

**EXHIBIT C**

**Chapter 17.02B  
NEW Critical Areas Ordinance**

**Sections:**

**17.02B.010 Authority**

**17.02B.020 Designated Critical Areas**

**17.02B.030 Definitions..... C-4**

**17.02B.040 Critical Area Administration..... C-15**

    A. Critical Area Review

    B. Critical Area Protection

    C. Rural Stewardship Plans

    D. Review Process

    E. Alteration of Critical Areas

    F. Property Assessment

    G. Penalties and Enforcement

**17.02B.050 Specific Use Standards ..... C-21**

    A. Single Family Dwelling on Existing Lot

    B. Reasonable Use

    C. Public Transportation and Utility Projects

    D. Voluntary Restoration

    E. Base Density Exception

    F. Agricultural Activities

**17.02B.060 Exempt Activities and Uses..... C-25**

    A. Forest Practices

    B. Operation and Maintenance Activities

    C. Site Investigation Work

    D. Emergency Actions

    E. Recreation on Small Lakes

    F. Existing Residential Landscaping and Agriculture

    G. Selective Vegetation Removal

    H. Passive Activities

    I. Removal of Beaver

**17.02B.070 Critical Area Mitigation..... C-26**

    A. General Mitigation Standards

    B. Off-site Mitigation

**17.02B.080 Monitoring and Adaptive Management ..... C-28**  
A. Purpose  
B. Guiding Principles  
C. Baseline Monitoring  
D. Source Identification  
E. Monitoring Trends  
F. Adaptive Management  
G. Wetland Monitoring Reports

**17.02B.090 Wetlands ..... C-34**  
A. **Regulated Wetlands**  
B. Wetland Mapping  
C. Wetland Reports  
D. Land Use Intensity  
E. Wetland Classification System  
F. Wetland Buffers  
G. Wetland Buffer Modification  
H. Wetland Mitigation Standards  
I. Wetland Mitigation Ratios  
J. Wetland Mitigation Plans  
K. Wetland Mitigation Banks

**17.02B.100 Fish and Wildlife Habitat Conservation Areas (Reserved)**

**17.02B.110 Severability**

**17.02B.120 Effective Date**

**17.02B.010 Authority**

- A. This chapter shall be known as the New Island County Critical Areas Ordinance (New CAO) and is hereby adopted under the authority of Chapters 36.70, 36.70A, 39.34, 43.21C, 58.17, 76.09, 84.33, 84.34 and 90.58 RCW.
- B. The New CAO is to be administered flexibly with attention to site-specific characteristics of Critical Areas. It is not the intent of the New CAO to make any parcel or Lot unusable; or deny an Owner Reasonable Use; or prevent the provision of planned public facilities and services.

**17.02B.020 Designated Critical Areas**

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

- A. Wetlands. Wetlands are regulated by this Chapter, Chapters 17.02A and 17.03 ICC; the health regulations governing the design and installation of on-site sewage systems; the Land Development Standards Ordinance, Chapter 11.01 ICC; the Clearing and Grading Ordinance, Chapter 11.02.ICC; the Storm Water Management Ordinance, Chapter 11.03 ICC; and, the Shoreline Master Program, Chapter 17.05 ICC.
- B. Fish and Wildlife Habitat Conservation Areas. Fish and Wildlife Habitat Conservation Areas are regulated by Chapters 17.02A and 17.03 ICC; 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.
- C. Geologically Hazardous Areas. Geologically hazardous areas are regulated by Chapters 11.02 and 11.03 ICC.
- D. Frequently Flooded Areas or Floodplains. Frequently flooded areas, also referred herein to as floodplains are regulated by the Flood Damage Prevention Ordinance, Chapter 14.02A ICC.
- E. 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 by sections ICC 8.09.097 and 8.09.099 of Potable Water and Supply and the Land Development Standards, Chapter 11.01 ICC.

### 17.02B.030 Definitions

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

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

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

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

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

**Alteration of a Wetland, a Deepwater Habitat or a Fish and Wildlife Habitat Conservation Area:** In any Wetland, Deepwater Habitat, or a Fish and Wildlife Habitat Conservation Area or required Buffer, the placement, erection or expansion of any solid material or Structure; the discharge or disposal of any dredged material or waste, including filling, grading, channelization, removing, dredging, draining, mining or extraction of any

materials; the removal or harvesting of trees or other vegetation; and modification for use as a storm water retention/detention facility.

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

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

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

**Areas with a Critical Recharging Effect on Aquifers Used for Potable Water or Aquifer**

**Recharge Areas:** Areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water.

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

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

- (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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Exemptions:** A specific activity or Use allowed by the County to be conducted in a Critical Area or Critical Area Buffer if it complies with the standards established in ICC 17.02B.060.

