

TITLE XVII
ZONING

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Chapter 17.02
Island County Critical Areas Ordinance

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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.

(Ord. PD-84-22, December 18, 1984, eff. December 31, 1984, vol. 23, p. 322; amended by Ord. C-55-04 [PLG-006-04], April 26, 2004, vol. 2004, p. 143)

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.

(Ord. PD-84-22, December 18, 1984, eff. December 31, 1984, vol. 23, p. 322; amended by Ord. C-62-98 [PLG-014-98], September 14, 1998, effective October 1, 1998, vol. 42, p. 434; accepted by Res. C-133-98 [PLG-043-98], October 19, 1998, vol. 43, p. 38; amended by Ord. C-136-98 [PLG-042-98], November 9, 1998, vol. 43, p. 65; amended by Ord. C-55-04 [PLG-006-04], April 26, 2004, vol. 2004, p. 143)

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.

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.

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 Slope¹: Areas that because of their susceptibility to erosion, sliding, or other geologic events, are generally not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns, including, but not limited to, those lands designated in the Department of Ecology Coastal Zone Atlas dated April 1979, as it may be amended or revised, as land which has had recent or historical slide activity and/or has unstable slope conditions, including those lands within one-hundred (100) feet (either top or base) thereof.

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

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).

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).

¹ **Reviser's Note:** The word "means" was omitted as it is redundant where placed in this ordinance.

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.

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.

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.

(Ord. PD-84-22, December 18, 1984, eff. December 31, 1984, vol. 23, p. 322; amended by Ord. PD-85-06, October 7, 1985, vol. 24, p. 441; amended by Ord. PD-86-14, June 16, 1986, vol. 25, p. 383; amended by Ord. C-13-89, January 23, 1989, vol. 29, p. 208; amended by Ord. C-29-89, March 13, 1989, vol. 29, p. 288; amended by Ord. C-41-89, April 10, 1989, vol. 29, p. 357; amended by Ord. C-48-89, April 24, 1989, vol. 29, p. 380; amended by Ord. C-161-90 and PLG 025-90, September 17, 1990, vol. 31, p. 425; amended by Ord. PLG- 033-93, July 12, 1993, vol. 36, p.16; amended by Ord. C-36-94 and PLG-016-94, June 13, 1994, vol. 37, p. 185; amended by Ord. PLG-042-95, November 6, 1995, vol. 39, p. 121; amended by Ord. C-49-98 [PLG-009-98], April 27, 1998, vol. 42, p. 147A; amended by Ord. C-62-98 [PLG-014-98], September 14, 1998, effective October 1, 1998, vol. 42, p. 434; accepted by Res. C-133-98 [PLG-043-98], October 19, 1998, vol. 43, p. 38; amended by Ord. C-136-98 [PLG-042-98], November 9, 1998, vol. 43, p. 65; amended by Ord. C-97-99 [PLG-019-99], November 22, 1999, vol. 44, p. 164; amended by Ord. C-55-04 [PLG-006-04], April 26, 2004, vol. 2004, p. 143)

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 the Geologically Hazardous Areas Overlay Zone, ICC 17.02.050.B, and Chapters 11.02 and 11.03 ICC.
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.**² 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)

² **Reviser's Note:** Exemptions were originally modified by C-49-98 [PLG-009-98], April 27, 1998, and changed to current Exemptions by Ord. C-62-98 [PLG-014-98], September 14, 1998.

- 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.

(Ord. C-62-98 [PLG-014-98], September 14, 1998, effective October 1, 1998, vol. 42, p. 434; accepted by Res. C-133-98 [PLG-043-98], October 19, 1998, vol. 43, p. 38; amended by Ord. C-136-98 [PLG-042-98], November 9, 1998, vol. 43, p. 65; amended by Ord. C-78-99 (PW-37-99), July 12, 1999, vol. 43, p. 377; amended by Ord. C-97-99 [PLG-019-99], November 22, 1999, vol. 44, p. 164; amended by Ord. C-151-99 [PLG-049-99], March 20, 2000, vol. 44, p. 352; amended by Ord. C-03-00 [PLG-002-00], April 10, 2000, vol. 44, p. 384, amendment to ICC 17.02.107.E.16 effective October 12, 2000 when the October 12, 2000 Growth Management Hearings Board Final Decision and Order, Case Number 98-2-0023c, approved the 5-acre minimum lot size in the Rural (R) Zone; amended by Ord. C-44-00 [PLG-011-00], June 5, 2000, vol. 44, p. 429, readopted June 19, 2000, vol. 44, p. 446; amended by Ord. C-55-04 [PLG-006-04], April 26, 2004, vol. 2004, p. 143)

17.02.050 Overlay Zones

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

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

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

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

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

2. Conditional Uses.

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

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

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

- (i) Substantial public benefit will accrue through the alteration; and
- (ii) The public benefit accruing substantially outweighs the public loss occurring through the alteration of the wetland; and
- (iii) There is no reasonable alternative to making the alteration; and
- (iv) All conditions for modifying a Category B wetland can be met.

