

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON**

IN THE MATTER OF AMENDING THE)	
COMPREHENSIVE PLAN, THE CRITICAL)	ORDINANCE C-41-06
AREAS ORDINANCE (CHAPTER 17.02 ICC),)	PLG-024-05
THE CLEARING AND GRADING ORDINANCE)	
(CHAPTER 11.02 ICC), AND THE)	
STORMWATER ORDINANCE (CHAPTER 11.03)	
ICC), IN CONJUNCTION WITH THE REVIEW)	
AND UPDATE OF THE CRITICAL AREA)	
REGULATIONS PERTAINING TO)	
GEOLOGICALLY HAZARDOUS AREAS)	
_____)	

WHEREAS, pursuant to RCW 36.70A.130 Island County is required to periodically update its critical area regulations; and

WHEREAS, Chapter 36.70A RCW defines critical areas as aquifer recharge areas, frequently flooded areas, geologically hazardous areas, wetlands, and fish and wildlife habitat conservation areas; and

WHEREAS, Resolution C-15-05 was adopted by the Board of Island County Commissioners on February 28, 2005 establishing a schedule satisfying the requirements of RCW 36.70A.130; and

WHEREAS, Exhibit A of Resolution C-15-05 places geologically hazardous areas under the timelines established for “Track 2”; and

WHEREAS, Resolution C-90-05 modified the update schedule associated with geologically hazardous areas and renamed as “Track 2-b”; and

WHEREAS, the proposed amendments were transmitted to state agencies for their review and 60 day comment period on August 16, 2005; and

WHEREAS, the Planning Commission conducted public hearings on September 13, 2005 on Camano Island and on September 27, 2005 in Coupeville; and

WHEREAS, a SEPA threshold determination of non-significance was issued on September 7, 2005 with a public comment period terminating on September 21, 2005 and an appeal period terminating on October 10, 2005; and

WHEREAS, the Planning Commission held a public meeting on October 18, 2005 for the purposes of deliberating on the proposed amendments and adopted a recommendation for amending the Comprehensive Plan, the Critical Areas Ordinance (Chapter 17.02 ICC), the Clearing and Grading Ordinance (Chapter 11.02 ICC), and the Stormwater Ordinance (Chapter 11.03 ICC); and

WHEREAS, pursuant to RCW 36.70A.172 best available science was acquired, developed, reviewed, and incorporated into the amendments adopted under this ordinance; and

WHEREAS, pursuant to WAC 197-11-330 and WAC 197-11-340, the County SEPA official has determined that the proposed changes to the Comprehensive Plan and Chapters 17.02, 11.02 and 11.03 ICC are not likely to have a significant adverse environmental impact that was not considered in the environmental documents prepared for the Comprehensive Plan and Development Regulations; **NOW, THEREFORE**,

BE IT ORDAINED that amendments to the Comprehensive Plan, attached hereto as Exhibit A, amendments to the Critical Areas Ordinance (Chapter 17.02 ICC), attached hereto as Exhibit B, amendments to the Clearing and Grading Ordinance (Chapter 11.02 ICC), attached hereto as Exhibit C, amendments to the Stormwater Ordinance (Chapter 11.03 ICC), attached hereto as Exhibit D, and the Planning Commission's findings of fact, attached hereto as Exhibit E, are adopted. Material stricken through is deleted and material underlined is added; and

BE IT FURTHER ORDAINED that adoption of this ordinance satisfies the requirements of RCW 36.70A.130 as it pertains to geologically hazardous areas and RCW 36.70A.172 which requires that critical area regulations be based on the best available science.

APPROVED AND ADOPTED this 24th day of April, 2006.

BOARD OF COUNTY COMMISSIONERS OF
ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

William J. Byrd, Member

Mike Shelton, Member

ATTEST:

Elaine Marlow
Clerk of the Board

APPROVED AS TO FORM:

DAVID L. JAMIESON, JR.
Deputy Prosecuting Attorney
& Island County Code Reviser

EXHIBIT A

Amendments to the Comprehensive Plan

Chapter 1, Overview – Major Issues – Page 60

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Geologically Hazardous Areas

Although Island County is characterized by a gentler landscape than much of the mountainous and river-torn Puget Sound mainland, the islands have been and continue to be buffeted by geological and climatological forces. Vertical bluffs, ancient landslides, slopes with groundwater seepage or springs can be found in Island County. Careless development in such areas can lead to loss of life and property, both on-site and to other properties. The County regulates grading and construction on all slopes greater than 40%.

The Growth Management Act establishes six different types of Geologically Hazardous Areas: Erosion Hazard Areas; Landslide Hazard Areas; Seismic Hazard Areas; Coal Mine Hazard Areas; Volcanic Hazard Areas; and Tsunami Hazard Areas. Varying levels of risk are associated with each type of hazard. These risk levels help shape the appropriate regulatory framework that ensures the hazard area is protected from human impact and that humans are protected from the hazard.

In Island County, there are no identified Volcanic Hazard Areas or Coal Mine Hazard Areas. However, regulatory and outreach programs need to be developed to address the remaining hazard areas as all four have been classified as known or suspected risks.

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Chapter 3, Future Land Use – General Overlays and Critical Areas – Page 107

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Geologically Hazardous Areas (Steep/Unstable Slopes) Overlay

Landslide Hazard Areas

Definition:

Areas not suited to siting of commercial, residential, or industrial development consistent with public health or safety concerns due to their susceptibility to sliding or other slope failures, erosion, or other geological events.

Designation Criteria:

- A. Areas indicated within the Washington Department of Ecology’s Coastal Zone Atlas of Island County, dated April, 1979 as having recent or historical slide activity and/or indicative of unstable slope conditions.
- B. Areas with slopes 40% or greater and with a vertical elevation change of at least ten feet, except areas of consolidated rock.

Erosion Hazard Areas

Definition:

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.

Designation Criteria: All of Island County has been identified as an Erosion Hazard Area.

Seismic Hazard Areas

Definition:

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.

Designation Criteria:

- A. In D1 Seismic Design Categories, conform to International Residential Code and International Building Code requirements.
- B. In D2 Seismic Design Categories, conform to International Residential Code and International Building Code requirements.
- C. Within one-half (1/2) mile of known fault lines, engineering shall conform to the minimum requirements as provided for in the International Building Code.

Tsunami Hazard Areas

Definition:

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

Designation Criteria:

- A. Those areas identified on maps prepared by the Washington State Division of Geology and Earth Resources; and
- B. Those areas identified in the Island County Hazard Identification Vulnerability Analysis (HIVA) of 2003.

Volcanic Hazard Areas

Definition:

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.

Designation Criteria:

- A. No Volcanic Hazard Areas have been identified in Island County.

Coal Mine Hazard Areas

Definition:

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.

Designation Criteria:

- A. No Coal Mine Hazard Areas have been identified in Island County.

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Chapter 4, Goals and Policies – General Land Use Policies – Page 141

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Geologically Hazardous Areas (Steep/Unstable Slopes) Overlay

Landslide Hazard Areas

Goal:

To protect the public health, safety and welfare from threats resulting from incompatible development being sited on or near steep and/or unstable slopes.