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

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

**Existing Lot:** A Lot or parcel of land which meets the definition of "Existing".

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

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

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

**Farmed Wet Meadows:** Shall mean those Wetlands whose vegetative cover has been sufficiently modified in the past as a result of grazing, seeding, cutting for hay or other

agricultural practices, such that they are dominated by a pasture species (such as blue grass, orchard grass, fescue, clovers, reed canary grass, etc.) and invasive wetland species indicative of continuous disturbance. They often are saturated or have standing water during the wet season and part of the Growing Season but are often dry during the summer months.

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

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

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

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

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

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

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

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

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

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

Alderwood fine sandy loam (Ab)

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

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

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

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

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

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

**Land Use Intensity:** A determination by the Department for every Development Proposal regulated by this Chapter. Intensity shall be based on the type, character, density and location of the proposed Use or Structure as well as the Cleared Area proposed by the Development Proposal and potential adverse impact that may be caused by the Development Proposal. Land Use Intensity is used to determine the size of a Wetland Buffer.

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

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

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

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

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

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

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

**Mature Forested Wetland:** A Wetland one quarter (1/4) acre or larger in size in which the tree canopy within the vegetated part of the Wetland is comprised predominantly of Sitka Spruce, Western Red Cedar, Red Alder, or Western Hemlock having diameters exceeding eighteen (18) inches measured at 4.5 feet above ground level. County maps will identify Mature Forested Wetlands as they are located through reviews of Development Proposals.

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

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

**Mitigation Banks:** A site where Wetlands are Re-established, Rehabilitated, Enhanced, Preserved or Created expressly for the purpose of providing Mitigation in advance of any specific Development Proposal. Mitigation Banks must qualify and be certified under Chapter 173-700 before they can be established and used in Island County.

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

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

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

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

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

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

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

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

**Planning Director:** The Planning and Community Development Director of Island County, Washington, or his or her authorized representative.

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

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

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

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

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

**Reasonable Use:** The logical or rational use of a specific parcel of land which a person can be expected to conduct or maintain fairly and appropriately under the specific circumstances, considering the size of the Lot, the type of Use or Structure proposed and similar Existing or allowed Uses and Structures in the general vicinity of the Lot.

**Rehabilitation:** A Mitigation action or actions that repairs or revitalizes natural or historic Functions of a degraded Wetland or Wetland Buffer. *See, Mitigation.*

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

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

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

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

**Restoration:** Measures taken to repair, revitalize or otherwise return to their previous functioning condition Critical Areas or Critical Area Buffers. Restoration is required for Critical Areas or Critical Area Buffers which have been lost or damaged through unauthorized Alteration activities and natural regeneration processes are found to be inadequate to restore the functions of the Critical Area or Critical Area Buffer. Restoration may also occur voluntarily after the County has approved a specific plan for the voluntary

Restoration. Restoration requirements for unauthorized Alterations are found in ICC 17.03.260.I.

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

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

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

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

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

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

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

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

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:** Areas where naturally occurring surface water 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, silt beds and defined channel swales. The channel or bed need not contain water year-round. This definition is not intended to include irrigation or drainage ditches or swales, canals, storm or surface water run-off devices or other artificial watercourses unless they are used by salmonids or to convey Streams naturally occurring prior to construction of such watercourse.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Wetland Professional:** A person with both professional education typically a B.S. or higher degree in biology, environmental studies or related field, as well as training and experience in Wetland technical issues such as experience performing Wetland classification and delineations, assessing Wetland Functions, analyzing impacts to Wetlands, and designing Mitigation. A Wetland Professional should be a certified professional Wetland scientist or have a minimum of five (5) years of experience in Wetland technical issues.