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

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

- (i) The alteration is solely to provide access to a deep water habitat or to expand an existing water-dependent use and does not act to degrade the functions of the wetland; or the degradation can be fully mitigated; or
- (ii) Alteration will preserve, improve or protect the functions; and
- (iii) Alteration will comply with the Land Use Standards ICC 17.02.060; and
- (iv) Use of the parcel will comply with all applicable terms and conditions of this Chapter and with other pertinent requirements of the Island County Code; and
- (v) The applicant irrevocably commits to restoration should alteration, in fact, not preserve, improve or protect the functions.

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

- e) Mitigation may be required as a condition to the approval of any alteration.
3. Designation Criteria - Wetlands. Wetlands shall be designated Category A, Category B or Category C according to the criteria in subsections a), b), and c) below. As used in this section, the term “regulated wetlands” shall refer to Category A and Category B wetlands.
- a) Category A: A wetland is assigned the Category A rating if it is not a Category C wetland, and it meets the following criteria:
 - (i) Presence of a protected species or an outstanding habitat for a protected species; or
 - (ii) The wetland is an estuarine wetland; or
 - (iii) Predominance of native wetland species over non-native wetland species; and
 - (1) The wetland is one-fourth (1/4th) of an acre or greater in size; or
 - (2) The wetland is one-eighth (1/8th) of an acre or greater in size and located in the Rural (R) Zone.
 - b) Category B: A wetland is assigned the Category B rating if it meets the following criterion:
 - (i) The wetland does not meet the criteria for Category A or Category C; and
 - (ii) The wetland is one (1) acre or greater in size; or
 - (iii) The wetland is one-fourth (1/4th) acre or greater in size and located in the Rural (R) Zone;
 - (iv) Any Category B wetland that is enhanced through an authorized alteration or mitigation process so that it meets the Category A designation criteria shall continue to be designated as a Category B wetland.
 - c) Category C: A wetland and/or deep water habitat (pond) may be designated as Category C by the Planning Director on a positive showing through documentation, photographs, statements and/or other evidence, that it was created through human actions that were carried out purposefully to create the wetland or deep water habitat where no wetland before existed. Wetlands created for mitigation purposes will not be considered as Category C.
 - d) For purposes of establishing buffers pursuant to 17.02.050.A., a single wetland shall be classified into more than one (1) category if distinct areas exist in the wetland which clearly meet the designation criteria of separate categories.
4. Setbacks.
- a) The following buffers shall be established adjacent to all wetlands:
 - (i) Category A Wetlands. Not less than one-hundred (100) feet.

- (ii) Category B Wetlands. Not less than twenty-five (25) feet, provided the buffer shall be not less than fifty (50) feet for lots or parcels located in the Rural (R) Zone.
- b) Minimum Setback: Any use permitted in the underlying zone shall preserve the above stated undisturbed buffer unless the Island County Planning Director determines the proposed use would preserve, improve or protect the wildlife habitat, natural drainage and/or other valuable functions of the wetland or deep water habitat and would be consistent with 17.02.060 and the purposes of this Chapter, whereupon such buffer width may be modified. This determination may be made upon review of a study completed by a biologist, plant ecologist or similarly qualified professional. The study shall be prepared at the applicant's cost. Provided that the Planning Director may also administratively authorize a modification of up to fifty percent (50%) of the buffer width to provide a reasonable buildable area for a single-family residence or accessory building on a lot legally established prior to the effective date of this Chapter.
- c) Increased Setback: The width of the wetland buffer may be increased over the required minimum under the following condition:
 - (i) When the wetland is especially sensitive, a wider buffer of native vegetation should be provided.
- d) General Provisions: The following general provisions shall apply to wetlands or their buffers:
 - (i) The buffer width shall be measured perpendicular at any point to the wetland edge.
 - (ii) No new lot shall be created that is wholly comprised of wetlands or that would require alteration of a regulated wetland or its buffer to provide a buildable area unless a conservation easement encompassing the lot is established and recorded.
 - (iii) In the case of existing lots which encroach into the required buffer, clearing, grading and placement of structures shall respect the required buffer if possible.
 - (iv) The wetland edge within the boundaries of the applicant's property shall be shown on all plats, short plats, site plans or PRDs, together with any conservation easement(s) and appropriate covenants. The applicant shall be responsible for such delineation. Such delineation may be based on findings by the Planning staff or, if the applicant disagrees with such findings, on the results of a study by a biologist, plant ecologist or similarly qualified professional which have been certified through the appeal process specified in Chapter 16.19.

