A.5 shall be approved when:

1. The project is needed to serve Island County residents. A project shall be presumed needed if it is included in the County's Capital Facility Plan;
2. The Alteration has been reduced as required by ICC 17.02A.040.A.5;
3. To the extent Practical and Reasonable, crossing of naturally vegetated corridors is avoided;
4. When necessary, culverts are installed to maintain hydrology; and
5. If the Alteration of the Critical Area cannot be Restored as required by ICC 17.02A.040.A.5, the project includes Mitigation required by this Chapter.

D. Voluntary Wetland Improvement Projects

Some Wetlands and Wetland Buffers were Altered prior to adoption of Wetland regulations (December 31, 1984) or the Alteration occurred after the implementation of Wetland regulations but the Alteration was not regulated. Voluntary improvement is encouraged of these Altered Wetlands and Wetland Buffers as well as Wetlands Altered before the County had Wetland regulations. Improvement action cannot reduce Wetland Functions and may include Re-establishment, Rehabilitation or Enhancement and shall be approved by the Planning Director upon approval of a specific plan for the voluntary improvement.

E. Base Density Exception

Critical Area Buffers may be reduced by the County Hearing Examiner when a property owner of a ten (10) acre or larger Existing Lot is unable to achieve the base density allowed under Chapter 17.03 ICC due to the requirements of this Chapter. Buffer modification requests under this subsection shall be reviewed under the review procedures set forth for Type III decisions in Chapter 16.19 ICC. Such Buffer modifications may be permitted when:

1. The owner demonstrates that the lot averaging provisions of Chapter 17.03 ICC, the use of a Planned Residential Development under Chapter 16.17 ICC and the provisions of this Chapter do not allow the owner to achieve base density;
2. The owner demonstrates that modification of Critical Area Buffer requirements is the only Practical and Reasonable option to achieve the base density;
3. The Alteration has been reduced as required by ICC 17.02A.040.A.5; and
4. If the Alteration cannot be Restored as required by ICC 17.02A.040.A.5, the Development Proposal includes Mitigation required by this Chapter.

F. Agricultural Activities

Existing Agricultural Activities that are on lands that contain or are affected by Critical Areas or Critical Area Buffers may comply voluntarily with the requirements of this

subsection. Otherwise, Agricultural Activities shall continue to comply with the Old Critical Areas Ordinance, Chapter 17.02 ICC.

1. Low Intensity Agriculture shall protect Critical Areas through the implementation of a Standard Farm Plan or, if the owner or lessee elects, a Custom Farm Management Plan.

2. Medium Intensity Agriculture shall protect Critical Areas through the implementation of a Custom Farm Management Plan.

3. High Intensity Agriculture shall protect Critical Areas through compliance with federal and state regulations for dairies, animal feeding operations and concentrated animal feeding operations when applicable or through implementation of a Custom Farm Management Plan.

4. A Standard Farm Management Plan shall be prepared by the Planning Director and approved by the Board of Commissioners as a Type IV decision under Chapter 16.19 ICC.

5. A Custom Farm Management Plan shall be prepared for a property by the owner, lessee or a farm planning consultant if they have received training and are certified by the NRCS or prepared by the Whidbey or Snohomish Conservation Districts or Island County. The Custom Plan shall apply NRCS BMPs to protect Critical Areas affected by Existing and On-going Agricultural Activities. The Record of Decision contained in the Plan prepared by an owner, lessee, the County or farm planning consultant shall be processed by the County as a Type I decision pursuant to Chapter 16.19 ICC.

6. To the fullest extent possible, the County and Conservation Districts shall rely on farm plans (that apply NRCS BMPs) approved by State or Federal agencies to satisfy the requirements of this section relating to Standard and Custom Farm Management Plans.

7. Existing permanent improvements that were lawfully erected, installed or constructed shall not be required to be modified to comply with the requirements of this Chapter pertaining to Agricultural Activities, unless such modification is required by ICC 17.03.230. Permanent improvements shall include such features as buildings, structures, bridges, drainage facilities, farm ponds, road, driveway, and laneways. Examples of features that are not permanent improvements include fences, filter strips, confinement areas, nutrient storage areas, watering troughs, and pasture locations.

8. Previously approved Farm Management Plans and/or lawfully erected, installed or constructed Best Management Practices, located on Commercial Agriculture and Rural Agriculture lands in order to comply with the requirements of Ordinance C-151-99, shall not be required to be modified to comply with updated BMPs adopted through the enactment of Ordinance C-150-05; unless such modification is required by ICC 17.03.230. This shall include fencing that was installed, stream crossings that were constructed, filter strips that were established, nutrient management systems implemented, barns erected, etc.

9. New Non-agricultural Uses on lands previously devoted to Agricultural Activities that conformed to the requirements of this subsection shall comply with the requirements of this Chapter that are applicable to such Uses.

17.02A.060 Exempt Activities and Uses

The following activities in Critical Areas or Critical Area Buffers are Exempt from the provisions of this Chapter. Unless noted expressly, Exempt activities do not require review or approval by the Planning Director. No new permanent intrusion into a Critical Area or Critical Area Buffer is allowed and any temporary Alteration of a Critical Area or Critical Area Buffer that is needed to complete the Exempt activity shall be Restored promptly upon completion of the Exempt activity.

A. **Forest Practices.** Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practice regulations, Title 222 WAC, and which are Exempt from Island County jurisdiction.

B. **Operation and Maintenance Activities.** Operation, Maintenance, reconstruction, remodeling or repair of Existing Structures and serviceable infrastructure improvements including, utilities, wells, septic drain fields, public or private roads, paths, bicycle ways, trails, bridges, ditches, dikes, tide gates and storm drainage facilities when Best Management Practices are implemented. This Exemption shall not apply to tidegates which historically drained Wetlands where: (i) lack of maintenance of the tidegate for five (5) consecutive years has allowed positive indicators of Wetland hydrology, Wetland Vegetation and hydric soils to become established; and (ii) maintenance or repair of the tidegate would result in adverse Alteration of Wetland hydrology. All operation and maintenance activities shall be conducted consistent with ICC 17.02A.040.A.5.