**Wetland Report:** A study prepared by the County or a Wetland Professional.

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

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

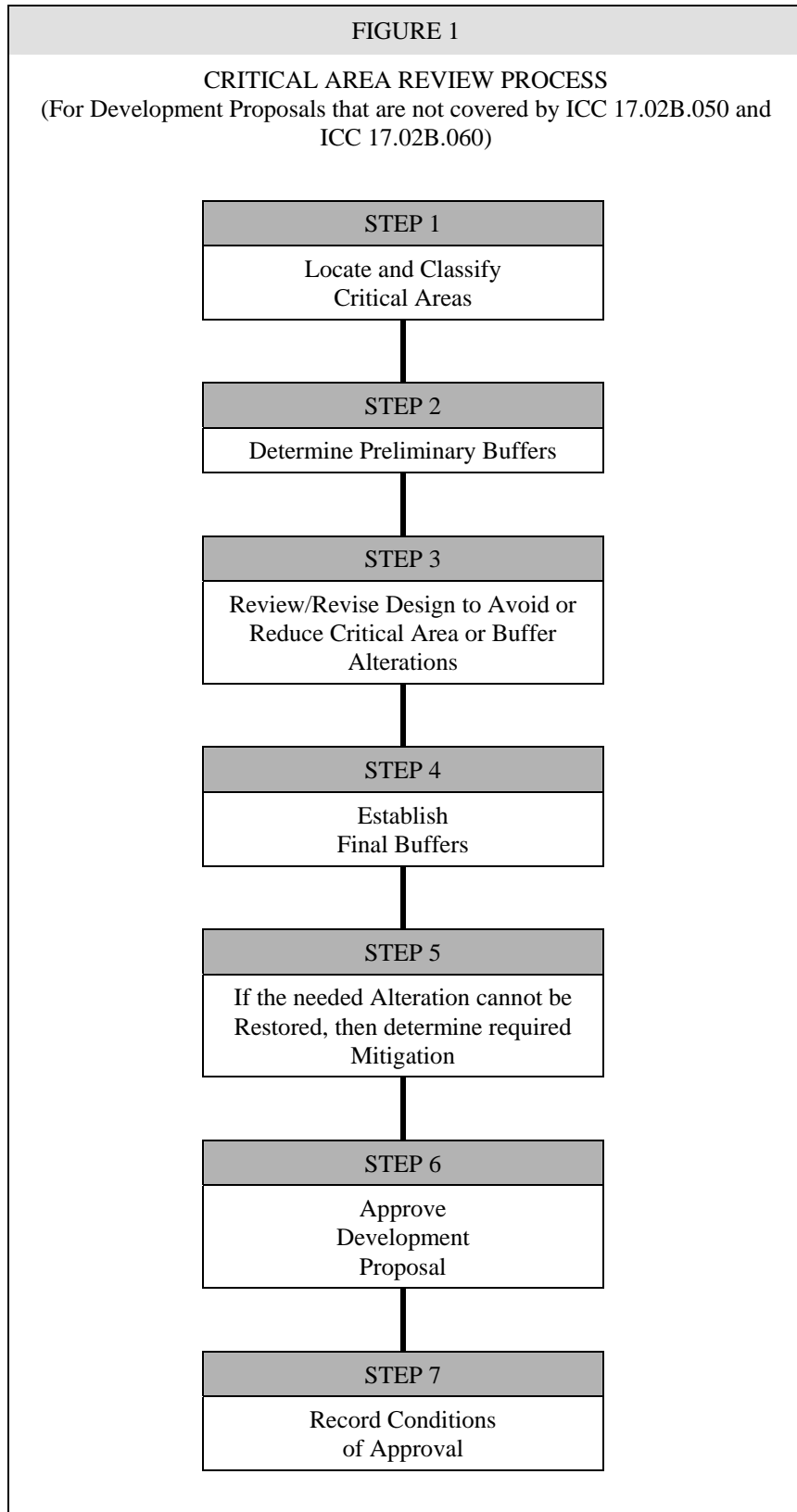
**Wetlands Associated with a Bog, Coastal Lagoon or Delta Estuary:** A Wetland that has a Wetland Outlet that connects the Wetland directly to a Bog, Coastal Lagoon or Delta Estuary, or is within 500 feet of a Bog, Coastal Lagoon or Delta Estuary in an uphill direction and within the same Contributing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

## 17.02B.040 Critical Area Administration

### A. Critical Area Review.

1. The New CAO applies to all Development Proposals. Unless expressly stated otherwise, Existing Uses are not affected by this Chapter. Before any new Development Proposal for a Lot that contains or is affected by a Critical Area or Critical Area Buffer may be approved by the County, a Critical Area review shall be completed by the Department as set forth below.
2. Unless an Owner or applicant voluntarily elects otherwise, Development Proposals that have been reviewed and approved under prior Critical Area regulations (December 31, 1984 for Wetlands and October 1, 1998 for other Critical Areas) shall be governed by any conditions and restrictions established by the County for the approved Development Proposal.
3. Unless an Owner or applicant voluntarily elects otherwise, all Agricultural Activities shall comply with the Old CAO, Chapter 17.02A ICC, and not this Chapter.
4. Unless an Owner or applicant voluntarily elects otherwise, Development Proposal applications that have been submitted prior to the effective date of this Chapter, shall be reviewed under the Critical Area regulations in effect on the date the application was determined to be complete.
5. For all other Development Proposals on Lots that contain or are affected by a Critical Area or Critical Area Buffer that are not covered by ICC 17.02B.060 and that require an Alteration of the Critical Area or Critical Area Buffer, the County shall apply the following Critical Area review criteria:
  - a) **Avoidance.** When Practical and Reasonable, Alteration of a Critical Area or Critical Area Buffer shall be avoided; and
  - b) **Reduction.** When avoidance of a Critical Area or Critical Area Buffer is not Practical and Reasonable, then the Alteration shall be reduced in scale or magnitude. The following actions are examples of techniques that may be used to reduce the scale or magnitude of a Development Proposal:
    - (i) reducing the size of the Development Proposal;
    - (ii) relocating the Use or Structure(s) on the site;
    - (iii) modifying the timing of construction of the Use, Structure or Clearing activities;
  - c) **Restoration.** When avoidance or reduction of the scale or magnitude of a Development Proposal is not Practical and Reasonable, then the impacts of the Alteration shall be rectified by Restoring the area affected by the Alteration; and
  - d) **Mitigation.** When action under subsections a), b) or c) is not Practical and Reasonable, then compensation for the Alteration is achieved through Mitigation.