Policies:

- A. Minimize damage to life, health, property, and natural resources caused by geological processes.
 1. Require thorough geotechnical investigation of localized conditions during the review of proposed development within areas of steep/unstable slopes. The amount of information required will be proportionate to the severity of the geologic hazard and the susceptibility of the proposed development.
 2. Encourage, and where appropriate, require use of special engineering, site design, and modified construction practices.
 3. Prohibit activities and land uses which cause or exacerbate existing hazardous geological conditions.
- B. Maps, site-specific studies, and information collected by other agencies available for public review will be made readily accessible to potential and existing landowners, interested citizens, and development interests to aid in the protection of these areas.
- C. Regulation of these areas will take into consideration the sensitivity of the area to disturbance, and the intensity and potential risks associated with a proposed land use.
- D. When a violation of the policies and regulations of this area is identified, the enforcement action and severity of any penalty will be proportional to the nature and circumstances of the violation and the damage or risk to private and public resources.
- E. Overlay policies and development regulations shall be implemented in addition to those associated with the underlying land use designation. When there is a conflict in policy statements or development regulations, the more restrictive shall apply.

- F. Steep and unstable slope regulations are contained in ICC 17.02.

Erosion Hazard Areas

Goal:

To protect the public health, safety, and welfare from threats from land disturbing activities in areas susceptible to erosion.

Policies:

- A. All permits for land disturbing activities shall require application of Best Management Practices for erosion control.

Seismic Hazard Areas

Goal:

To protect the public health, safety, and welfare from threats associated with seismic activities.

Policies:

- A. Identify Seismic Design Categories and known fault lines in Island County.
- B. In D1 Seismic Design Categories, conform to International Residential Code requirements.
- C. In D2 Seismic Design Categories, conform to International Residential Code requirements.
- D. Within one-half (1/2) mile of known fault lines, conform to International Residential Code requirements.

Tsunami Hazard Areas

Goal:

To protect the public health, safety, and welfare from threats associated with tsunami activities

Policies:

- A. Identify areas susceptible to risk as a result of tsunami events.
- B. Prohibit the siting of critical public facilities in known tsunami hazard areas unless the siting of the facility can be shown to have a public benefit which outweighs the risk of siting in the hazard area.
- C. Ensure land use planning policies and development regulations are consistent with Hazard Mitigation Planning efforts.

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Chapter 5, Implementation Strategies – Benchmark Monitoring – Page 156 C.

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C. Benchmark Monitoring

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Natural Environment

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- f) Geologic Hazards: New development within geologically hazardous areas
 - i. Island County Public Works shall report to the Planning Commission, Board of Island County Commissioners, and Hearing Examiner annual meeting on the number of geotechnical report and mitigation plan peer reviews initiated during the prior year. The report shall provide the total number of projects initiated during the prior year, a brief description of each project, an explanation of the circumstances that warranted peer review and the total cost spent by the county and applicant for each instance.
 - ii. Prior to December 31, 2006, Public Works and Planning shall provide the Planning Commission with a draft homeowners guide for bluff management. The manual shall provide guidance on activities that can be and/or should be done on bluff properties without necessitating a clearing and grading permit or other type of land use permit. Conditions and best management practices shall be outlined for general bluff maintenance as well as for activities that are minor in scope and therefore should not be considered under a permit process.

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EXHIBIT B

Amendments to Chapter 17.02 ICC, the Critical Areas Ordinance

17.02.010 Authority

This ordinance shall be known as the Island County Critical Areas Ordinance 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 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.

Agricultural/Farm Use: 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. Farm use includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. Farm use also includes the growing of ornamental shrubs, Christmas trees and similar nursery stock.

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.

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.

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%.

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.

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.

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 which shall apply throughout this Title.
- B. **Applicability.** This section shall apply to all properties which are designated as critical areas by Island County. 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 8.07C 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 Potable Water and Supply, Chapter 8.09 ICC, 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 ($1/4^{\text{th}}$) 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 ($1/8^{\text{th}}$) acre for Category A wetlands and one-fourth ($1/4^{\text{th}}$) 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.

17.02.050 Overlay Zones

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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.

EXHIBIT C

Amendments to Chapter 11.02 ICC, the Clearing and Grading Ordinance

11.02.010 Purpose

The purpose of this chapter shall be to regulate clearing and grading on property to safeguard life, limb, property, and the general welfare. The objectives of this chapter are as follows:

- A. To promote sound, practical, and economical development practices and construction procedures which minimize impacts to the county's water resources and adjoining properties;
- B. To minimize degradation of water quality and to prevent erosion and sedimentation of streams, creeks, lakes, wetlands, and other surface water;
- C. To control soil movement originating on developing land;
- D. To preserve and protect archeological sites;
- E. To maintain stable earth foundations for structures or site grading operations using benches, keys, and compaction of soils or other suitable engineering methods;
- F. To maintain the quality of the county's water resources;
- G. To minimize adverse effects caused by alterations in surface water or ground water quality, quantities, locations, and flow patterns;
- H. To promote site planning and construction practices that are consistent with natural topographical, vegetational, and hydrological conditions;
- I. To maintain the safety of county roads and right-of-ways; and
- J. To protect public safety by reducing slope instability and potential for landslides.

11.02.020 Applicability

This chapter applies to all clearing and grading except as exempted herein. Prior to beginning regulated grading activity on a site, the owner of the project or agent shall be required to comply with the terms and conditions of this chapter. Failure to comply is subject to the enforcement and penalty provisions stated herein.

11.02.030 Definitions

Unless the context clearly requires otherwise, the definitions in this chapter apply to all clearing and grading in unincorporated Island County. Clearing and grading within proposed or existing public right-of-ways shall follow the standards of the 1998 Standard Specifications for Road

Bridge and Municipal Construction, or most recent addition.

- A. **Applicant** means a property owner, or any person or entity designated or named in writing by the property owner to be the applicant, in an application for a development proposal, permit, or approval.
- B. **Approval** means that the proposed work or completed work conforms to this chapter in the opinion of the Building Official or Director.
- C. **As-graded** means the extent of surface conditions on completion of grading.
- D. **Bank** means the rising ground bordering the sea, river, or lake. (Also see Bluff)
- E. **Bluff** means a high bank composed largely of unconsolidated deposits with near-vertical face overlooking a body of water.
- F. **Bedrock** means in-place solid rock.
- G. **Bench** means a relatively level step excavated into earth material on which fill is to be placed.
- H. **Best management practices (BMPs)** or “BMPs” means physical, structural, or managerial practices which have gained general acceptance for their ability to prevent or reduce public safety impacts and other environmental impacts and which are adopted in the Island County Drainage Manual or approved by the Director.
- I. **Bond.** “Bond” shall mean a surety bond, assignment of funds, or irrevocable bank letter of credit.
- J. **Civil engineer** means a professional engineer licensed by the State of Washington to practice civil engineering.
- K. **Civil engineering** means the application of the knowledge of the forces of nature, principles of mechanics, and the properties of materials to the evaluation, design, and construction of civil works.
- L. **Clearing** means the cutting and removal of vegetation by mechanical or chemical methods.
- M. **Compaction** means the densification of a fill by mechanical means.
- N. **Critical areas**, as used in this chapter, means fish and wildlife habitat conservation areas, wetlands, flood hazard areas, geologically hazardous areas, and their buffers, as applicable.
- O. **Development activity** means any proposal which will result in construction, development, earth movement, clearing, or other site disturbance and requires a permit, approval, or authorization from the county or is proposed by a public agency.