C. **Site Investigation Work.** Site investigative work necessary for land use application submittals such as surveys, soil logs, and percolation tests involving no fill or use of heavy equipment in a Wetland, or a Fish and Wildlife Habitat Conservation Area or their Buffers. Provided that Best Management Practices are implemented and any area excavated for soil logs or percolation tests is filled pursuant to ICC 8.07C.110.H.3.d). Site Investigation Work shall be conducted consistent with ICC 17.02A.040.A.5.

D. **Emergency Actions.** Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation. The Planning Director shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken unless the nature of the emergency is such that it is not possible to first gain approval of the Planning Director, in which case such review must occur within ten (10) days of the conclusion of the emergency work. Emergency Actions shall be conducted consistent with ICC 17.02A.040.A.5 and review procedures established by the Department.

E. **Recreation on Small Lakes.** Swimming, boating, hunting and fishing. Construction, placement, maintenance and repair of docks, piers, boat launches and floats in Lakes (provided that the proposed action complies with the requirements of the Shoreline Management Act), in Deepwater Habitats one (1) acre or greater in size when such

activities are for recreational purposes and do not involve Alteration of or construction through, over or in a regulated Wetland.

F. **Existing Residential Landscaping and Agriculture.** Planting, irrigating, fertilizing, spraying, mowing and pruning and maintenance and repair of yard or garden structures when such activities are part of existing normal residential landscaping activities and no building permit is required. Residential Agriculture includes uses that are considered Accessory Uses under Chapter 17.03 ICC. Accessory Uses must be incidental to or secondary to a single family dwelling. Examples of Residential Agriculture include vegetable/flower gardens or orchards normally associated with a rural home and animal husbandry involving less than one (1) Animal Unit per two and one-half (2.5) acres. This Exemption does not allow further intrusion into a Wetland, Fish and Wildlife Habitat Conservation Area, Geologically Hazardous Area or their Buffers.

G. **Selective Vegetation Removal.** Removal of the following vegetation from Critical Areas and/or Critical Area Buffers provided that, the following conditions are met:

1. The removal or control of noxious weeds listed in Chapter 16-750 WAC; and

2. The removal or control of Invasive Species including, Himalayan Blackberry and Evergreen Blackberry shall be with hand labor, herbicides and/or light equipment. Use of heavy equipment may be allowed if approved by the Planning Director. All herbicide applications in aquatic environments shall conform to the rules of the Department of Ecology, Department of Agriculture and Department of Natural Resources, pursuant to Chapters 173-201, 16-228, and 222 WAC; and

3. All noxious weeds or Invasive Species removed from a Critical Area or Critical Area Buffer shall be removed using Best Management Practices and shall be taken away and disposed of appropriately. Revegetation with appropriate Native plant Species at natural densities is allowed in conjunction with the removal.

H. **Passive Activities.** Provided no gasoline powered, motorized boats or equipment are used, conservation, recreation, education and scientific research activities within Critical Areas and Critical Area Buffers including fishing, hunting , hiking and bird watching. Installation of fences to protect Habitat and trails in Buffers is allowed provided Best Management Practices adopted by the County are implemented.

I. **Removal of Beaver.** The control, trapping and removal of Beaver from Critical Areas or Critical Area Buffers provided no Alteration occurs except the removal of the Beaver dam and the control, trapping or removal is authorized by the Washington State Department of Fish and Wildlife (DFW) through the issuance of a Hydraulic Project Approval (HPA).

17.02A.070 Critical Area Mitigation

A. General Mitigation Standards

1. Mitigation shall be required to compensate for any approved Alteration of a Wetland or Fish and Wildlife Habitat Conservation Area or Buffer for these Critical Areas.

Mitigation requirements shall be established after determining that the Alteration cannot be avoided, reduced or Restored as required by ICC 17.02A.040.A.5.

2. Unless clearly specified otherwise, all Mitigation required under this Chapter shall be based on an approved Mitigation Plan. Mitigation Plan requirements for Wetlands are set forth in ICC17.02A.090 and for Fish and Wildlife Habitat Conservation areas in Chapter 17.02 ICC. All Mitigation shall be Monitored, typically by the Applicant, and a Contingency Plan shall be required for any approved Mitigation.

3. Mitigation shall not be implemented until approved by the County. The applicant shall notify the Department when Mitigation has been completed and shall provide the Department reasonable access to the Mitigation to allow inspections during the Monitoring period.

4. Because it takes time to verify that Mitigation is achieving established goals, the area committed to Mitigation will generally be larger than the area that has been Altered. Mitigation ratios established by this Chapter provide general guidance. However, specific requirements shall be determined by the Planning Director on a case-by-case basis. Re-establishment and Rehabilitation are the preferred forms of Mitigation. These forms of Mitigation should be considered as well as Creation before Enhancement or Preservation is permitted.

5. If Mitigation is required under this Chapter to compensate for the Alteration of a Critical Area or Critical Area Buffer, an applicant shall Monitor the performance of any required Mitigation. If Monitoring identifies that the Mitigation is failing to achieve the goals established in an approved Mitigation Plan, the applicant shall implement the approved Contingency Plan. The Contingency Plan shall constitute new Mitigation and shall meet all requirements for Mitigation required by this Chapter.

6. Conveyance by deed or easement of a Critical Area, its Buffer and Mitigation sites to a land trust, similar conservation organization or governmental agency is encouraged when such conveyance will ensure the long-term Maintenance and protection of the Critical Area or Critical Area Buffer.

7. All Mitigation sites shall be managed to prevent degradation and ensure protection of Critical Area functions in perpetuity. Permanent protection shall be achieved through deed restriction, conservation easement or protective covenant.

8. When Practical and Reasonable, Mitigation should be completed prior to commencing activities that will Alter a Critical Area or Critical Area Buffer. In all other cases, Mitigation shall be completed concurrent with or within one (1) year following the Alteration. Construction of Mitigation projects shall be timed to minimize impacts to plants and animals. The Planning Director may adjust timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).