6. As depicted in Figure 1, after the effective date of this Chapter, the Critical Area review of Development Proposals for activities and Uses that are not covered by ICC 17.02B.050 and ICC 17.02B.060, shall include:
  - a) Determining whether a Critical Area or Areas is/are located on or affect the Lot;
  - b) If a Buffer is required, initially establishing the appropriate Buffer for the Critical Area;
  - c) Applying the Critical Area review criteria set forth in ICC 17.02B.040.A.5, determining whether the Development Proposal will require approval of an Alteration of the Critical Area or Critical Area Buffer;
  - d) Establishing final Buffers and for Wetlands determining whether Buffers need to be increased, whether Buffers may be decreased or whether Buffer averaging is appropriate;
  - e) If an Alteration is required, establishing the Mitigation needed to compensate for the Alteration; and
  - f) After final approval, recording conditions of approval.
7. If any provision of this Chapter conflicts with any other provision of this Chapter or any other ordinance adopted by the Island County Board of Commissioners, Critical Area review shall be based on the more stringent requirement, regulation, restriction standard or limitation.
8. For any Development Proposal that requires an Alteration, the Alteration shall not be granted if the need for the Alteration is due to action(s) by the applicant or owner after December 31, 1984 (Wetlands) or October 1, 1998 (other Critical Areas) that:
  - a) Were regulated under this Chapter but did not receive County authorization; or
  - b) Were not regulated under the County's Land Division regulations, Chapter 16.06 ICC.
9. For any Development Proposal (1) or (2), the Planning Director may reduce development standards required by Chapter 11.01 and 17.03 ICC when the modification will reduce the otherwise required Alteration. Such modifications shall be considered before reducing standards that protect Critical Areas and may be allowed without requiring a Variance.
  - a) Zoning Setbacks may be modified as follows:
    - (i) One hundred (100) foot Front Yard and fifty (50) foot Side and Rear Yard Setbacks may be reduced up to fifty percent (50%); and
    - (ii) All other required Front and Rear Yard Setbacks may be reduced up to ten percent (10%).
  - b) Other Development Standards may be modified when public health or safety is not impaired.



**B. Critical Area Protection**

1. Critical Areas and Critical Area Buffers shall be shown on all plats, short plats, site plans, or PRDs, and any conservation easement(s) and approved covenants.
2. Critical Area Buffers shall be measured horizontally and perpendicularly to the edge of the Critical Area on all sides.
3. Markers. The Department may require that the outer edge of a Critical Area or Critical Area Buffer be permanently identified by markers that are clearly visible, durable and permanently affixed to the ground.
4. Fencing. Temporary construction fencing shall be required when vegetation is to be retained in an undisturbed condition within the Critical Area or Critical Area Buffer. Permanent Fencing may be required along the Critical Area or Critical Area Buffer when such fencing is determined to be the most effective means of protecting the Critical Area or Critical Area Buffer.
5. Signage. The Department may also require that permanent signage be installed along the edge of a Critical Area or Critical Area Buffer.
6. Notice on Title. For all approved Development Proposals regulated under this Chapter and for all approved Rural Stewardship Plans, the Department shall record a notice with the Island County Auditor. Said notice shall describe the Type of Critical Area found on the property and/or whether any restrictions or conditions have been imposed by the Department. Notice shall also be recorded when a Rural Stewardship Plan has been approved.
7. Unless otherwise noted expressly, all Development Proposals may be approved by the County only after the County has applied the Critical Area review criteria set forth in ICC 17.02B.040.A.5.