- (v) Development within the buffer shall be limited to passive recreation such as trails or scientific uses and fences or other barriers necessary to protect habitat, unless otherwise approved or exempted under the provisions of 17.02.050.A.4.a).
 - (vi) Conveyance of wetlands identified as part of project review to a land trust, the Audubon Society, the Nature Conservancy, the Trust for Public Land or similar organization or governmental agency is encouraged when such conveyance will ensure the long-term protection of the wetlands.
- 5. Environmentally Sensitive Areas: Wetlands are hereby declared to be “environmentally sensitive areas” pursuant to WAC 197-11-748 and 197-11-908.
- B. Geologically Hazardous Areas (gh).** The primary purpose of the geologically hazardous areas overlay zone is to promote the public health, safety and general welfare by minimizing the hazards incident to development on or adjacent to steep slopes or geologically hazardous areas.
 - 1. 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.
 - 2. Environmentally Sensitive Areas. Steep slopes or geologically hazardous areas are hereby declared to be “environmentally sensitive areas” pursuant to WAC 197-11-748 and 197-11-908.
- C. Fish and Wildlife Habitat Conservation Areas (fw)**
 - 1. Designation. The following are designated as Fish and Wildlife Habitat Conservation Areas:
 - a) Areas with which endangered, threatened, and sensitive species listed by the federal or state government have a primary association.
 - b) Streams.
 - c) Commercial and recreational shellfish beds.
 - d) Kelp and eelgrass beds.
 - e) Herring and smelt spawning areas.
 - f) State natural area preserves.
 - g) State natural resource conservation areas.

- h) **Species and Habitats of Local Importance.**³ Any person may nominate for designation a species or habitat of local importance. Nominations will be processed pursuant to Chapter 16.26 ICC.
- (i) The person making the nomination shall provide information demonstrating that the species or habitat is native to Island County existing on or prior to December 1, 1998.
 - (ii) Nominated species must satisfy the following criteria:
 - (1) Local populations which are in danger of extirpation based on existing trends since January 1, 1985.
 - (2) The species is sensitive to habitat manipulation.
 - (3) The species or habitat has commercial, game, or other special value such as locally rare species.
 - (iii) Habitats nominated to protect a particular species must satisfy the following criteria:
 - (1) Where a habitat is nominated to protect a species, the use of the habitat by that species is documented or is highly likely or the habitat is proposed to be restored with the consent of the affected property owner so that it will be suitable for use by the species; and
 - (2) Long term persistence of the species is dependent on the protection, maintenance or restoration of the habitat.
 - (iv) Areas nominated to protect a particular habitat must represent either high-quality native habitat or habitat that has an excellent potential to recover to a high quality condition and which is either of limited availability or highly vulnerable to alteration.
 - (v) The nomination shall indicate the specific habitat features to be protected (for example, nest sites, breeding areas, nurseries, etc.).
 - (vi) The nomination shall include management strategies for the species or habitats. Management strategies must be supported by best available science, and where restoration or habitat is proposed, a specific plan for restoration must be provided prior to nomination.

³ **Reviser's Note:** This subsection h) and its subparts were amended three times by Ord. C-97-99 [PLG-019-99], November 22, 1999; by Exhibit A, by Technical Amendment, and by Amendment No. 9A dated November 15, 1999. The version codified is a compilation of all three.

- (vii) Pursuant to ICC 16.19.060, the Planning Department shall determine whether the proposal is complete. For proposals which are complete, it shall evaluate the proposal for compliance with the standards enumerated in subsection (ix) and make a recommendation to the Planning Commission based on those standards. Management strategies must be supported by best available science and where restoration is proposed a specific plan to finance the restoration is available.
 - (viii) The Planning Commission will hold a Public Hearing for proposals found to be complete, and make a recommendation to the Board of Commissioners based on the standards enumerated in subsection (ix).
 - (ix) Following the recommendation of the Planning Commission, the Board of Commissioners shall designate a Habitat or Species of Local Importance that:
 - (1) Satisfies the nomination criteria in subsection h)(ii) and includes the information required in subsections h)(iii) and (iv); and
 - (2) Includes best available science; and
 - (3) Protection by other county, state or federal policies, laws, regulations or non-regulatory tools is not adequate to prevent degradation of the species or habitat in Island County; and
 - (4) For which management strategies are practicable; and
 - (5) Without protection, there is a likelihood that the species will not maintain and reproduce over the long term.
 - (x) Approved nominations will be subject to the provisions of this Title.
 - i) Flora species included in the Protected Species list.
 - j) All areas designated by the Department of Natural Resources (“DNR”) through the Washington Natural Heritage Program as high quality wetland ecosystems and high quality terrestrial ecosystems and shown on a Map prepared by Island County dated October 11, 1999.
2. Site Assessment Requirements. When a development proposal is located on lands which may contain, based upon maps and other information maintained by the Department, a habitat for a Protected Species, other than Bald Eagle nesting territories or when the applicant proposes to alter, decrease or average the standard buffer, a Biological Site Assessment (BSA) shall be required. A BSA shall be prepared by the County or a qualified professional biologist, plant ecologist, or similarly qualified

professional with experience assessing the relevant species and/or habitats. The level of detail in a BSA should be proportionate to the location, size and impacts of the project proposal. Unless modified by the Director, a BSA shall include:

- a) A site plan indicating all Fish and Wildlife Habitat Conservation Areas falling on or within one-hundred (100) feet of the portion of the subject property proposed for development. For heron and osprey the distance shall be as follows:
 - i) Heron - One thousand (1,000) feet for non-residential development, three-hundred (300) feet for residential development; and
 - ii) Osprey - Six hundred (600) feet for non-residential development, two-hundred (200) feet for residential development.
- b) Descriptions of all Fish and Wildlife Habitat Conservation Areas shown on the site plan;
- c) Description of the proposed project, including, but not limited to, associated earthwork (grading, excavation, filling), structures, utilities, and existing habitat other than Fish and Wildlife Habitat Conservation Areas (wetlands, other vegetated areas, including areas which may act as corridors, ravines or steep slopes, etc.);
- d) Analysis of impacts to the protected species or habitats. A discussion of impacts to all Fish and Wildlife Habitat Conservation Areas must be included;
- e) Regulatory summary, identifying other agencies with jurisdiction;
- f) If adverse impacts to protected species or habitats are likely to occur, a conceptual mitigation plan, including an analysis of feasible mitigation alternatives that would mitigate adverse impacts of the project. The effectiveness of the proposed mitigation measures shall be compared to other feasible alternatives. Mitigation alternatives shall be presented in the following order (in accordance with WAC 197-11-766):
 - (i) Avoiding the impact by not taking a certain action or parts of an action;
 - (ii) Minimizing impacts by limiting the degree of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
 - (iii) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - (iv) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

- (v) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
- (vi) Monitoring the impact and taking appropriate corrective measures.
- g) Best Management Practices, including a discussion of on-going maintenance practices that will assure protection of all Fish and Wildlife Habitat Conservation Areas on-site after the project has been completed. If monitoring is required, this section shall include a description of proposed monitoring criteria, methods, and schedule.
- h) The recommendations of the BSA, once approved, shall be included as conditions of approval of the underlying permit.

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**TABLE 17.02.050.C
Water Typing Criteria, WAC 222-16-030⁴**

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

⁴ These criteria are used to classify streams as defined in ICC 17.02.030.

3. Protection Standards: Streams

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

Stream Type	Buffer (ft)
1	150
2	100
3- reach without anadromous fish present	75
3- reach with anadromous fish present	100
4	50
5-tributary to a salmon bearing stream or is located in the Rural (R) Zone	50
5-not tributary to a salmon bearing stream or is not located in the Rural (R) Zone	25

- b) **Increasing Buffer Widths.** The Director has the authority to increase the standard buffer widths on a case-by-case basis based on the intensity of the proposed use, the functions of the stream and the characteristics of the existing buffer when a larger buffer is determined to be necessary to protect stream water quality or a Protected Species. For example, stream buffers that are unstable slopes may require larger buffer widths; PRDs using density bonuses may warrant increased buffer widths. However, an applicant may enhance any such buffer (such as through bioengineering using native plants) to maintain the standard buffer width following submittal, review and approval of a BSA which demonstrates that the enhancement will provide a buffer which protects stream water quality or a Protected Species, as applicable.
- c) **Decreased Buffer Widths.** Decreased buffer widths will be allowed only if the applicant demonstrates that all of the following criteria are met:
- (i) Decreasing the buffer width will not adversely affect fish and wildlife habitat functions and values; and
 - (ii) If a portion of a buffer is reduced, an area of the remaining buffer equal to two (2) times the area removed from the standard buffer shall be enhanced

using native vegetation and/or installed habitat features. For example, if a buffer is reduced by 1,000 square feet, then 2,000 square feet of remaining buffer shall be enhanced; and