9. Mitigation shall create an encumbrance only on a Lot or Lots owned by the proponent of the Mitigation. Mitigation may encumber or restrict the Use of an adjacent Lot only if the Owner of such Lot consents in writing to the encumbrance or restriction.

B. Off-site Mitigation

1. Generally, all Mitigation shall be on the property containing the affected Critical Area. However, on-site Mitigation is not always the most effective option. Preference shall be given to sites that provide highest ecological benefits and therefore off-site Mitigation or payment in lieu of Mitigation may be preferred over on-site Mitigation.

2. The Planning Director may approve off-site Mitigation if an applicant demonstrates that:

   a) It is not Practical and Reasonable to Mitigate on-site; or

   b) Improved or greater ecological benefits can be achieved by off-site Mitigation.

3. When off-site Mitigation for the Alteration of a Wetland is authorized, the Planning Director shall give first priority to locations within the same Contributing Area and second priority to locations within the same Watershed. Locations outside the Watershed may be considered only if the Planning Director determines that first and second priority locations are not Practical and Reasonable for off-site Mitigation.

4. The Department may also develop a program for Wetlands and Streams to allow payment of a fee in lieu of providing on-site or off-site Mitigation. The fee program should be available for use when on-site or off-site Mitigation is not Practical and Reasonable. A fee in lieu of on-site or off-site Mitigation is also appropriate when greater ecological benefits can be achieved through the use of fees. The Mitigation fee program shall include:

   a) The specific circumstances when payment of a Mitigation fee will be permitted;

   b) The structure or method for calculating the amount of the Mitigation fee; and

   c) The specific procedures for establishing locations and Wetland Categories or Types where or for which Mitigation fees may be used.

5. Mitigation Banks may also be established to allow off-site Mitigation to compensate for Alteration of a Wetland or Wetland Buffers. Specific standards and procedures for establishing a Wetland Mitigation Bank are set forth in ICC 17.02A.090.J.

17.02A.080 Monitoring and Adaptive Management.

Monitoring is important to allow for a reasoned assessment of whether the County's CAO is achieving the goals and policies set forth in the Island County Comprehensive Plan for Critical Areas. In 2006, the County initiated a comprehensive Water Quality Monitoring Program focused on Lakes and Streams. This Program is set forth in Chapter 17.02 ICC.

In addition to Monitoring water quality for surface waters, the County intends to initiate a parallel Monitoring Program for Wetlands, to begin on the effective date of this Chapter. The Wetlands Monitoring Program will take two forms. First, a multi-year, science-based monitoring program will be maintained to measure water quality in the County's Wetlands. In addition to measuring water quality, the County will also Monitor changes in Wetland Vegetation. Together, water quality and Wetland Vegetation will be used to track changes in the health of the Wetlands located in Island County. These data will augment and expand on the work completed in 2006 by Dr. Paul Adamus and documented in *Wetlands of Island County, Washington - Profile of Characteristics, Functions and Health* published by the County in August, 2006.

A. Purpose. The primary purpose of the County's Wetland Monitoring Program will be to determine the overall health of a Wetland. To do so, the County will track both chemical indicators through measuring water quality and biological indicators by sampling Wetland Vegetation. These measures will be used to evaluate the effectiveness of County regulations.

B. Guiding Principles. The following principles will be used to guide the implementation of the Wetland Monitoring Program and any Adaptive Management actions that are used by the County to address a decline in Wetland health, should a decline be identified through the Monitoring Program that is adversely affecting Wetlands.

1. Vegetation Monitoring as well as water quality Monitoring shall be conducted in Wetlands to which the County has been granted access, and which represent a range of surrounding land uses and Buffer widths. Wetland Vegetation Monitoring will focus on measuring changes in the species composition and the surface area of herbaceous vegetation. Water quality Monitoring will track change in water quality parameters. For a given Wetland, change will be analyzed at five year intervals. Changes in overall cover of woody vegetation will be interpreted from aerial imagery.

2. The identification of the source or sources of the decline in Wetland health shall generally follow after commencing Monitoring. However, existing data may trigger Compliance Assessment and/or Source Identification when the existing data reliably documents an on-going decline.

3. Both water quality and vegetation Monitoring shall utilize the best available "peer reviewed" protocols for sampling and measuring contaminants and changes in Wetland Vegetation.

4. Except when authorized pursuant to ICC 17.03.260A, access to private property to conduct Baseline Monitoring or Source Identification shall only occur if the property owner voluntarily consents in writing to such access.

5. If Baseline Monitoring identifies a significant elevation of water quality contaminants or more than a 10% increase in the percent cover of non-native herbaceous vegetation or more than a 10% change in species richness, the first step initiated by the County will typically be Compliance Assessment to determine whether a source or sources of the contamination or plant community change can be readily identified. Subsequently, the County may initiate Source Identification.

6. The Monitoring Program shall be conducted in a manner that encourages the involvement of property owners and voluntary compliance. Educational outreach will be the first action taken by the County after Compliance Assessment or Source Identification determines that an Exceedence is attributable to a specific source or sources.

7. Adaptive actions initiated by the County to address non-point source contamination and spread of non-native plants that are adversely affecting Wetland health shall usually be through legislative changes in Critical Area regulations typically applied county-wide and applicable to new and not Existing Uses.

C. Baseline Monitoring. The goal of the County will be to establish baseline conditions countywide within five (5) years of the commencement of the Wetland Monitoring Program.

1. Monitoring parameters used by the County to establish baseline conditions shall include:

   a) Dissolved Oxygen;
   b) Fecal Coliform;
   c) Nitrate;
   d) pH;
   e) Phosphorus;
   f) Temperature;
   g) Turbidity;
   h) Conductivity;
   i) Hardness; and
   j) Wetland Vegetation

2. The parameters listed above may be changed by the Board from time to time based on data from Baseline Monitoring; changed standards of State or Federal agencies; or the need to assess the potential adverse effect of unlisted parameters on Wetlands.