- P. **Director** means, unless otherwise specified, the Director of the Public Works Department or his or her designee.
- Q. **Earth material** means any rock, natural soil, or fill or any combination thereof.
- R. **Engineering geologist** means a professional engineering geologist licensed by the State of Washington ~~experienced and knowledgeable in engineering geology.~~
- S. **Engineering geology** means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.
- T. **Erosion** means the removal and loss of soil by the action of water, ice, or wind.
- U. **Excavation** means the mechanical removal of earth material.
- V. **Fill** means a deposit of earth material placed by artificial means.
- W. **Forest practices** means any activity conducted on or directly pertaining to forest land and related to growing, harvesting, or processing timber as described in WAC 222-16.
- X. **General Design and Construction Standards.** “General Design and Construction Standards” means “The Standard Specifications for Municipal Public Works Construction”, latest edition, as prepared by the Washington State Chapter of the American Public Works Association, except as amended herein or by variance granted in writing by the Director.
- Y. **Geologically hazardous area** means those 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.
- Z. **Geologist** means a professional geologist licensed by the State of Washington.
- AA. **Geotechnical engineer** means a civil engineer licensed by the State of Washington with training and experience in the practice of soil mechanics (geotechnical engineering).
- BB. **Geotechnical professional** means a licensed civil engineer with training and experience in the practice of soil mechanics (geotechnical engineer), engineering geologist or geologist licensed in the State of Washington.
- CC. **Grade** means the vertical location of the ground surface.
 - 1. Existing grade means the grade prior to grading.

2. Finish grade means the final grade of the site that conforms to the approved plan.
 3. Rough grade means the stage at which the grade approximately conforms to the approved plan.
- DD. **Grading** means any excavating or filling or combination thereof.
- EE. **Key** means a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.
- FF. **Land disturbing activity** means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, demolition, construction, clearing, grading, filling, and excavation. Land disturbing activities also include Class IV General Forest Practices Permits, Class IV Platted Forest Practices Permits, and Conversion Option Harvest Plans and their associated forest practices permit submitted pursuant to RCW 76.09.060(3)(b)(I)(F).
- GG. **Landslide hazard areas** are potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. Landslide areas include any areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors.
- HH. **Professional inspection** means the inspection required by this code to be performed by the civil engineer, geotechnical engineer, geologist, or engineering geologist licensed by the State of Washington with appropriate training and experience. Such inspections include that performed by persons supervised by such engineers or geologists and shall be sufficient to form an opinion relating to the conduct of the work.
- II. **Scarp** means a line of a cliff(s) produced by faulting, landslides, or erosion.
- JJ. **Site** means any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is performed or permitted.
- KK. **Site review** means the inspection by an Island County employee of a site at which development activity has been proposed, including examination of proposed plans, and may include critical area site plan review per ICC 17.02, erosion control, site conditions, and applicable Island County codes, standards, and written policies.
- LL. **Slope** means the gradient in vertical feet per horizontal feet or percent. Side slopes of drainage facilities are usually referred to with the horizontal dimension first as in 3H:1V.
- MM. **Slope - Steep**. “Steep slope” as used in this chapter means those areas in Island County on 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 uppermost limit of the area where the ground surface drops ten (10) feet or more vertically within a horizontal distance of twenty-five (25) feet.

NN. **Soil** means naturally-occurring superficial deposits overlying bedrock.

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OO. **Specifications** mean requirements for the proposed work. It may include, but is not limited to, the current and subsequent amendment to Washington State Department of Transportation and American Public Works Association standards and specifications for Road, Bridge and Municipal Construction.

PP. **Temporary Erosion and Sedimentation Control** means any temporary measures taken to reduce erosion, control siltation and sedimentation, and ensure that sediment-laden water does not leave the site.

QQ. **Terrace** means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

11.02.040 Public Works Director/County Engineer Authority

A. **Administration of grading.** The Public Works Director/County Engineer shall administer and enforce compliance with all grading requirements of this chapter for all grading except for grading administered by the Public Works Director/County Engineer as provided in this chapter, or otherwise noted herein.

B. **Policies and procedures.** The Public Works Director/County Engineer may adopt and amend administrative policies and procedures for the purpose of implementing and enforcing the provisions of this chapter. All administrative policies and procedures and any amendments thereto will be approved by the Board of County Commissioners and shall be available to the public at the Public Works Department.

11.02.050 Compliance with Other Laws

Approvals and permits granted under this chapter and any policies and procedures promulgated hereunder do not constitute waivers of the requirements of any other laws or regulations nor do they indicate compliance with any other laws or regulations. Compliance is still required with all applicable federal, state, or other local laws and regulations.

11.02.060 Relationship to Chapter 16.14C ICC Environmental Impacts

- A. The grading requirements of this chapter, together with the comprehensive plan adopted pursuant to RCW 36.70A, the critical areas regulations of ICC 17.02, and the drainage regulations of ICC 11.03, constitute the policy of the county under the county's police power authority, the Growth Management Act (GMA), and the State Environmental Policy Act (SEPA) for the review of development and the determination of significant adverse environmental impacts and imposition of mitigation requirements due to the impacts on-site and off-site from grading.
- B. For the purposes of ICC 16.14C, measures required by this chapter and other applicable development regulations shall constitute adequate mitigation of adverse or significant adverse environmental impacts, on-site and off-site, from grading.

11.02.070 Liability

- A. Administration of this chapter shall not be construed to impose or create a basis for any liability on the part of the county, its appointed and elected officials, officers, agents, or employees, nor shall this chapter be construed to create any special relationship with or otherwise protect any specific person or class of persons.
- B. Island County is not responsible for the accuracy of grading plans submitted for approval. The county expressly disclaims any responsibility for the design or implementation of a grading plan. The design or implementation of a suitable grading plan is the responsibility of the person submitting the application.

11.02.080 Grading Permit Required

A grading permit shall be required for all land disturbing activities, unless exempted by this chapter. Examples of regulated land disturbing activities include, but are not limited to:

- A. Accumulative filling and/or excavation exceeding five hundred (500) cubic yards.
- B. Clearing, filling, or excavation, in any quantities, within two hundred (200) feet of a **regulated** shoreline area, on steep slopes as defined herein, or within a geologically

hazardous area, as herein defined, in wetlands or their associated buffers, or into or next to any body of water, including streams or their associated buffers, or any other critical areas, **as herein defined.**

- C. Class IV Forest Practice Permits, Class IV Platted Forest Practice Permits, and Conversion Option Harvest Plans **and their associated forest practices permit.**
- D. Clearing to bare earth if greater than two (2) acres in size.