**C. Rural Stewardship Plan.**

1. The goals of a Rural Stewardship Plan are to:
  - a) Improve the stewardship of land resources through voluntary actions;
  - b) Maintain and/or improve natural hydrologic systems and Critical Area Functions;
  - c) Promote Rural Character and rural lifestyles; and
  - d) Maintain and/or improve Habitat for Protected Species and Species and Habitats of Local Importance.
2. Rural Stewardship Plans and amendments to adopted Plans may be approved by the Department for Lots one (1) acre and larger in size when the Plan is consistent with the Rural Stewardship Guide prepared by the County. The Guide shall be prepared by the Director and approved by the Board of Commissioners as a Type IV decision under Chapter 16.19 ICC.
3. A Rural Stewardship Plan is not effective until approved by the Department. Before

- approval, the County may conduct a site inspection to verify that the Plan is reasonably likely to accomplish the goals for Rural Stewardship Plans.
4. Once approved by the County, a notice will be recorded by the County that the Plan has been approved. Thereafter, all Uses, Structures and activities conducted on the property shall be consistent with the Plan as approved. Any change in Uses, Structures or activities governed by the Plan that the approved Plan does not allow, must first be authorized by a Plan amendment approved by the Department.
  5. A Rural Stewardship Plan allows an Owner to be eligible for:
    - a) A reduction in property tax through the County's Public Benefit Rating System; or
    - b) A reduction in the Land Use Intensity that would otherwise be assigned to the Uses and Structures included in the Plan; and
    - c) An expedited approval process for all Uses and Structures included in the Plan that require County approval of a Development Proposal.

#### **D. Review Process**

1. Single Family Dwellings on Existing Lot and Reasonable Use. A Single Family Dwelling on an Existing Lot shall be reviewed under the process set forth for Type I decisions in Chapter 16.19 ICC. All Reasonable Use requests shall be reviewed under the process set forth for Type II decisions in Chapter 16.19 ICC.
2. Base Density Exceptions. Base Density Exceptions shall be reviewed under the process set forth for Type III decisions in Chapter 16.19 ICC.
3. All Other Development Proposals. For all other Development Proposals located on property which contains or is affected by a Critical Area or Critical Area Buffer, the applicable Critical Areas regulations shall be applied to the underlying permit through the review process applicable to that permit.
4. Wetland Map Corrections. Requests to correct a Wetland Map shall be reviewed under the process set forth for Type I decisions in Chapter 16.19 ICC.
5. Rural Stewardship Plan. A Rural Stewardship Plan shall be reviewed under the process set forth for Type I decisions in Chapter 16.19 ICC. Provided, if the Plan is submitted with a Development Proposal, then the Plan will be reviewed through the review process applicable to the Development Proposal.
6. Restoration Plans. Voluntary Restoration Plans shall be reviewed under the process set forth for Type I decisions in Chapter 16.19 ICC. Compliance Restoration Plans required by an Enforcement Order will be reviewed under the review process set forth for Type II decisions in Chapter 16.19 ICC.

**E. Alteration of Critical Areas.**

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

**F. Property Assessment.**

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

**G. Penalties Enforcement.**

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

**17.02.050 Specific Use Standards****A. Single Family Dwellings on Existing Lots.**

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

1. Buffer Alteration has not and will not exceed cumulatively 2,800 square feet;
2. The Development Proposal is a Reasonable Use of the Lot and the Alteration of the required Buffer has been reduced as required by ICC 17.02B.040.A.5.
3. Adverse impacts resulting from Alterations of a Steep Slope or Geologically Hazardous Area are minimized;
4. If the Alteration cannot be Restored as required by ICC 17.2B.040.A.5, the proposal includes Mitigation required by this Chapter;
5. Temporary disturbance of Critical Areas and their Buffers will be immediately repaired; and
6. This action does not allow Wetlands or Fish and Wildlife Habitat Conservation Areas or their Buffers to be converted to lawn or residential landscaping.

**B. Reasonable Use.**

Nothing in this Chapter is intended to preclude Reasonable Use of property. Strict application of the Critical Area regulations contained in this Chapter shall not cause the denial of Uses allowed under Chapter 17.03 ICC including a Single Family Dwelling that does not qualify for review under Section A. A Development Proposal that requires an

Alteration of a Critical Area or Critical Area Buffer that cannot be avoided as required by ICC 17.02B.040.A.5 shall be approved when:

1. A report on Reasonable Use has been prepared. The report shall include:
  - a) A description of the function and condition of the Critical Area and/or Critical Area Buffer that would be Altered;
  - b) An analysis of the affect of the Development Proposal on the Critical Area and or Critical Area Buffer;
  - c) A description of actions that can be taken to modify the Development Proposal to avoid or reduce the Alteration of the Critical Area and/or Critical Area Buffer and a discussion of whether these modifications are Practical and Reasonable;
  - d) An explanation of why the Development Proposal should be considered a Reasonable Use considering the size of the Lot, the type of use proposed and similar Uses that either Exist or are allowed within the vicinity of the Development Proposal;
  - e) If the Alteration cannot be Restored as required in ICC 17.02B.040.A.5, a Mitigation Plan.
2. The Development Proposal is a Reasonable Use of the Lot and the Alteration has been reduced as required by ICC 17.02B.040.A.5; and
3. The Development Proposal includes Mitigation required by this Chapter.