D. Source Identification

1. Generally, Source Identification will be initiated only after Baseline Monitoring has identified contaminants that exceed County adopted Water Quality Standards or

Thresholds or Wetland Vegetation Monitoring shows signs of significantly diminished health of a Wetland.

2. Before Baseline Monitoring is completed, the County may initiate Source Identification in some Watersheds**,** based on existing data.

3. Types of Source Identification shall include in order of typical use:

   a) Increase the compilation and analysis of existing data;
   b) Increase the number of Monitoring sites including Wetland Vegetation Monitoring sites and/or change the location of Monitoring sites;
   c) Increase the frequency of water quality Monitoring or change the frequency of Wetland Vegetation Monitoring; and
   d) When the above actions prove insufficient, implement different Monitoring methods such as analysis of DNA, optical brighteners or other specialized tracing methods.

E. Monitoring Trends. Unlike surface water quality in Lakes and Streams, there is no general concurrence on appropriate Standards or Thresholds for Wetlands. Therefore, the County's Monitoring focus will be on establishing a baseline and Trends. These Trends in both water quality and vegetation will be established through Monitoring a parameter over time.

F. Adaptive Management. Baseline Monitoring and Source Identification provide information used by the County to assist in determining the effectiveness of the County's Wetland regulations. The adaptive actions that may be triggered could be to make County regulations more stringent, less stringent or leave them unchanged. All three outcomes are possible. Adaptive Management actions to address worsening Trends that are adversely affecting Wetland health shall conform to the guiding principles set forth in subsection B above and shall follow the steps set forth below:

1. Step 1 - Compliance Assessment/Source Identification. Compliance Assessment is the first adaptive management action the County will initiate after a decline in Wetland health has been detected. The purpose of the assessment is to determine whether there is compliance with applicable Critical Area regulations. When Compliance Assessment shows conformance with Critical Area requirements, then Source Identification will be initiated to determine the source or sources of the worsening Trend.

2. Step 2 - Education. If the County determines that decline in Wetland health is, at least in part, attributable to non-compliance with applicable Critical Area regulations, the County will initiate actions to secure voluntary compliance.

3. Step 3 - Enforcement. If reasonable efforts to achieve voluntary compliance are not successful, then the County will initiate enforcement actions under Chapter 17.03 ICC.

4. Step 4 - Modification of Critical Area Regulations. This step shall be initiated when Monitoring shows signs of declining Wetland health attributable to County regulation; and, a change in regulations that are applicable countywide is needed to address the decline in Wetland health. Any modification of Critical Area regulations will be made after considering best available science.

G. Wetland Monitoring Reports. The County shall produce annual reports on Wetland Monitoring as well as on activities and decisions relating to Wetlands. The Wetland Monitoring Reports will be similar in format to the Water Quality Monitoring Reports and be made available to State Agencies and the public. These reports will include all Baseline Monitoring data, summary statistics, an assessment of the accuracy and completeness of the data, and a description of data collection issues, if any, identified during the reporting period as well as the following additional information:

1. A description of any identified Trends and all Compliance Assessments and Source Identification actions taken during the reporting period.
2. A description of educational outreach actions as well as enforcement actions taken during the reporting period.
3. A discussion of Wetland Monitoring priorities for the next reporting period.
4. A description of approved Development Proposals that required a Wetland Alteration, including a description of Wetland Type, Category, Buffer, Mitigation and Monitoring.
5. A review of the application of Specific Use Standards contained in ICC 17.02A.050.
6. A review of activities and Uses that are exempt under ICC 17.02A.060.
7. A review of Land Use Intensity determinations.
8. A description of enforcement actions relating to Wetlands.
9. A description of any Buffer Modification decisions.
10. A description of requested Alterations, the action taken on the request and the reasons that support the action.
11. A summary characterization of Wetland health and the effectiveness of CAO regulations in implementing Comprehensive Plan goals and policies for Wetlands.

17.02A.090 Wetlands

A. Regulated Wetlands

1. All Category A, B, C and D wetlands 1,000 square feet or larger in surface area (approximately equal to a circle with a radius of 17.5 feet) and all Category E Wetlands 5,000 square feet or larger in surface area are regulated under this Chapter.
2. Category A, B, C and D Wetlands that are less than 1,000 square feet (approximately equal to a circle with a radius of 17.5 feet) in size surface area and Category E Wetlands less than 5,000 square feet in surface are regulated by this Chapter only if:
    a) The Wetland is considered a Mosaic Wetland; or
    b) The Wetland is known to contain either a Protected Species or a Species of Local Importance; or
    c) The Wetland receives a Rating score of 50 or greater.

B. Wetland Mapping

1. The Department shall maintain and update Maps that depict the location and Type of all known Wetlands in Island County. However, not all Wetlands have been mapped.

   These Maps will be available at the offices of the Department and used as a guide to identify and locate Wetlands. The Planning Director shall propose and the Board of Commissioners shall adopt an administrative procedure for the update of Wetland Maps.

2. Both the term Wetland as well as specific Types of Wetlands are defined in ICC 17.02A.030. Most of these Wetland Types have been mapped by the County and these Maps shall serve as a guide for determining the general location of Wetlands. However, the presence of a Wetland on a Lot shall be determined based on the definitions established by the New CAO, not the County's Wetland Maps.

3. At any time, an Owner can provide the Department information prepared by a Wetland Professional to correct or clarify the County's Wetland Maps for property he or she owns. When the Planning Director finds that a Map is in error, a correction shall be approved as a Type I decision pursuant to Chapter 16.19 ICC.

C. Wetland Identification

1. The Planning Director shall determine Wetland Type, location and Classification for any Development Proposal on a Lot that contains or is affected by a Wetland or Wetland Buffer. This determination will use information provided to the County through the Field Indicators Worksheet contained in the Wetland Identification Guide or a Wetland Report. As provided herein, except for activities and uses addressed in ICC 17.02A.060, a Worksheet shall be required for all Development Proposals.