11.02.090 Exemptions

The following land disturbing activities outside a critical area and its associated buffer, which are at least five (5) feet from the property boundary line, are exempt from the requirements of this chapter, except for land disturbing activities located partially or entirely within a geologically hazardous area or steep slope as herein defined:

- A. Operation of a solid waste disposal site controlled by other regulations. This exemption shall not apply to expansion, relocation, or closure of a solid waste disposal site;
- B. Commercial operations involving mining, quarrying, excavating, processing, or stockpiling of rock, sand, gravel, aggregate, or clay if such operations are authorized by a valid Island County permit as required by ICC 17.03. This exemption does not apply to:
 - 1. Reclamation pursuant to this chapter;
 - 2. An operation which destabilizes or undermines any adjacent or contiguous property;
or
 - 3. An operation which results in adverse downstream drainage impacts;
- C. Agricultural activities as follows:
 - 1. Tilling, soil preparation, and maintenance;
 - 2. Fallow rotation, planting, and harvesting; or
 - 3. Application of fertilizer and chemicals approved by the Environmental Protection Agency, the Washington State Department of Ecology, or the United States Department of Agriculture in accordance with applicable regulation and best management practices;
- D. Site investigative work necessary for land use application submittals such as surveys, soil borings and test pits, soil logs and other related activities, provided the land-disturbing activity is no greater than is necessary to accomplish the work;
- E. Excavation of a well for a single family dwelling;

- F. Excavation or filling of cemetery graves;
- G. Grading pursuant to an approved public road access permit when the provisions of this chapter have been considered and addressed in the terms and conditions of the access permit;
- H. Grading which is regulated by this chapter, but for which review has occurred and conditions specified in compliance with this chapter, as a requirement of the approval of the development activity, including but not limited to the issuance of a building permit;
- I. Accumulated filling and/or excavation less than five hundred (500) cubic yards, except that as a condition of this exemption those land disturbing activities specified below must comply with the minimum erosion and sedimentation control requirements of ICC 11.03:
 - 1. Grading which does not obstruct or **significantly** alter an existing drainage course or pattern, and/or which creates five thousand (5,000) square feet or less of new impervious surface;
 - 2. Grading which is greater than two hundred fifty (250) cubic yards but less than five hundred (500) cubic yards in a Rural Area of Intense Development; or
 - 3. Grading on a site for a single-family dwelling and accessory structures, provided that excess excavated material must be disposed of at a permitted site approved by the Director (if not retained on site), and that the excavations shall not commence until the building permit is secured by the applicant, unless otherwise authorized by the Director; or
- J. Grading of five thousand (5,000) cubic yards or less in an isolated, self-contained area not in a UGA/RAID, if there is no danger of environmental degradation to critical areas **as herein defined**, on or off site, and no threat that sediment will be transported off site to adjoining properties;
- K. Routine maintenance or repair of the following agricultural activities:
 - 1. Drainage facilities;
 - 2. Animal waste management facilities;
 - 3. Buildings, fences, roads, and bridges;
 - 4. Ponds, drains, and waterways;
- L. A grading permit is not required for county Public Works Department construction or maintenance projects. The Public Works Director/County Engineer shall administer and enforce compliance with all grading requirements of this chapter for county Public Works Department construction projects. The Public Works Director/County Engineer shall

include a requirement for all applicable grading, drainage, and erosion and sedimentation control plans in any contract documents prepared for such projects;

- M. Development that is undertaken by the Washington State Department of Transportation in state highway rights-of-way and is regulated by Chapter 173-270 WAC, the Puget Sound Highway Runoff Program, shall be exempt from the provisions of this chapter.

11.02.100 Grading in Accordance with Approved Permit and Plans - Person Responsible

When a grading permit is required, all land disturbing activities shall be done in accordance with the approved plans, specifications, and permit requirements. Any person performing land disturbing activities subject to a grading permit shall have a copy of a valid grading permit and plans on the work site at all times and shall be responsible for compliance with the plans, specifications, and permit requirements.

11.02.110 Grading Permit Application Submittal Requirements

- A. The purpose of the grading permit application is to require sufficient engineering and design information to determine compliance with the requirements of this chapter and Chapter 11.03 and Titles 16 and 17 ICC, as applicable.
- B. The Director shall establish and may revise submittal requirements for a complete grading permit application. The list of submittal requirements shall be available at the Public Works Department. The submittal requirements may include at least the following:
 - 1. The applicant's name, address, and legal description;
 - 2. Vicinity map;
 - 3. Grading plans drawn to scale which include all proposed grading showing cross-sections or an equivalent method;
 - 4. Grading quantities (amount of cut or fill to be moved);
 - 5. If excess material excavated, the location of the disposal site;
 - 6. Temporary erosion and sedimentation control plans which meet the requirements of ICC 11.03;
 - 7. Existing grade and proposed finish grade contours shall be shown on each grading plan sheet;
 - 8. A preliminary drainage plan/drainage narrative pursuant to ICC 11.03, if applicable;
 - 9. Location of property boundary, easements, critical areas, and structures within fifteen (15) feet of said boundary, on-site sewage facilities, and location of domestic water

supply; and/or

10. Applicable grading permit application fees pursuant to this chapter, if any.
- C. A civil engineer shall prepare and stamp the grading plans if they are engineered grading pursuant to this chapter.
- D. After a site review of the proposed grading, the Building Official or Director may require additional information be submitted to determine compliance with the requirements of this chapter. The request for additional information is subject to the procedures and time frames established in ICC 16.19.

11.02.120 Submittals for Engineered Grading

- A. All grading in excess of five thousand (5,000) cubic yards requires submittal and approval of a grading plan and drainage plan, as specified in ICC 11.03, prepared and stamped by a civil engineer.
- B. All grading within a geologically hazardous area, as herein defined, requires submittal and approval of a geotechnical engineering report, an engineered grading plan and full drainage plan, as specified in ICC 11.03, prepared and stamped by a civil engineer.
- C. All grading, except for utility installations, within public road rights-of-way shall follow the grading requirements and specifications of the 1998 WSDOT Standard Specifications, or current edition, and the grading plans shall be prepared and stamped by a civil engineer.
- D. When required by this chapter, all grading plans that are presented for record as part of a public hearing associated with the approval of the development activity, except appeal hearings, shall be prepared and stamped by a civil engineer.

11.02.130 Notice of Application--Grading in Excess of Five Hundred (500) Cubic Yards

- A. Within five (5) working days of filing an application for a grading permit for grading in excess of five hundred (500) cubic yards of material, an applicant shall post one (1) or more signs which meet county standards in conspicuous locations on the property's frontage abutting a public right-of-way. If no public right-of-way exists, the signs shall be placed at the point of access to the property. If the grading is subject to SEPA review, the posting shall occur at the same time and in the same manner as the posting/notice requirements of ICC 16.19.
- B. The signs shall contain at least the following information in a form prescribed by the Director: type of permit requested, assigned county file number, project description, and

the county contact person. The signs shall remain posted throughout the review process and until all appeal periods have expired.

- C. Posting is not required if the grading was anticipated and described in a prior approved land use action.
- D. The applicant shall submit a declaration verifying the date and location of posting in a form prescribed by the Director.
- E. If a declaration of posting is not returned to the Director within fifteen (15) days of application, the Director shall discontinue processing of the permit request until the declaration is received.

11.02.140 Reports on Geotechnical Engineering, Soils Engineering, Engineering Geology, and Mitigation Plans

If the Director or their designee determines that geologic, hydrologic, or site conditions may present special grading or drainage problems, he or she may require the applicant to submit a geotechnical engineering report per this chapter. The Director or their designee may waive all or some of the elements of the general geotechnical report, geotechnical engineering report, and/or mitigation plans.

- A. **General Geotechnical Report.** In the case of land-disturbing activities proposed on a steep slope, not in a geological hazardous area, the Director or their designee may require a general geotechnical report prepared by a licensed geotechnical professional. A general geotechnical report shall include:
 - 1. An adequate description of the geology of the site including data regarding the nature, distribution, and strength of existing soils; and
 - 2. An opinion on the adequacy for the intended use of sites to be developed by the proposed grading, as affected by geotechnical factors, including stability of slopes and potential impacts; and
 - 3. Conclusions and recommendations for grading procedures including cuts and placement of structural fills, when necessary; and
 - 4. Appropriate mitigation measures.
 - 5. The Director or their designee may require the information outlined in the Geotechnical Engineering Report (ICC 11.02.140(B)) and/or Mitigation Plans (ICC 11.02.140(C)) if site conditions and/or proposed land disturbance are determined to warrant a detailed site evaluation.