- (iii) The perimeter of the reduced buffer must be screened with dense vegetation or barrier fencing (other measures necessary to provide adequate protection for fish and wildlife habitat should be identified in the BSA); and
 - (iv) The buffer width shall not be reduced by more than 33% of the standard buffer width for Type 1 and Type 2 streams, 50% for Type 3, Type 4 and Type 5 streams for which a 50 foot buffer is required. For all other Type 5 streams the buffer shall not be reduced by more than 10%.
- d) Averaging Buffer Widths. Buffer widths may be modified by “averaging.” Buffer width averaging shall be allowed only where the applicant demonstrates through an approved BSA that the following criteria are met:
- (i) A decrease in a portion of the buffer is necessary to accomplish the purpose of the proposed project and no reasonable alternative is available; or
 - (ii) Averaging would allow the applicant to establish a corridor of native vegetation between natural systems; and
 - (iii) Decreasing the buffer width will not adversely affect fish and wildlife habitat functions and values; and
 - (iv) If a portion of a buffer is reduced through averaging, an area of additional buffer, contiguous with the existing buffer, shall be designated that is equal in size to the reduced portion of the standard buffer so that the total buffer area remains unchanged; and
 - (v) The buffer width shall not be reduced by more than 33% of the standard buffer width for Type 1 and Type 2 streams, 50% for Type 3 and Type 4 and Type 5 streams for which a 50 foot buffer is required. For all other Type 5 streams the buffer shall not be reduced by more than 10%.
- e) Allowed Uses in Buffers. Low impact uses that are consistent with the purpose and intent of this Ordinance, and that do not detract from the buffer’s ability to preserve stream and riparian functions may be permitted. Examples of low-impact uses and activities that are permitted in buffers include pedestrian (pervious) trails, interpretive signs, fencing, and viewing platforms.

4. Protection Standards: Commercial and Recreational Shellfish, Kelp and Eelgrass Beds, Herring and Smelt Spawning Areas. The following standards apply to property adjacent to or containing commercial or recreational shellfish areas, kelp or eelgrass beds or herring or smelt spawning areas.
 - a) On-Site Sewage Systems. The design of new and the replacement of existing on-site sewage systems shall comply with Chapter 8.07 ICC.
 - b) New Development
 - (i) Residential and Non-Residential
 - (1) Applications for residential subdivisions, or for construction of any new non-residential facility, shall require preparation, submittal, and approval of a storm water collection, treatment, and disposal system designed by a Professional Engineer and reviewed pursuant to Chapter 11.01 ICC. Infiltration of storm water shall be encouraged, except where this practice would be injurious or potentially injurious to the quality of ground water in designated Aquifer Recharge Areas.
 - (2) All applications for residential subdivisions and development or for construction on lots created after October 1, 1998 or any new non-residential facility shall provide a seventy-five (75) foot buffer to protect commercial and recreational shellfish, kelp and eelgrass beds, and herring and smelt spawning areas. The buffer applies to all non-water-dependent portions of the application and shall be measured from the ordinary high water mark.
 - (3) For lots created on or before October 1, 1998, located in a series of four (4) or more consecutive lots that are one hundred (100) feet or less in width and proposed for single family residential development, the seventy-five (75) foot buffer required in subsection (2) may be reduced by review and approval of the Director but shall not be less than the shoreline setback required by Chapter 17.05 ICC, and shall comply with the County-adopted best management practices and shall meet the following standards (see figure A for illustrative purposes):
 - (a) The shoreline frontage of the building lot and adjacent lots is one hundred (100) feet or less; and
 - (b) The building lot is low bank (less than ten (10) feet in elevation); and

- (c) either one of the following:
 - (i) For lots where existing single-family waterfront residences encroach on the required buffer on both sides of the proposed building lot, the required buffer may be reduced to the average of the setbacks of the existing residences located on the adjacent parcels; or
 - (ii) The end lot buffer may be reduced by averaging the existing buffer of the residence on the adjacent one hundred (100) feet or less wide lot and seventy-five (75) feet.
- (4) The Director has the authority to increase the standard buffer widths on a case-by-case basis when a larger buffer is determined to be necessary to protect commercial and recreational shellfish, kelp and eelgrass beds, and herring and smelt spawning areas. For example, areas landward of these protected areas that are unstable slopes may require larger buffer widths. However, an applicant may enhance any such buffer (such as through bioengineering using native plants) to maintain the standard buffer width following submittal, review and approval of a BSA which demonstrates that the enhancement will provide a buffer which protects the commercial and recreational shellfish, kelp and eelgrass beds, and herring and smelt spawning areas.
- (ii) Agricultural Facilities and Livestock
 - (1) If construction of agricultural facilities in the CA Zone is proposed within the shoreline jurisdiction, preparation, submittal, and approval of farm plans and compliance with best management practices shall be required.
 - (2) Construction of new agricultural facilities or activities involving the raising or keeping of livestock in the RA Zone shall require compliance with water quality BMPs.