2. Wetland Identification Guide. The purpose of the County's Wetland Identification Guide is to assist an owner and/or an applicant in the identification of Wetlands. Generally, the Field Indicators Worksheet shall be submitted with all Development Proposals regardless of whether the Lot may contain or be affected by a Wetland or Wetland Buffer. For Single Family Dwellings or Accessory Uses and Structures for Single Family Dwellings, the owner or applicant shall have the option of submitting a Wetland Report instead of the Field Indicators Worksheet.

3. Wetland Report. A Wetland Report shall be submitted for all Development Proposals, other than Building Permits for Single Family Dwellings or Accessory Uses and Structures for Single Family Dwellings, when the Development Proposal is located on a Lot that contains or is affected by a Wetland or Wetland Buffer. A Wetland Report will also be required for any request to modify a required Wetland Buffer. Wetland Reports shall be prepared by a Wetland Professional.

4. A Wetland Report shall at a minimum include:

   a) A brief detailed description of the Development Proposal;

b) A description of assumptions and methodologies used to complete the analysis and appropriate documentation of all fieldwork;

c) A description of the Wetland Type, its specific location and the Buffer that is appropriate for the Wetland;

d) If an Alteration is proposed for the Wetland or Wetland Buffer, the Wetland Report shall describe actions that have been considered to avoid or reduce any Alteration;

e) If an Alteration is proposed, a Wetland Mitigation Plan; and

f) If a Buffer Modification is proposed, an explanation of why the modification will not adversely affect Wetland Functions.

D. Land Use Intensity

The appropriate Buffer for a Wetland will, in part, be determined based on the intensity of a Development Proposal. Land Use Intensity shall be determined by the Planning Director on a case-by-case basis for Development Proposals that contain or are affected by a Wetland or Wetland Buffer. The Land Use Intensity Worksheet from the Wetlands Identification Guide shall be submitted with all Development Proposals on a Lot that contains or is affected by a Wetland or Wetland Buffer and will be used by the Planning Director in the determination of Land Use Intensity. The Planning Director shall determine Land Use Intensity as follows:

1. High Intensity

a) All Uses and Structures located on Lots less than one (1) acre in size shall typically be classified initially as high intensity;

b) All Non-Residential Uses and Structures located on Lots equal to one (1) acre but less than five (5) acres in size shall typically be classified initially as high intensity;

c) For Residential Uses and Structures:

(i) More than ten (10) percent of the Lot is covered with an Impervious Surface; or

(ii) The Cleared Area exceeds the following thresholds:

	Lot Size				
	1 to 2.49 acres	2.5 to 4.99 acres	5 to 9.99 acres	10 to 19.99 acres	>20 acres
Cleared	**>50%**	**>45%**	**>40%**	**>35%**	**>30%**

Area					

2. Medium Intensity

   a) All Non-Residential Uses and Structures located on Lots equal to one (1) acre but less than five (5) acres in size shall typically be classified initially as medium intensity;

   b) All Residential Uses and Structures that do not meet the Cleared Area and Impervious Surface ratios established for high and low intensity Uses shall typically be classified initially as medium intensity.

3. Low Intensity

   a) For Residential Uses and Structures:

      (i) Less than five (5) percent of the Lot is covered with an Impervious Surface; and

      (ii) The Cleared Area exceeds the following thresholds:

Lot Size					
	1 to 2.49 Acres	2.5 to 4.99 acres	5 to 9.99 acres	10 to 19.99 acres	> 20 acres
Cleared Area	<35 %	<30 %	<25 %	<20 %	<15 %

   b) Low Intensity Uses and Structures shall adhere to the following standards:

      (i) Structures, patios and decks shall be set back fifteen (15) feet from the outer edge of the Buffer; and

      (ii) Exterior lighting fixtures shall comply with the lighting standards of Chapter 17.03 ICC and shall be shrouded and directed away from the Wetland or Wetland Buffer; and

      (iii) Fertilizers, pesticides and herbicides shall not be applied in a manner that adversely impacts Wetland Functions or Wetland Buffers; and

      (iv) Storm water from Impervious Surfaces shall be controlled before it reaches the Wetland Buffer.

4. Intensity determinations will consider the potential adverse impacts to Wetland Functions expected to be caused because of site-specific characteristics and the orientation or location of the proposed Use or Structure in relation to the Wetland. For example, the Development Proposal may qualify as Low Intensity under

subsection 3. However, topography or soils and site location or design of the proposed Structures may potentially generate adverse impacts to Wetland Functions. Therefore, if it is not modified by the applicant, the Development Proposal may be finally classified by the Planning Director in a medium or high intensity classification.

5. Any new Use or Structure classified as medium or high intensity may be lowered by one intensity classification by the Planning Director if the Use or Structure is modified to reduce potential adverse impacts to Wetland Functions through the approval of a Rural Stewardship Plan, provided the approved Plan contains a monitoring program as required by ICC 17.02A.040.C.6.

6. When a Development Proposal contains more than one Use or Structure and the Uses or Structures are of differing Land Use Intensity, the Development Proposal shall be classified in the intensity classification that provides the greatest protection to the Critical Area.

E. Wetland Classification System

Wetlands shall be classified by the Planning Director based on the Type of Wetland and Buffers will be established by the Planning Director based on the Wetland Classification. The Classification that provides the greatest protection shall be used for Wetlands that exhibit the characteristics of more than one Type. The Field Indicators Worksheet or a Wetland Report will be used by the Planning Director as well as the County's Wetland Maps and site investigations to determine the appropriate Wetland Classification.