B. Geotechnical engineering report for geologically hazardous areas. In the case of land-disturbing activities proposed to be within setbacks established for a geological hazardous area, a geotechnical engineering report prepared and sealed by a geotechnical engineer shall be submitted. If appropriate, a geologist may contribute to the geologic aspects of the project.

1. The minimum setbacks that will generally not require a geotechnical report are as follows:
 - a) Fifty (50) foot setback or greater from a slope that is more than ten (10) feet but no more than thirty (30) feet in height; or
 - b) Seventy-five (75) foot setback or greater from a slope that is more than thirty (30) feet but no more than fifty (50) feet in height; or
 - c) One hundred (100) foot setback or greater from a slope that is more than fifty (50) feet in height.
2. The scope of a geotechnical report shall include the following where applicable:
 - a) An assessment of the geologic and hydrogeologic conditions in the vicinity of the site. Description of types and engineering properties of the soils, sediments, and/or rock of the subject property and potentially affected adjacent properties must be included;. b) Description of existing site topography including determination of height of slope, slope gradient, and preparation of a generalized cross section;
 - c) Description of any areas mapped as unstable (e.g. by Coastal Zone Atlas), landslides, erosion activity or other areas of unstable soils identified visually at the site;
 - d) Description of any watercourses, including drainage channels, ditches, springs and intermittent streams;
 - e) An estimate of slope stability and the effect construction and placement of structures will have on the stability of slopes. The minimum setbacks described above shall be used. The geotechnical engineer must concur with this setback or may establish an alternative setback based on the geology, bluff retreat rates, seismic activity and other considerations;
 - f) A description of the extent and type of vegetative cover to include tree attitude;

- g) A detailed description of the project including any structural development, its relationship to geologic hazard(s) and its potential impact upon the hazard area, the subject property, and affected adjacent properties;
- h) A description of type of construction including any unusual load intensities, public and private sewage disposal systems, fills and excavations including proposed angles of cuts and fills;
- i) Specific recommendations and/or mitigation actions must be provided regarding proposed vegetation removal and replacement, erosion control, and locations and methods of surface and subsurface drainage. If anchor blocks within 50 feet of the bluff are required for storm drains over bluffs, specific recommendations regarding setbacks and design criteria shall be included;
- j) The drainage recommendations shall be site specific to mitigate impacts and prevent erosion. Surface drainage shall not be directed across the face of geologically hazardous or landslides hazard area (including marine bluffs or ravines). If drainage must be discharged from the area into adjacent waters, it shall be collected above the hazard, secured, and directed to the water by tight line drain and provided with an energy dissipating device at the point of discharge. Installations within two hundred (200) feet of the shoreline must be authorized by the County Shoreline Administrator and must be consistent with the Shoreline Management Act. If the drainage recommendations in the Geotechnical Engineering Report are determined by the Director to not be sufficient, a specific Drainage Plan prepared by a licensed engineer may be required (see Mitigation Plans).
- k) The Director or their designee may require a representative of the geotechnical engineer to perform special inspections in accordance with ICC 11.02.210 to confirm that conditions encountered during construction are consistent with the assumptions of the geotechnical engineering report and construction conforms with the design and mitigation plans.

C. **Mitigation plans.** If the Director or their designee determines that the site conditions and/or proposed development require additional mitigation details not provided in the geotechnical engineering report or general geotechnical report, mitigation plans or other submittals including but not limited to any of the follow may be required:

.1. Mitigation proposals that shall include :

- a) Subsurface exploration and logs prepared under the supervision of the geotechnical engineer. Subsurface exploration may be required for proposed development within 25 feet of the top or base of a bluff greater than 10 feet in

height; for proposed infiltration of stormwater; unusual load intensities as determined by the geotechnical engineer; stormwater anchor blocks; or other design considerations that the Director determines represent a risk form the geohazard;

- b) A vegetation management and/or restoration plan and/or other means for maintaining long term stability of slopes;
 - c) A temporary erosion and sedimentation control plan (TESCP) prepared by a qualified professional in accordance with the requirements of ICC 11.03;
 - d) A drainage plan prepared by a licensed civil engineer showing the collection, transport, treatment, discharge, and/or recycle of water in accordance with the requirements of ICC 11.03. The drainage plan must include at least the considerations presented in ICC 11.02.140.B.10.
 - e) All infiltration systems, such as stormwater detention and retention facilities, and curtain drains or french drain are prohibited in geologically hazardous areas and their buffers unless a geotechnical report indicates such facilities or systems will not adversely affect slope stability and the systems are designed by a licensed civil engineer. Such systems will require subsurface exploration to confirm the suitability of subsurface conditions. Special inspection in accordance with ICC 11.02.210 will be required during construction.
2. The mitigation plan must be approved by the Director or their designee and be implemented as a condition of project approval;
 3. Projects found to be in non-compliance with the mitigation conditions issued as part of the development approval are subject to enforcement actions necessary to bring the development into compliance with this chapter;
 4. Mitigation plans which do not fulfill the performance required based on the site assessment/geotechnical report findings or otherwise fail to meet the intent of this chapter shall be revised and the subject development brought into compliance with the revised mitigation plan.
 5. The Director or their designee may require project specific professional inspections in accordance with ICC 11.02.210 to confirm that conditions encountered during construction are consistent with the design assumptions and construction conforms to the design and mitigation plans.
- D. Peer Review. The Director may require third party review of geotechnical reports and/or mitigation plans if the Director or their designee determines that additional professional interpretation is needed to evaluate/address site conditions or the applicant's proposed

development. The review will be accomplished by an experienced geotechnical professional either selected by Island County Public Works or the applicant may select from a list of three or more pre-qualified geotechnical professionals assembled by Island County Public Works. The applicant shall pay 50% of the cost of the review.

11.02.150 Bonds

- A. The Director may require bonds in such form and amounts as may be deemed necessary to ensure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.
- B. For drainage facilities required by a grading permit, the Director may require security and/or insurance in accordance with ICC 11.03.

11.02.160 Issuance of Grading Permits. Grading in Shorelines of the State, Geologically Hazardous Areas, Steep Slopes, and/or Critical Areas

- A. A grading permit shall not be issued for grading in a shoreline/geologically hazardous area, steep slope or critical areas or their buffers or grading that is associated with a project in a shoreline/geologically hazardous, steep slope or critical area until all required permits and approvals have been granted.
- B. A grading permit will be issued after all other necessary permits and plan approvals required for site development have been obtained or review indicates that approvals are assured by other affected agencies, all fees have been paid, the grading plans and specifications have been approved, and environmental review under ICC 16.14C has been completed, if applicable.