**C. Public Transportation and Utility Projects.**

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

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

**D. Voluntary Restoration.**

Some Wetlands and Wetland Buffers were Altered prior to adoption of Wetland regulations (December 31, 1984) or the Alteration occurred after the implementation of Wetland regulations but the Alteration was not regulated. Voluntary Restoration of these Altered Wetlands and Wetland Buffers is encouraged, as well as Enhancement of Wetlands and Wetland Buffers, and shall be approved by the Department upon approval of a specific

plan for the voluntary Restoration.

**E. Base Density Exception.**

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

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

**F. Agricultural Activities**

Agricultural Activities may intrude or continue to intrude in Critical Areas and Critical Area Buffers, as follows:

1. Low Intensity Agriculture shall protect Critical Areas through the implementation of a Standard Farm Plan or, if the owner or lessee elects, a Custom Farm Management Plan.
2. Medium Intensity Agriculture shall protect Critical Areas through the implementation of a Custom Farm Management Plan.
3. High Intensity Agriculture shall protect Critical Areas through compliance with federal and state regulations for dairies, animal feeding operations and concentrated animal feeding operations when applicable or through implementation of a Custom Farm Management Plan.
4. A Standard Farm Management Plan shall be prepared by the Director and approved by the Board of Commissioners as a Type IV decision under Chapter 16.19 ICC.
5. A Custom Farm Management Plan shall be prepared for a property by the owner, lessee or a farm planning consultant if they have received training and are certified by the NRCS or prepared by the Whidbey or Snohomish Conservation Districts or Island County. The Custom Plan shall apply NRCS BMPs to protect Critical Areas affected by Existing and On-going Agricultural Activities. The Record of Decision contained in the Plan prepared by an owner, lessee, the County or farm planning consultant shall be processed by the County as a Type I decision pursuant to Chapter 16.19 ICC.
6. To the fullest extent possible, the County and Conservation Districts shall rely on farm plans (that apply NRCS BMPs) approved by State or Federal agencies to satisfy

the requirements of this section relating to Standard and Custom Farm Management Plans.

7. Existing permanent improvements that were lawfully erected, installed or constructed shall not be required to be modified to comply with the requirements of this Chapter pertaining to Agricultural activities, unless such modification is required by ICC 17.03.230. Permanent improvements shall include such features as buildings, structures, bridges, drainage facilities, farm ponds, road, driveway, and laneways. Examples of features that are not permanent improvements include fences, filter strips, confinement areas, nutrient storage areas, watering troughs, and pasture locations.
8. Previously approved Farm Management Plans and/or lawfully erected, installed or constructed Best Management Practices, located on Commercial Agriculture and Rural Agriculture lands in order to comply with the requirements of Ordinance C-151-99, shall not be required to be modified to comply with updated BMPs adopted through the enactment of Ordinance PLG-021-05; unless such modification is required by ICC 17.02.230. This shall include fencing that was installed, stream crossings that were constructed, filter strips established, nutrient management systems implemented, barns erected, etc.

#### **17.02B.060 Exempt Activities and Uses**

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

- A. **Forest Practices.** Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practice regulations, Title 222 WAC, and which are Exempt from Island County jurisdiction.
- B. **Operation and Maintenance Activities.** Operation, Maintenance, reconstruction, remodeling or repair of Existing Structures and serviceable infrastructure improvements including, utilities, wells, septic drain fields, public or private roads, paths, bicycle ways, trails, bridges, ditches, dikes, tide gates and storm drainage facilities when Best Management Practices are implemented. This Exemption shall not apply to tidegates which historically drained Wetlands where: (i) lack of maintenance of the tidegate for five (5) consecutive years has allowed positive indicators of Wetland hydrology, Wetland Vegetation and hydric soils to become established; and (ii) maintenance or repair of the tidegate would result in adverse Alteration of Wetland hydrology. Operation and maintenance Activities shall be conducted consistent with ICC 17.023.040.A.5.
- C. **Site Investigation Work.** Site investigative work necessary for land use application submittals such as surveys, soil logs, and percolation tests involving no fill or use of heavy equipment in a Wetland, or a Fish and Wildlife Habitat Conservation Area or their Buffers.

Provided that Best Management Practices are implemented and any area excavated for soil logs or percolation tests is filled pursuant to ICC 8.07C.110.H.3.d). Site Investigation Work shall be conducted consistent with ICC 17.02B.040.A.5.