Wetland Classification System	
WETLAND CATEGORY	**WETLAND TYPE**
A	• Bogs • Coastal Lagoon Wetlands • Delta Estuary Wetlands • Mature Forested Wetlands
B	• Large Ponded Wetlands • Anadromous Fish Stream Wetlands • Wetland Associated with a Bog or Coastal Lagoon or Delta Estuary
C	• Other Estuarine Wetlands • Resident Salmonid Stream Wetlands • Mosaic Wetlands
D	• Native Plant Wetlands • Small Ponded Wetlands
E	• All Wetlands not otherwise classified

F. Wetland Buffers

Generally, Habitat and water quality are specific Wetland attributes used to establish a Wetland Buffer. Special Buffers have been established for Bogs, Coastal Lagoon Wetlands and Wetlands located within the Delta Estuary. Buffers have also been established specifically for Estuarine Wetlands that are not Coastal Lagoon Wetlands and Delta Estuary Wetlands. These Wetlands are either very rare, sensitive and/or are particularly important for Anadromous Fish. For all other Wetlands both Habitat and water quality Buffers must be determined and the larger of the two will be the Buffer that applies. Water quality Buffers shall be established based on the Wetland's sensitivity to disturbance, Wetland Type and the Land Use Intensity proposed by a Development Proposal. Habitat Buffers shall be established using a Habitat Rating System and Land Use Intensity. The Habitat Rating System shall allow a property owner and/or a Wetlands Professional to evaluate the character and relative quality of Habitat located on his/her property for Wetland Dependent Species. The Habitat Rating System is included in the Wetland Buffer Worksheet contained in the Wetland Identification Guide. This Worksheet shall be submitted with all Development Proposals on a Lot that contains or is affected by a Wetland or Wetland Buffer. Buffers are set forth in Tables 1-4 below.

Buffer widths are presumed to be vegetated with Native and/or Non-Native Plant Species that are adequate to protect Wetland Functions. If Buffer vegetation is determined by the Planning Director to be inadequate to protect Wetland Functions, then if Practical and Reasonable, Buffer vegetation shall be Re-established, Rehabilitated and/or Enhanced so that it is adequate to protect Wetland Functions. Otherwise, expansion of the Buffer may be required pursuant to ICC 17.02A.090.G.

1. Unless the activity or use is covered by ICC 17.02A.050 or ICC 17.02A.060, vegetated Buffers shall be required as follows:

    a) For regulated Category A, B, C and D Wetlands less than 1,000 square feet in size and regulated Category E Wetlands less than 5,000 square feet in size, the required Buffer shall be fifteen (15) feet with a fifteen (15) foot setback for Buildings and Structures.

    b) For Category A, B, C and D Wetlands 1,000 square feet or larger in size and Category E Wetlands 5,000 square feet or larger in size, the required Buffer shall be as set forth in Tables 1 through 4.

    c) A required Wetland Buffer shall not exceed three hundred (300) feet.

2. The applicable Buffer can be determined using the following steps:

    a) Step 1: Have the County establish the Wetland Type and the Wetland size to determine whether a Buffer is required.

    b) Step 2: Have the County determine the Land Use Intensity of the Development Proposal and the Wetland's Contributing Area.

    c) Step 3A: For Wetlands regulated by this Chapter that are under 1,000 square feet in size, use the 15 foot Buffer plus 15 foot setback required under subsection 1a) above.

    Step 3B: For Bogs, Coastal Lagoon Wetlands, Delta Estuary Wetlands and other Estuarine Wetlands, the required Buffer can be determined from Table 1.

    Step 3C: For all other Wetland Types, determine the Habitat Rating for the Wetland. If the score is 22 or higher, then use Table 2 to determine the required Buffer. If the Habitat Rating is less than 22, then go to Step 4.

    d) Step 4: Determine whether the Wetland has a surface water Outlet and determine the Slope Gradient between the Development Proposal and the Wetland.

    e) Step 5: Determine the applicable water quality Buffer using Tables 3 and 4.

    f) Step 6: Determine whether any Buffer modification standards are applicable.

    g) Step 7: Determine which Buffer is larger. If the Habitat Buffer is larger then apply it to the entire Wetland. If the water quality Buffer is larger then apply it to the Contributing Area and apply a 20 foot Buffer to the non- Contributing Area.

3. Buffers are established in Table 1 for Bogs, Coastal Lagoon Wetlands, Delta Estuary Wetlands and other Estuarine Wetlands.

Table 1: Special Case Buffers for Specific Wetlands Types				
Land Use Intensity	**Bog**	**Coastal Lagoon Wetland**	**Delta Estuary Wetland**	**Other Estuarine Wetlands**
Low	125 ft	100 ft	40ft	30 ft
Moderate	190 ft	150 ft	90ft	55 ft
High	250 ft	200 ft	125ft	90 ft

4. Habitat Buffers for Wetlands not covered by Table 1 shall be determined based on the score achieved through the County's Habitat Rating System. The Wetland Buffer Worksheet contained in the Wetland Identification Guide shall be submitted with all Development Proposals that are on land that contains or is affected by a Wetland or Wetland Buffer and will be used to assist the Planning Director in the determination of the applicable Habitat Buffer. Habitat Buffers are established in Table 2.

Table 2: Habitat Buffers						
Land Use Intensity	**Habitat Functions Score**					
	Wetland Outlet	**40 or higher**	**32-39**	**29-31**	**22-28**	**Less than 22**
Low	Yes	125 ft	75 ft	75 ft	75 ft	Use Tables 3 and 4
	No	150 ft	125 ft	100 ft	75 ft	
Moderate	Yes	200 ft	110 ft	110 ft	110 ft	
	No	225 ft	175 ft	150 ft	110 ft	
High	Yes	250 ft	150 ft	150 ft	150 ft	
	No	300 ft	200 ft	175 ft	150 ft	

5. Water quality Wetland Buffers for Wetlands that are not covered by Tables 1 or 2 are established in Table 3. For Development Proposals on Lots that have a percent slope of 5% or greater between the Development Proposal and the Wetland, the water quality Buffer from Table 3 will need to be adjusted using Table 4.

6. Visible evidence of an Outlet is required to determine that a Wetland has an Outlet. If the presence of an Outlet is unclear or uncertain, then the presumption will be that a Wetland does not have an Outlet.