11.02.170 Covenant

The Public Works Director/County Engineer may require a covenant between the owner(s) of the property and Island County. The covenant shall be signed by the owner(s) of the site and notarized prior to issuance of any permit or approval in a potential geologically hazardous area or other area of potentially hazardous soils or drainage or erosion conditions. The covenant shall not be required where the permit or approval is for work done by Island County. The covenant shall include:

- A. A legal description of the property;
- B. A description of the property condition making this subsection applicable;

- C. A statement that the owner(s) of the property understands and accepts the responsibility for the risks associated with development on the property given the described condition, and agrees to inform future purchasers and other successors and assignees of the risks;
- D. The application date, type, and number of the permit or approval for which the covenant is required;
- E. A statement waiving the right of the owner(s), the owner's heirs, successors and assigns to assert any claim against Island County by reason of or arising out of issuance of the permit or approval by Island County for the development on the property, except only for such losses that may directly result from the negligence of Island County.

The covenant shall be filed for record by the owner with the Island County Auditor, at the expense of the owner, so as to become part of the Island County real property records.

11.02.180 Disclosure Statement

Pursuant to the requirements of this chapter, no person shall sell, lease, or offer for sale or lease any property within a geologically hazardous area that has been the subject of a geotechnical report required by this chapter, unless the prospective buyer or lessee has been given notice substantially as follows:

To: _____

The Property at _____ is located within a geologically hazardous area. Geologically hazardous areas include areas susceptible to the effects of erosion, sliding, earthquake, or other geologic events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development are sited in areas of a hazard. Geologic hazards pose a risk to life, property, and resources when steep slopes are destabilized by inappropriate activities and development or when structures or facilities are sited in areas susceptible to natural or human-caused geologic events.

Some geologic hazards can be reduced or mitigated, but not eliminated by engineering, design, or modified construction practices so that risks to

health and safety are acceptable. Island County has placed certain restrictions on development and use of geologically hazardous areas.

Before purchasing or leasing the above property, you should consult the Island County Zoning Ordinance ICC 17.03, [the Island County Critical Area Ordinance ICC 17.02](#), the Island County Grading Ordinance ICC 11.02, and any previously issued permits/geotechnical reports to determine restrictions, if any, which have been placed on the subject property.

11.02.190 Grading Permit Expiration and Renewal

- A. Grading permits shall expire twenty four (24) months from the date of issuance, provided that the Director may set an earlier expiration date for a permit, or issue a permit that is non-renewable, or both, if the Director determines that soil, hydrologic, or geologic conditions on the project site necessitate that grading and drainage improvements and site stabilization be completed within less time.
- B. If a permit has expired, the applicant must obtain a renewed permit before starting work authorized under the expired permit.
- C. A permit may be renewed only once for up to twenty four (24) additional months. Additional extensions may be granted following a site inspection verifying that conditions have not changed, and work in progress, if any, is in compliance with the conditions of the permit.
- D. Requirements under this chapter that are not expressly temporary during the grading operations, including but not limited to, requirements for erosion control, drainage, and slope management do not terminate with the expiration of the grading permit.

11.02.200 Modifications of Permit Conditions

After issuance of a grading permit, the Director may require modifications of grading plans and operations if grading delays or weather-generated problems occur which were not considered at the time the permit was issued.

11.02.210 Grading Inspection

- A. Land-disturbing activities for which a permit is required shall be subject to inspection by the Director/Building Official. Professional inspection of grading operations shall be provided, at the expense of the applicant, by the civil engineer, soils engineer, and the engineering geologist retained to provide such services in accordance with “E” below for engineered grading and as required by the Building Official for other grading.
- B. The civil engineer shall provide professional observation within such engineer’s area of technical specialty, which shall consist of observation and review as to the establishment of line, grade, surface drainage, and erosion control of the development area. If revised plans are required during the course of the work they shall be prepared by the civil engineer, at the expense of the applicant.
- C. The soils engineer shall provide professional observation within such engineer’s area of technical specialty, which shall include observation during grading and testing for required

compaction. The soils engineer shall provide sufficient observation during the preparation of the natural ground and placement and compaction of the fill to verify that such work is being performed in accordance with the conditions of the approved plan and the appropriate requirements of this chapter. Revised recommendations relating to conditions differing from the approved soils engineering and engineering geology reports shall be submitted to the permittee, the Building Official, and the civil engineer.

- D. The engineering geologist/geotechnical engineer shall provide professional observation within such engineer's area of technical specialty to determine if conditions encountered are in conformance with the approved report. Revised recommendations relating to conditions differing from the approved engineering geology report shall be submitted to the soils engineer.
- E. The applicant or owner shall be responsible for the work to be performed in accordance with the approved plans and specifications and in conformance with the provisions of this code and shall engage consultants, when required, to provide professional inspections on a timely basis. The applicant or owner shall act as a coordinator between the consultant, the contractor, and the Director/Building Official. In the event of changed conditions, the applicant or owner shall be responsible for informing the Director/Building Official of such change and shall provide revised plans for approval.
- F. The Director shall require grading observation of subdivisions to assure that future public or private roadways and slopes are graded in accordance with the approved plans and specifications and in conformance with provisions of this chapter.
- G. If, in the course of fulfilling their respective duties under this chapter, the civil engineer, the soils engineer, geotechnical engineer, or the engineering geologist finds that the work is not being done in conformance with this chapter or the approved grading plans, the discrepancies shall be reported immediately in writing to the applicant or owner and to the Building Official.
- H. If the civil engineer, the soils engineer, geotechnical engineer, or the engineering geologist of record is changed during grading, the work shall be stopped until the replacement has agreed in writing to accept their responsibility within the area of technical competence for approval upon completion of the work. It shall be the duty of the applicant or owner to notify the Building Official in writing of such change prior to the recommencement of such grading.
- I. The types of soils inspections and standards recognized as acceptable soils tests are:
 - 1. ASTM D 1557, moisture-density relations of soils and soil aggregate mixtures;
 - 2. ASTM D 1556, in-place density of soils by the sand-cone method; ASTM D 2167, the rubber-balloon method; or ASTM D 2937, the drive-cylinder method; and

3. ASTM D 2922 and D 3017, in-place moisture content and density of soils by nuclear methods.

11.02.220 Completion of Work

Upon final completion of the work, the following final reports and drawings and supplements thereto are required for engineered grading or when professional inspection is performed for grading, as applicable.

- A. Civil engineers shall state that to the best of their knowledge the work within their area of responsibility was done in accordance with the final approved grading plan, or the civil engineer shall show any significant deviations from the approved plans. The locations, elevations, and details of subsurface drains shall show any significant deviations from the approved plan as reported by the design engineer.
- B. A report prepared by the soils engineer retained to provide such services in accordance with this chapter, including locations and elevations of field density tests, summaries of field and laboratory tests, other substantiating data, and comments on any changes made during grading and their effect on the recommendations made in the approved soils engineering investigation report. Soils engineers shall submit a statement that, to the best of their knowledge, the work within their area of responsibilities is in accordance with the approved soils engineering report and applicable provisions of this chapter.
- C. A report prepared by the engineering geologist retained to provide such services in accordance with this chapter, including a final description of the geology of the site and any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. Engineering geologists shall submit a statement that, to the best of their knowledge, the work within their area of responsibility is in accordance with the approved engineering geologist report and applicable provisions of this chapter.
- D. The applicant's engineer shall submit, in a form prescribed by the Director/Building Official, a statement of conformance to said as-built plan and the specifications. The applicant or owner shall notify the Director/Building Official when the grading operation is ready for final inspection. Final approval shall not be given until all work, including installation of all drainage facilities and their protective devices, and all erosion-control measures have been completed in accordance with the final approved grading and drainage plans, and the required reports have been submitted.