5. Protection Standards: Bald Eagle

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

6. Protection Standards: Washington Natural Heritage Program Areas ⁵

- a) South Camano and Keystone. South Camano is inventoried as a significant plant community dominated by Big Leaf Maple (*Acer macrophyllum*). Keystone is inventoried as a significant plant community dominated by Douglas Fir, Western Hemlock and Swordfern. Natural vegetation between the ordinary high water mark and the top of banks and bluffs ten (10) feet or higher shall be retained, except for removal of hazardous, diseased or damaged trees and to allow for pedestrian waterfront access. Removal of invasive non-native species is authorized. Trimming but not removal for view enhancement is authorized.
- b) Grasser's Hill. Grasser's Hill is inventoried as a significant plant community including white-top aster (*Aster curtus*), a Protected Species. A Biological Site Assessment shall be prepared pursuant to ICC 17.02.050.C.2 and a habitat management plan (HMP) shall be prepared pursuant to ICC 17.02.050.C.8 to ensure protection of the white-top aster.
- c) West Beach and Ebey's Landing. West Beach and Ebey's Landing are inventoried as a significant plant community including golden indian paintbrush (*Castilleja levisecta*), a Protected Species. A Biological Site Assessment shall be prepared pursuant to ICC 17.02.050.C.2 and a habitat management plan (HMP) shall be prepared pursuant to ICC 17.02.050.C.8 to ensure protection of the golden indian paintbrush.
- d) All other Areas. Requests for permit approval by Island County will be acted on only after consultation with the Washington Natural Heritage Program.

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

⁵ **Reviser's Note:** This subsection 6 was amended twice by Ord. C-130-99 [PLG-033-99], November 22, 1999: by Exhibit A and by Amendment No. 2A. The version codified is Amendment No. 2A.

8. Protection Standards: All other Fish and Wildlife Habitat Conservation Areas shall be protected on a case-by-case basis. In addition to a Biological Site Assessment required by ICC 17.02.050.C.2, a Habitat Management Plan (HMP) shall be prepared.
9. Habitat Management Plan. HMPs shall be prepared by a professional ecologist, biologist or similarly-qualified professional, submitted, and approved. The HMP may be combined with the BSA. The HMP must consider Management Recommendations adopted by the Washington Department of Fish and Wildlife, and the specific attributes of the affected properties, such as, but not limited to, property size and configuration, surrounding land use, and the practicability of implementing the HMP, and the adaptation of the species to human activity.
10. Protection Standards: Standard Habitat Management Plan (HMP)

The County has developed a standard Habitat Management Plan for the bald eagle. From time to time as the lists of Protected Species and Species of Local Importance are amended, the County may develop additional standard HMPs, modify adopted standards; and/or delete HMP requirements. Where the County has developed a standard HMP, the applicant may either accept and sign the standard HMP or prepare his or her own HMP pursuant to subsection 9.⁶

D. Penalties and Enforcement

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

E. Airport and Aircraft Safety (as) (Reserved)

F. Scenic Corridors (sc) (Reserved)

G. Water Resources (wr) (Reserved)

H. Critical Drainage (cd) (Reserved)

I. Historic (h) (Reserved)

(Ord. PD-84-22, December 18, 1984; eff. December 31, 1984, vol. 23, p. 322; amended by Ord. C-13-89, January 23, 1989, vol. 29, p. 208; amended by Ord. C-41-89, April 10, 1989, vol. 29, p. 357; amended by Ord. PLG-006-92, February 24, 1992, vol. 33, p. 376; amended by Ord. PLG-044-92, September 14, 1992, vol. 34, p. 331; amended by Ord. C-49-98 [PLG-009-98], April 27, 1998, vol. 42, p. 147A; amended by Ord. C-62-98 [PLG-014-98], September 14, 1998, effective October 1, 1998, vol. 42, p. 434; accepted by Res. C-133-98 [PLG-043-98], October 19, 1998, vol. 43, p. 38; amended by Ord. C-136-98 [PLG-042-98], November 9, 1998, vol. 43, p. 65; amended by Ord. C-97-99 [PLG-019-99], November 22, 1999, vol. 44, p. 164; amended by Ord. C-130-99 [PLG-033-99], November 22, 1999, vol. 44, p. 172; amended by Ord. C-03-00 [PLG-002-00], April 10, 2000, vol. 44, p. 384, amendment to 17.02.110.A.3 and 4 effective October 12, 2000 when the October 12, 2000 Growth Management Hearings Board Final Decision and Order, Case Number 98-2-0023c, approved the 5-acre minimum lot size in the Rural (R)

⁶ **Reviser's Note:** Ordinance C-51-01, adopted May 14, 2001, vol. 45, p. 325, deleted new subsection 8, Protection Standards: Blue Flag Iris, added by Ordinance C-14-01, adopted March 1, 2001, vol. 45, p. 230, thereby retaining the original subsection numbering as reflected here.