Table 3: Water Quality Buffers

Land Use Intensity	Wetland Outlet	Wetland Category A*	B	C**	D	E
Low	Yes	40 ft	35 ft	30 ft	25 ft	20 ft
	No	75 ft	50 ft	40 ft	35 ft	25 ft
Moderate	Yes	90 ft	65 ft	55 ft	45 ft	30 ft
	No	105 ft	90 ft	75 ft	60 ft	40 ft
High	Yes	125 ft	110 ft	90 ft	65 ft	40 ft
	No	175 ft	150 ft	125 ft	90 ft	50 ft

* Use Table 1 for Buffers for Bogs, Coastal Lagoon Wetlands and Delta Estuary Wetlands

** Use Table 1 for Buffers for Other Estuarine Wetlands

7. For Development Proposals on Lots that are sloped between the Development Proposal and the Wetland, the water quality Wetland Buffer established in Table 3 shall be increased using the following multipliers:

Table 4: Slope Adjustment	
Slope Gradient	**Additional Buffer Multiplier**
5-14%	1.3
15-40%	1.4
>40%	1.5

8. Water quality Buffers established in Table 3 and 4 shall apply only to a Wetland's Contributing Area. For the non-Contributing Area of a Wetland, the Buffer shall be twenty (20) feet in width.

9. Except for Mitigation Banks, no Buffers shall be required for voluntary Wetland and Wetland Buffer Improvement projects.

10. For Wetlands regulated by this Chapter, Mitigation shall be required when the approved Alteration of any Wetland or Wetland Buffer cannot be Restored.

11. Permissible Maintenance activities for Wetland Buffers shall be specified in the approval conditions for a Development Proposal. Otherwise Buffers shall remain undisturbed or, if Re-established, Rehabilitated, Created or Enhanced, in the condition established after completion of the approved activity.

G. Wetland Buffer Modification

After applying the Critical Area review criteria set forth in ICC 17.02A.040.A.5, the Planning Director shall have the authority to modify Wetland Buffers on a case-by-case basis.

1. A required Wetland Buffer may be reduced when a legally established road crosses a Wetland Buffer and the reduction will not adversely affect Wetland Functions as documented in a Wetland Report.

2. In lieu of a Buffer reduction, Buffer Averaging may be approved when:

   a) The total area contained in a Buffer after averaging is not less than that which would be contained within the Buffer if Buffer averaging was not permitted; and

   b) Buffer averaging will not adversely affect Wetland Functions as documented in a Wetland Report.

3. For a Category A and B Wetland, a Buffer Modification under subsection 1 or 2 above shall not reduce the Buffer to less than seventy-five percent (75%) of the otherwise required Buffer or thirty-five (35) feet, whichever is greater.

4. For a Category C, D and E Wetland, a Buffer modification shall not reduce the Buffer to less than fifty percent (50%) of the otherwise required Buffer or twenty (20) feet, whichever is greater.

5. A Wetland Buffer may be increased when:

   a) The increase is needed to protect Wetland Functions; or

   b) Buffer vegetation is inadequate to protect Wetland Functions and Buffer Re-establishment, Rehabilitation or Enhancement is not Practical and Reasonable; or

   c) The Wetland has a Small Contributing Area; or

   d) The Wetland is a Relict Bog; or

   e) For sloped Lots, the sloped area between the Development Proposal and the Wetland contains Highly Erodible Soils.

H. Wetland Mitigation Standards

1. Mitigation shall be required only if the approved Alteration cannot be Restored, within two (2) years of the Alteration. Generally, Mitigation for Alteration of a Wetland or Wetland Buffer shall provide equal or better Wetland Functions.

2. Wetland Alterations. No Alteration of a Category A Wetland is permitted unless the activity or Use is covered by ICC 17.02A.050 and ICC 17.02A.060. Alteration of Category B, C, D and E Wetlands may be permitted only after applying the review criteria set forth in ICC 17.02A.040.A.5.

3. Mitigation for approved Wetland Alterations that cannot be Restored shall occur in the following order of preference:

   a) Re-establishing Wetlands on sites that were formerly Wetlands. These sites commonly exist on Soils classified as hydric by the NRCS;

   b) Rehabilitating Wetlands by Restoring natural and/or historic Wetland Functions;

   c) Creating or establishing Wetlands on upland sites such as those consisting primarily of Non-native, Invasive Plant Species or to expand an existing Wetland;

   d) Enhancing degraded Wetlands;

   e) Providing a fee established by the County in lieu of on-site or off-site Mitigation; or

   f) Preserving, protecting or maintaining Category A, B, C or D Wetlands that are under imminent threat of significant and undesirable ecological change. Provided that, Preservation shall only be allowed on sites in the Altered Wetland's Watershed; and when the Planning Director determines that the overall Mitigation Plan replaces the Wetland Functions lost due to the Development Proposal with improved Wetland Functions.

4. Buffer Alteration. Compensatory Mitigation for any approved Wetland Buffer Alteration that cannot be Restored as required by ICC 17.02A.040.A.5 shall be determined by the Planning Director on a case-by-case basis. Buffer Mitigation may include any action that can achieve equal or improved Wetland Functions. When Enhancement of the Altered Buffer is not Practical or Reasonable, Mitigation preferences will otherwise be the same as for Wetland Mitigation.

5. Mitigation by Re-establishing, Rehabilitating, Creating, Enhancing or Preserving Wetlands or Wetland Buffers should be completed in advance of activities that will

   disturb Wetlands whenever Practical and Reasonable and must be based on a Mitigation Plan approved by the Planning Director. If Mitigation is not completed in advance, then it should be completed before completion of the approved Development Proposal. Otherwise, Mitigation shall be completed within one (1) year of the decision to require Mitigation.

I. Wetland Mitigation Ratios

1. Compensatory Mitigation for approved Wetland Alterations shall be based on the Wetland Category, the type of Mitigation activity proposed and the magnitude of the Alteration. Mitigation shall be determined according to the ratios provided in Table 5 below.