- D. **Emergency Actions.** Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation. The 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. Emergency Actions shall be conducted consistent with ICC 17.02.040.A.5.
- E. **Recreation on Small Lakes.** 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 Deepwater Habitats one (1) acre or greater in size when such activities are for recreational purposes and do not involve Alteration of or construction through, over or in a regulated Wetland.
- F. **Existing Residential Landscaping and Agriculture.** Planting, irrigating, fertilizing, spraying, mowing and pruning and maintenance and repair of yard or garden structures when such activities are part of existing normal residential landscaping activities and no building permit is required. Residential Agriculture includes uses that are considered Accessory Uses under Chapter 17.03 ICC. Accessory Uses must be incidental to or secondary to a single family dwelling. Examples of Residential Agriculture include vegetable/flower gardens or orchards normally associated with a rural home and animal husbandry involving less than one (1) Animal Unit per two and one-half (2.5) acres. This Exemption does not allow further intrusion into a Wetland, Fish and Wildlife Habitat Conservation Area, Geologically Hazardous Area or their Buffers.
- G. **Selective Vegetation Removal.** Removal of the following vegetation from Critical Areas and/or Critical Area Buffers provided that, the following conditions are met:
- a) The removal or control of noxious weeds listed in Chapter 16-750 WAC; and
  - b) The removal or control of Invasive Species including, Himalayan Blackberry and Evergreen Blackberry shall be with hand labor, herbicides and/or light equipment. Use of heavy equipment may be allowed if approved by the Department. All herbicide applications in aquatic environments shall conform to the rules of the Department of Ecology, Department of Agriculture and Department of Natural Resources, pursuant to Chapters 173-201, 16-228, and 222 WAC; and
  - c) All noxious weeds or Invasive Species removed from a Critical Area or Critical Area Buffer shall be removed using Best Management Practices and shall be taken away and disposed of appropriately. Revegetation with appropriate Native plant Species at natural densities is allowed in conjunction with the removal.
- H. **Passive Activities.** Provided no gasoline powered, motorized boats or equipment are used, conservation, recreation, education and scientific research activities within Critical

Areas and Critical Area Buffers including fishing, hunting, hiking and bird watching. Installation of fences to protect Habitat and trails in Buffers is allowed provided Best Management Practices adopted by the County are implemented.

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

## **17.02B.070 Critical Area Mitigation**

### **A. General Mitigation Standards**

1. Mitigation shall be required to compensate for any approved Alteration of a Wetland or Fish and Wildlife Habitat Conservation Area or Buffer for these Critical Areas. Mitigation requirements shall be established after determining that the Alteration cannot be avoided or reduced as required by ICC 17.02B.040.A.5.
2. Unless clearly specified otherwise, all Mitigation required under this Chapter shall be based on an approved Mitigation Plan. Mitigation Plan requirements for Wetlands are set forth in ICC17.02B.090 and for Fish and Wildlife Habitat Conservation areas in Chapter 17.02A.ICC. All Mitigation shall be Monitored, typically by the Applicant, and a Contingency Plan shall be required for any approved Mitigation.
3. Mitigation shall not be implemented until approved by the County. The applicant shall notify the Department when Mitigation has been completed and shall provide the Department reasonable access to the Mitigation to allow inspections during the Monitoring period.
4. Because it takes time to verify that Mitigation is achieving established goals, the area committed to Mitigation will generally be larger than the area that has been Altered. Mitigation ratios established by this Chapter provide general guidance. However, specific requirements shall be determined by the Planning Director on a case-by-case basis. Re-establishment and Rehabilitation are the preferred forms of Mitigation. These forms of Mitigation should be considered as well as Creation before Enhancement or Preservation is permitted.
5. If Mitigation is required under this Chapter to compensate for the Alteration of a Critical Area or Critical Area Buffer, an applicant shall Monitor the performance of any required Mitigation. If Monitoring identifies that the Mitigation is failing to achieve the goals established in an approved Mitigation Plan, the applicant shall implement the approved Contingency Plan. The Contingency Plan shall constitute new Mitigation and shall meet all requirements for Mitigation required by this Chapter.
6. Conveyance by deed or easement of a Critical Area, its Buffer and Mitigation sites to a land trust, similar conservation organization or governmental agency is encouraged when such conveyance will ensure the long-term Maintenance and protection of the Critical Area or Critical Area Buffer.

7. All Mitigation sites shall be managed to prevent degradation and ensure protection of Critical Area functions in perpetuity. Permanent protection shall be achieved through deed restriction, conservation easement or protective covenant.
8. When Practical and Reasonable, Mitigation should be completed prior to commencing activities that will Alter a Critical Area or Critical Area Buffer. In all other cases, Mitigation shall be completed concurrent with or as quickly as possible following the Alteration. Construction of Mitigation projects shall be timed to minimize impacts to plants and animals. The Director may adjust timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).
9. Mitigation shall create an encumbrance only on a Lot or Lots owned by the proponent of the Mitigation. Mitigation may encumber or restrict the Use of an adjacent Lot only if the Owner of such Lot consents in writing to the encumbrance or restriction.