11.02.230 Hazards

- A. Whenever the Director/Building Official determines that any existing cut or excavation, fill, or embankment on private property adversely affects the safety, use, or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located or other person or agency in control of said property, upon receipt of notice in writing from the Building Official, shall within the period specified therein repair or eliminate such cut or excavation, fill, or embankment to eliminate the hazard to conform with the requirements of this chapter. Failure to comply shall be considered a violation subject to the penalty and enforcement provisions of this chapter.
- B. Where the Director determines that hazardous conditions exist, warning signs shall be affixed at locations as required by the Director, and the site must be enclosed by fencing with lockable gates that must be closed and locked when personnel are not present at the site. The fence must be no less than five (5) feet in height and the fence material shall have no horizontal opening larger than two (2) inches.

11.02.240 Grading Permit Fees

Refer to Island County Fee Schedule available at the Island County Public Works Department.

11.02.250 Appeals

- A. Any aggrieved person may appeal any final decision or determination of the Director under this chapter to the Hearing Examiner as a Type II appeal, except that the appeal of decisions and determinations of the Director that are included as a condition of another permit, pursuant to the exemption provisions of this chapter, do not change the appeal procedures established for issued permit. Appeals shall be filed and processed pursuant to the provisions of ICC 16.19.
- B. At the hearing, the appellant shall have the burden of proof.
- C. The decision of the Hearing Examiner shall be final and conclusive with the right of reconsideration and may then be reviewable by an action for writ of review filed in Island County Superior Court as provided in ICC 16.19.

11.02.260 Penalties and Enforcement

Any violation of Chapter 11.02 shall be enforced by the Planning and Community Development Director and shall be subject to the enforcement provisions of Chapter 17.03 ICC. The County Engineer shall provide support and technical guidance to the Planning and Community Development Director on all Chapter 11.02 violations.

11.02.270 Standards for Class IV General Forest Practices Permits, Class IV Platted Forest Practices Permits, and Conversion Option Harvest Plans, and for Any Lands Harvested Without a Forest Practices Permit When a Permit was Required

- A. Grading permit requirements shall be established on a case-by-case basis, following a field inspection/evaluation of slopes and their relative stability, of topography and existing natural, constructed, or planned drainage ways/systems, of soils and their susceptibility to erosion, of forest and vegetative cover as exists and planned, and of critical areas, as defined in this chapter, and regulated shoreline areas. Prior to establishing the requirements of the grading permit a determination shall be made by the Director as to:
 - 1. the presence of documented critical drainage/flooding/erosion/stability problems downstream of the development activity that may be exacerbated by the development activity if appropriate conditions are not established; and
 - 2. the quality and use of receiving waters which may be degraded if appropriate conditions are not established.
- B. Grading permit requirements may include the preparation and implementation of drainage plans pursuant to the requirements of ICC 11.03.
- C. If the proposal is within an urban growth area, the city/town shall be consulted to ensure conformance with the requirements for similar development activities within the incorporated area of the UGA.

11.02.280 Cuts or Excavations

- A. Unless otherwise recommended in the approved soils engineering or engineering geology report, cuts shall conform to the provisions of this section. These provisions may be waived for minor cuts which are less than four (4) feet in height.
- B. Slopes. Maximum slopes allowable are specified in Section 11.02.300.
- C. Slopes after being cut shall be stabilized. The soils engineering or an engineering geology report, or both, shall verify that the slopes shall not be subject to on-going erosion that would adversely impact public or private property.
- D. Cuts or excavations within critical areas or their buffers shall not occur unless consistent with requirements of ICC 17.02.

11.02.290 Fills or Embankments

- A. General. Unless otherwise recommended in the approved soils engineering report, fills shall conform to the provisions of this section. In the absence of an approved soils engineering report, these provisions may be waived for minor fills not intended to support structures, and which are less than four (4) feet in height.
- B. Slopes. Maximum allowable slopes are specified in Section 11.02.300.
- C. Fill material:
 - 1. Detrimental amounts of organic material shall not be permitted in fills. Except as permitted by the Director, no rock or similar irreducible material with a maximum dimension greater than twelve (12) inches shall be buried or placed in fills.
 - 2. Exception. The Director may permit placement of larger rock when the soils engineer properly devises a method of placement, and continuously inspects its placement and approves the fill stability. The following conditions shall also apply:
 - a) Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan;
 - b) Rock sizes greater than twelve (12) inches in maximum dimension shall be ten (10) feet or more below grade, measured vertically; and
 - c) Rocks shall be placed so as to assure filling of all voids with well-graded soil.
 - 3. Compaction. All fills intended to support structures or private roads shall be compacted to a minimum of ninety percent (90%) of maximum dry density (MDD) as determined by the modified Proctor (ASTM D1557).
 - 4. Slope. Maximum allowable slopes are specified in Section 11.02.300.
 - 5. Fills. Fills shall not be placed in critical areas unless in compliance with the requirements of ICC 17.02.

11.02.300 Slope Requirements

Slopes shall be constructed to ensure the stability of embankments and adjacent properties and shall be constructed consistent with accepted design standards, but shall not be steeper than those maximum slopes specified below without an analysis and recommendation from the soils engineer:

- A. Cut slope:
 - 1. 1H:1V requires stepped construction method, as specified in design standards or as approved by the Director **or with review and recommendation of a civil engineer**; or

2. 1.75H:1V

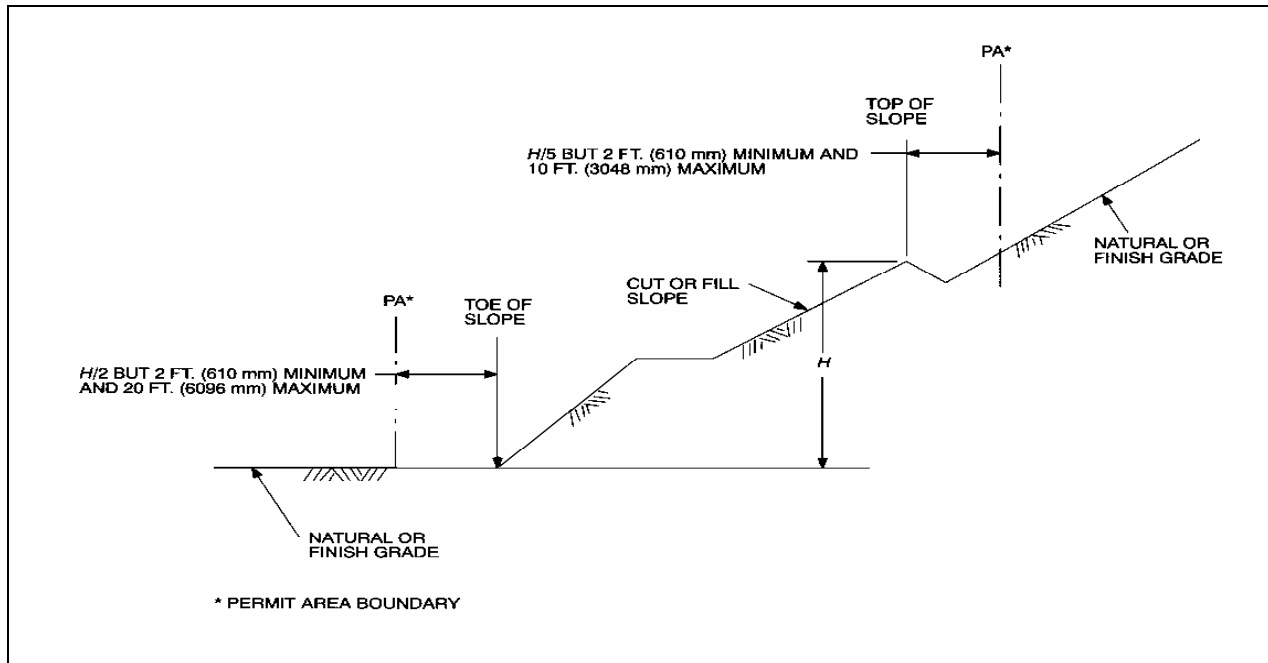
B. Fill slope:

1. 1.5H:1V with review and recommendations of a **civil** engineer or **as approved by the Director**; or
2. 1.75H:1V

11.02.310 Setbacks for Cuts or Fills (See Figure 1)

- A. Cut and fill slopes shall be set back from site boundaries in accordance with this section. Setback dimensions shall be horizontal distances measured perpendicular to the site boundary. The top of cut slopes shall not be made nearer to a site boundary line than one fifth of the vertical height of cut with a minimum of two (2) feet and a maximum of ten (10) feet. The setback must be increased as necessary for stability for any required subsurface drainage or surcharge.
- B. The toe of fill slope shall be made not nearer to the site boundary line than one half the height of the slope with a minimum of two (2) feet and a maximum of twenty (20) feet.

FIGURE 1--SETBACK DIMENSIONS



11.02.320 Drainage and Terracing

- A. Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this section for cut or fill slopes steeper than three (3) units horizontal in one (1) unit vertical (3H:1V - 33.3% slope).
- B. Terraces at least sixteen (16) feet in width shall be established at not more than thirty foot (30') vertical intervals on all cut or fill slopes to control surface drainage and debris, except that where only one terrace is required, it shall be at midheight. For cut or fill slopes greater than sixty (60) feet and up to one hundred and twenty (120) feet in vertical height, one terrace at approximately mid height shall be twelve (12) feet in width. Terrace widths and spacing for cut and fill slopes greater than one hundred and twenty (120) feet in height shall be designed by the civil engineer and approved by the Building Official. Suitable access shall be provided to permit proper cleaning and maintenance.
- C. Swales or ditches on terraces shall have a minimum gradient of one-half percent (0.5%).
- D. Cut or fill slopes shall be provided with subsurface drainage as necessary for stability and proper conveyance of groundwater.

- E. All drainage facilities shall be designed to carry waters to the nearest practicable drainage way in a safe manner approved by the Building Official or Director and shall comply with provisions of ICC 11.03, if applicable. Outfalls or points of discharge shall be designed using best management practices and construction procedures which minimize erosion.
- F. Building pads shall have a drainage gradient of two percent (2%) toward approved drainage facilities, unless waived by the Building Official. Exception: the gradient from the building pad may be one percent (1%) if all of the following conditions exist throughout the permit area:
 - 1. No proposed fills are greater than ten (10) feet in maximum depth;
 - 2. No proposed finish cut or fill slope faces have a vertical height in excess of ten (10) feet; and
 - 3. No existing slope faces steeper than one (1) unit vertical in ten (10) units horizontal, ten percent (10%) slope have a vertical height in excess of ten (10) feet.
- G. Paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes toward the cut and has a drainage path greater than forty (40) feet measured horizontally. Interceptor drains shall be paved with a minimum of three (3) inches of concrete or granite and reinforced. They shall have a minimum depth of twelve (12) inches and a minimum paved width of thirty (30) inches measured horizontally across the drain. The slope of drain shall be approved by the Building Official or Director.

11.02.330 Erosion Control

- A. The faces of cut and fill slopes shall be prepared and maintained to control against erosion. This control may consist of effective planting, hydroseeding, or mulching. The protection for the slopes shall be installed as soon as practicable and prior to calling for/or requesting final project approval. Where cut slopes are not subject to erosion due to the erosion-resistant character of the materials, such protection may be omitted.
- B. Where necessary, check dams, cribbing, riprap, silt fences, or other devices/methods shall be employed to provide safety to adjoining properties or to minimize impacts.
- C. Small residential development and other small development activity, as defined in ICC 11.03, that creates less than five thousand (5,000) square feet of new impervious surface must comply with erosion control and best management practices requirements of ICC 11.03.
- D. Major development and redevelopment, as defined in ICC 11.03, must comply with erosion control and best management practices requirements of ICC 11.03.

- E. All **other** regulated grading shall comply with drainage and erosion control requirements of ICC 11.03.

11.02.340 Reclamation of Quarry or Mining Sites

Upon completion or abandonment of quarrying or mining operations, the owner or operator of sites not regulated by Washington State Department of Natural Resources pursuant to Chapter 78.44 RCW, must obtain a grading permit under this chapter for reclamation and an approved full drainage plan under ICC 11.03, and comply with the following reclamation standards:

- A. Grading or backfilling shall be done with clean earth material (i.e., non-noxious, nonflammable, noncombustible, and nonputrescible solids);
- B. Such graded or backfilled areas, except for roads, shall be sodded or surfaced with soil of a quality at least equal to the topsoil of the immediately surrounding land areas, and to a depth equal to that of the topsoil of immediately surrounding land areas, provided that all sod and soil shall be at least four (4) inches in depth;
- C. Final grading shall be such as to encourage the uses permitted within the underlying zone classification;
- D. Bare topsoil shall be planted with trees, shrubs, and grasses which are indigenous to the region and compatible with the surrounding area;
- E. Graded or backfilled areas shall be reclaimed in a manner which will not allow water to collect nor permit stagnant water to remain unless specifically authorized in the grading permit; and
- F. Non-harmful tailings consisting of earth material and soil piles shall be level. The leveled and graded area must be sodded or surfaced and planted as required in paragraphs B and D of this section. Burying of material other than earth materials as part of the mining reclamation must have prior approval from the Director.

11.02.350 Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance or its application to other persons or circumstances is not affected.

11.02.360 Effective Date

The amendments to this Chapter shall take effect on December 1, 1998 and shall apply to new applications submitted on or after that date and to incomplete applications filed prior to that date.

EXHIBIT D

Amendments to Chapter 11.03 ICC, the Stormwater Ordinance

11.03.010 Declaration of Purpose

The purpose of this chapter is to regulate and control drainage or storm water to safeguard the public health, safety, and general welfare. The objectives of this chapter are as follows:

- A. To promote sound, practical, and economical development practices and construction procedures which minimize impacts to the county's waters;
- B. To minimize degradation of water quality and to control the sedimentation of streams, rivers, lakes, wetlands, and other surface water;
- C. To control storm water runoff originating on developing land;
- D. To preserve the suitability of water for recreation and fishing;
- E. To fulfill the goals and requirements of the Critical Areas Ordinance, Chapter 17.02 ICC, by:
 - 1. Preserving and protecting aquatic habitat; and
 - 2. Minimizing net loss of the county's wetlands by maintaining hydrologic continuity with other aquatic resources.
- F. To maintain the quality of the county's water resources;
- G. To minimize adverse effects caused by alterations in surface water or ground water quality, quantities, locations, and flow patterns;
- H. To maintain the safety of county roads and rights-of-way;
- I. To protect public safety by reducing slope instability and landslides; and

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EXHIBIT E

Planning Commission Findings of Fact