Table 5: Wetland Mitigation Ratios

	Standard Mitigation Ratio*		
Wetland Category	**Re-establishment or Creation**	**Rehabilitation**	**Enhancement**
A**	6:1	10:1	20:1
B	3:1	6:1	12:1
C & D	2:1	4:1	8:1
E	1.5:1	2:1	4:1

* Ratio is the Mitigation area: area of Alteration

** Alteration of a Category A Wetland is allowed only for Development Proposals for activities or Uses covered by ICC 17.02A.050 and ICC 17.02A.060.

2. Mitigation ratios for Wetland Preservation shall be determined by the Planning Director on a case-by-case basis. Generally, the Mitigation ratio for Preservation will be greater than 20:1 because Preservation is the last priority Mitigation option. However, Preservation of a higher Category Wetland would allow the Mitigation

Ratio to be reduced. A lower ratio may also be allowed when Preservation is combined with other types of Mitigation.

3. Unless the activity is voluntary, a site for a Wetland that is Re-established, Rehabilitated, Created, Enhanced, or Preserved shall have adequate room for the Buffer required under this Chapter.

4. The Planning Director shall have the authority to reduce the Wetland Mitigation ratios by up to forty percent (40%) when the proposed Mitigation:

   a) Has a very high likelihood of success based on experience with similar Mitigation projects; or

   b) Will provide more significant Wetland Functions than the Functions of the Wetland being Altered as documented in a Wetland Report.

5. Mitigation ratios for approved Wetland Buffer Alterations shall be determined by the Planning Director on a case-by-case basis. Generally, the Mitigation ratio shall be at a 1:1 ratio but shall be established based on the nature and extent of the Buffer intrusion and the Wetland Type and Wetland Functions.

6. The Planning Director shall also determine, on a case-by-case basis, Mitigation ratios for temporary Alterations of Wetlands or Wetland Buffers and the conversion of a Wetland from one Wetland Type to another. Generally, these ratios will be one-quarter (1/4) (Temporary Alteration) to one-half (1/2) (Conversion to another Wetland Type) of the ratios for permanent Alterations.

J. Wetland Mitigation Plan

Unless a fee in-lieu of Mitigation is allowed, Wetland Mitigation shall be based on a specific plan. If requested by an applicant, the County shall prepare the Mitigation Plan for a Single Family Dwelling or Accessory Structure including Development Proposals reviewed under ICC 17.02A.050.A. Otherwise, the Mitigation Plan shall be prepared by the County or a Wetland Professional. Typically, a Wetland Mitigation Plan shall include the following:

1. The plan shall be based on applicable portions of the Washington State Department of Ecology's *Guidelines for Developing Freshwater Wetland Mitigation Plans and Proposals*, 2004 or other appropriate guidance document.

2. Typically, if a Wetland Report is prepared, and an Alteration is proposed or Buffer modification requested, then the Mitigation Plan shall be included with the Wetland Report. The Plan shall contain sufficient information to demonstrate that the proposed activities are Practical and Reasonable, ecologically sustainable and likely to succeed. Unless the Planning Director establishes the scope and content of a Mitigation Plan, the Plan shall include:

   a) A detailed description of the proposed Mitigation and the rationale for the selection of the Mitigation site. If off-site Mitigation is proposed, an explanation of why on-site mitigation is not Practical and Reasonable;

b) An assessment of Existing site conditions for the Mitigation site including vegetation type, Structure and composition; topography, hydrology and soil conditions; Existing Wetland Functions if any; and for off-site Mitigation, an estimate of future conditions of the site should Mitigation not occur;

c) A grading and planting plan showing proposed post-construction topography hydrologic patterns, spacing and distribution of plants, species, actions to provide or improve Habitat, size and type of proposed plant stock, irrigation and other information that is relevant to the proposed Mitigation;

d) A management plan that includes Mitigation goals, benchmarks and review criteria; site treatment measures for the maintenance of the Mitigation; and legal documents to be recorded by the County after approval of the Plan;

e) A Monitoring Plan that specifies the standards and time period that will be used to Monitor whether the Mitigation is successful; and

f) A Contingency Plan that establishes the actions that will be taken should Monitoring identify that the Mitigation is not achieving the established benchmarks.

3. All Mitigation projects shall be Monitored, typically by the applicant, for a time period necessary to establish that Mitigation goals and benchmarks have been met. The Monitoring time period shall be established based on the type, complexity and uncertainty of the proposed Mitigation. Five years of Monitoring will usually be the minimum required to establish whether Mitigation has successfully achieved equal or improved Wetland Functions. Ten years may be typical for Re-establishment, Rehabilitation or Creation.

4. Reports shall be submitted at a frequency established by the Planning Director for the Monitoring time period to document the achievement of Mitigation goals and benchmarks and recommended actions relating to the Mitigation.

K. Wetland Mitigation Banks

The County may approve Mitigation in advance of Development Proposals through an approved Mitigation Bank. Mitigation Banks may be approved by the County when:

1. The bank is certified by the Washington State Department of Ecology;

2. The Planning Director determines that the Wetland Mitigation Bank provides appropriate compensation for the authorized Alteration;

3. The Proposed use of credits is consistent with the terms and conditions of the Bank's certification;

4. Replacement ratios for projects using Bank credits shall be consistent with replacement ratios specified in the Bank's certification;

5. Credits from a certified Wetland Mitigation Bank may be used to compensate for impacts located within the service area specified in the Bank's certification. In some

cases, the service area of the Bank may include portions of more than one adjacent Drainage Basin for specific Wetland Functions.

17.02A.100 Fish and Wildlife Habitat Conservation Areas (See ICC 17.02.050C)

17.02A.110 Severability

If any provision or provisions of this Chapter or its/their application to any person or circumstances is held invalid, the remainder of this Chapter or the application of the provision or provisions to other persons or circumstances shall not be affected.

17.02A.120 Effective Date

Chapter 17.02A ICC shall go into effect on July 1, 2008.

PAGES 837-870 RESERVED