Zone; amended by Ord. C-44-00 [PLG-011-00], June 5, 2000, vol. 44, p. 429, readopted June 19, 2000, vol. 44, p. 446; amended

by Ord. C-73-00 [PLG-017-00], August 7, 2000, vol. 44, p. 489; amended by Ord. C-78-00 [PLG-022-00], August 28, 2000, vol. 45, p. 10; amended by Ord. C-94-00 [PLG-018-00], December 4, 2000, vol. 45, p. 97; amended by Ord. C-14-01 [PLG-002-01], March 1, 2001, vol. 45, p. 230; amended by Ord. C-51-01 [PLG-008-01], May 14, 2001, vol. 45, p. 325; amended by Ord. C-55-04 [PLG-006-04], April 26, 2004, vol. 2004, p. 143)

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

A General standards: These standards shall apply to all applications for an alteration pursuant to ICC 17.02.040.F of a regulated wetland, deep water habitat, fish and wildlife habitat conservation areas or their buffers, unless modified by the Planning Director upon a determination that the anticipated alteration will preserve, improve and/or protect the wildlife habitat, natural drainage and/or other natural functions of the wetland, deep water habitat or fish and wildlife habitat conservation areas and will be consistent with the purposes of this Chapter without strict application of said standards. This determination may be made upon review of a study completed by a biologist, plant ecologist or similarly qualified professional. The study shall be prepared at the applicant's cost. As used in this section, wetlands shall refer to Category A and Category B wetlands.

1. Water quantity and quality. Uses permitted adjacent to wetlands and deep water habitats shall control stormwater runoff and protect the natural movement of water according to the following provisions:
 - a) General provisions:
 - (i) All surface water directed into wetlands and deep water habitats shall be passed through a vegetated detention pond or other stormwater management system incorporating a grass-lined swale approved by the Island County Engineer in order to remove sediments;
 - (ii) The best available treatment practices shall be used to remove toxic wastes, petrochemicals or other pollutants from stormwater before it enters any wetland or deep water habitat;
 - (iii) The velocity of stormwater runoff entering a wetland or deep water habitat shall be limited to pre-development levels;
 - (iv) Where possible, natural water level fluctuations in wetlands or deep water habitats shall be minimized during spring breeding season (April through June);
 - (v) Category A and Category B wetlands shall not be modified to function as stormwater retention/detention sites.
 - b) Category A wetlands. In wetlands rated Category A with no natural point of inflow (i.e., stream), any surface water directed towards the wetland as a result of an approved drainage plan shall filter through the water table or a drain field to avoid erosion and excess nutrient inflow.

2. Human access. The following provisions shall apply to controlling human access and encouraging appropriate use in wetlands:
 - a) No motorized vehicles shall be allowed within a wetland, fish and wildlife habitat conservation area or its buffer, except when allowed through Use Approval or as provided in section 17.02.050.A.4 and/or as the wetland or buffer may be traversed by a public or private roadway which existed on or before December 31, 1984 and the fish and wildlife habitat conservation area may be traversed by a public or private roadway which existed on or before October 1, 1998;
 - b) Any trails within a wetland shall be constructed with minimum disruption to habitat.
 - 3) Corridors. Where possible, wetlands should be connected to streams, to other wetlands or to undeveloped areas such as forest or Puget Sound by undisturbed corridors.
- B. Alteration Approval standards. Alteration of a wetland, a deep water habitat, fish and wildlife habitat conservation area or their buffers may be permitted only by Alteration Approval unless otherwise authorized in this Chapter. If such development is permitted, the following development standards shall apply:
1. If alteration in fact will not preserve, improve or protect the functions of the wetland, deep water habitat, fish and wildlife habitat conservation area or their buffers, then a determination shall be made that mitigation or restoration is feasible, and that the mitigation or restoration requirements of ICC 17.02.060 and/or 17.03.260 pertaining to a plan, monitoring and a bond or other security can be met; if such determination cannot be made, no alteration shall be authorized.
 2. When mitigation is required as a condition of approval of a wetland fish and wildlife habitat conservation areas alteration, the following requirements shall apply:
 - a) An ecological assessment of the wetlands or fish and wildlife habitat conservation areas to be lost or adversely altered shall be made, at the expense of the applicant, to determine the gross area of loss and the functions, habitat, and types, sizes and quantities of vegetation lost.
 - b) A mitigation plan shall be prepared by the applicant and approved by the Planning Director, and in the event the construction of a new wetland is included as a part of that plan, the earth moving, hydrology and vegetation planting requirements of the plan will be completed prior to the commencement of the proposed alteration. The Planning Director may call on state or other agencies to provide technical support in evaluating the plan. The mitigation plan shall include but not be limited to, the following:

- (i) Statements of goals. Such statements shall include a discussion of the functions and values lost and those planned for replacement;
 - (ii) Methods. Information discussing “what, where, when and how,” i.e., acreage of mitigation, wetland or other habitat types to be constructed/restored, location, dates for beginning and completing the project, methods of construction and maintenance requirements shall be included.
 - (iii) Standards of success. A qualitative and, to the extent possible, a quantitative description of what will be considered a successful, functioning wetland or fish and wildlife habitat conservation area shall be provided.
- c) Monitoring. Same as requirements set forth in 17.03.260.I.2.
 - d) Contingency plan. A plan which complies with the requirements of 17.03.260.I.1 may be required by the Planning Director to outline restorative measures to be taken should the mitigation fail or only partially succeed.
 - e) Bonding. A performance bond or other security in an amount to enable the County to carry out the mitigation plan should the applicant fail to do so shall be required.
3. The project should be located or designed to avoid habitats including wintering, breeding, rearing, feeding and nesting habitats and migration routes;
 4. Native vegetation to replace lost habitat for a particular species shall be planted;
 5. Artificial resting, hiding and breeding sites to replace losses shall be constructed;
 6. Aquatic substrate may be altered to produce an increase in fish, waterfowl, and shorebird organisms to replace losses;
 7. Dredge and/or fill of a wetland, a deep water habitat, stream, or their buffers shall not be permitted unless:
 - a) The benefits of the proposed use outweigh the impacts associated with the proposed use or the proposed use is water-dependent; and,
 - b) Mitigation areas will be provided which have greater value as a wetland, stream, or habitat than the area lost; and,
 - c) The amount dredged or filled is the minimum necessary to accomplish the proposed use; and,
 - d) Dredging is not solely for the purpose of obtaining fill; and,

- e) Leachate from polluted dredge spoil will be treated and will not enter surface waters; and,
 - f) The project is timed to avoid interference with fish and wildlife migrations, rearing, spawning or nesting.
8. Habitat replacement should provide an insurance factor to take into account the risk of mitigation and the loss of fish and wildlife until the mitigation site becomes productive;
 9. Cumulative impacts of the proposed development shall be considered. Thus development shall not be considered a precedent allowing further development; and,
 10. Where possible, development should be located in the buffer rather than the wetland or fish and wildlife habitat conservation areas.

(Ord. PD-84-22, December 18, 1984, eff. December 31, 1984, vol. 23, p. 322; amended by Ord. PD-85-06, October 7, 1985, vol. 24, p. 441; amended by Ord. PD-86-14, June 16, 1986, vol. 25, p. 383; amended by Ord. C-45-88, June 20, 1988, vol. 28, p. 290; amended by Ord. C-29-89, March 13, 1989, vol. 29, p. 288; amended by Ord. C-41-89, April 10, 1989, vol. 29, p. 357; amended by Ord. C-48-89, April 24, 1989, vol. 29, p. 380; amended by Ord. C-87-90 and PLG 011-90, June 25, 1990, vol. 31, p. 249; amended by Ord. C-161-90 and PLG 025-90, September 17, 1990, vol. 31, p. 425; amended by Ord. C-170-90 and PLG 028-90, October 1, 1990, vol. 31, p. 449; amended by Ord. PLG-052-92, October 12, 1992, vol. 34, p. 392; amended by Ord. PLG-066-92, December 21, 1992, vol. 35, p. 61; Amended by Ord. C-36-94, June 13, 1994, vol. 37, p. 185; amended by Ord. C-69-94, November 28, 1994, vol. 37, p. 465; amended by Ord. C-79-95, November 6, 1995, vol. 39, p.121; amended by Ord. C-62-98 [PLG-014-98], September 14, 1998, effective October 1, 1998, vol. 42, p. 434; accepted by Res. C-133-98 [PLG-043-98], October 19, 1998, vol. 43, p. 38; amended by Ord. C-78-99 [PW-37-99], July 12, 1999, vol. 43, p. 377; amended by Ord. C-55-04 [PLG-006-04], April 26, 2004, vol. 2004, p. 143)

17.02.070 Severability

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

(Ord. PD-84-22, December 18, 1984, eff. December 31, 1984, vol. 23, p. 322)

PROTECTED SPECIES

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

NON-NATIVE WETLAND SPECIES

<u>Iris pseudocorus repens</u>	Yellow Iris
<u>Juncus effusus</u>	Soft Rush
<u>Myriophyllum spicatum</u>	Eurasian Millfoil
<u>Ranunculus repens</u>	Creeping Buttercup
<u>Phalaris arundinacea</u>	Reed Canarygrass

SPECIES OF LOCAL IMPORTANCE

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

HABITATS OF LOCAL IMPORTANCE

Bos Lake¹
Crockett Lake¹
Deer Lagoon¹

Newman Road Lakes¹
Cultus Bay Flats¹
Whidbey Island Game Farm¹

Penn Cove¹
Hastie Lake¹
Useless Bay¹

¹ Habitats of Local Importance - as shown on a map dated August 28, 2000 adopted by Ordinance C-78-00.

Reviser's Note: Maps depicting Habitats of Local Importance may be obtained from the Island County Planning Department.