## **B. Off-site Mitigation**

1. Generally, all Mitigation shall be on the property containing the affected Critical Area. However, on-site Mitigation is not always the most effective option. Preference shall be given to sites that provide highest ecological benefits and therefore off-site Mitigation or payment in lieu of Mitigation may be preferred over on-site Mitigation.
2. The Planning Director may approve off-site Mitigation if an applicant demonstrates that:
  - a) It is not Practical and Reasonable to Mitigate on-site; or
  - b) Improved or greater ecological benefits can be achieved by off-site Mitigation.
3. When off-site Mitigation for the Alteration of a Wetland is authorized, the Planning Director shall give first priority to locations within the same Contributing Area and second priority to locations within the same Watershed. Locations outside the Watershed may be considered only if the Planning Director determines that first and second priority locations are not reasonably available for off-site Mitigation
4. The Department may also develop a program for Wetlands and Streams to allow payment of a fee in lieu of providing on-site or off-site Mitigation. The fee program should be available for use when on-site or off-site Mitigation is not Practical and Reasonable. A fee in lieu of on-site or off-site Mitigation is also appropriate when greater ecological benefits can be achieved through the use of fees. The Mitigation fee program shall include:
  - a) The specific circumstances when payment of a Mitigation fee will be permitted;
  - b) The structure or method for calculating the amount of the Mitigation fee; and
  - c) The specific procedures for establishing locations and Wetland Categories or Types where or for which Mitigation fees may be used.

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

#### **17.02B.080 Monitoring and Adaptive Management.**

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

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

- A. Purpose.** The primary purpose of the County's Wetland Monitoring Program will be to determine the overall health of a Wetland. To do so, the County will track both chemical indicators through measuring water quality and biological indicators by sampling Wetland Vegetation. These measures will be used to evaluate the effectiveness of County regulations.
- B. Guiding Principles.** The following principles will be used to guide the implementation of the Wetland Monitoring Program and any Adaptive Management actions that are used by the County to address a decline in Wetland health, should a decline be identified through the Monitoring Program that is adversely affecting Wetlands.
  1. Vegetation Monitoring as well as water quality Monitoring shall be conducted in Wetlands to which the County has been granted access, and which represent a range of surrounding land uses and Buffer widths. Wetland Vegetation Monitoring will focus on measuring changes in the species composition and the surface area of herbaceous vegetation. Water quality Monitoring will track change in water quality parameters. For a given Wetland, change will be analyzed at five year intervals. Changes in overall cover of woody vegetation will be interpreted from aerial imagery.
  2. The identification of the source or sources of the decline in Wetland health shall generally follow after commencing Monitoring. However, existing data may trigger Compliance Assessment and/or Source Identification when the existing data reliably documents an on-going decline.
  3. Both water quality and vegetation Monitoring shall utilize the best available "peer reviewed" protocols for sampling and measuring contaminants and changes in Wetland Vegetation.

4. Except when authorized pursuant to ICC 17.03.260A, access to private property to conduct Baseline Monitoring or Source Identification shall only occur if the property owner voluntarily consents in writing to such access.
5. If Baseline Monitoring identifies a significant elevation of water quality contaminants of more than a 10% increase in the percent cover of non-native herbaceous vegetation or more than a 10% change in species richness, the first step initiated by the County will typically be Compliance Assessment to determine whether a source or sources of the contamination or plant community change can be readily identified. Subsequently, the County may initiate Source Identification.
6. The Monitoring Program shall be conducted in a manner that encourages the involvement of property owners and voluntary compliance. Educational outreach will be the first action taken by the County after Compliance Assessment or Source Identification determines that an Exceedence is attributable to a specific source or sources.
7. Adaptive actions initiated by the County to address non-point source contamination and spread of non-native plants that are adversely affecting Wetland health shall usually be through legislative changes in Critical Area regulations typically applied county-wide and applicable to new and not Existing Uses.

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

1. Monitoring parameters used by the County to establish baseline conditions shall include:
  - a) Dissolved Oxygen;
  - b) Fecal Coliform;
  - c) Nitrate;
  - d) pH;
  - e) Phosphorus;
  - f) Temperature;
  - g) Turbidity;
  - h) Conductivity;
  - i) Hardness; and
  - j) Wetland Vegetation
2. The parameters listed above may be changed by the Board from time to time based on data from Baseline Monitoring; changed standards of State or Federal agencies; or the need to assess the potential adverse effect of unlisted parameters on Wetlands.

**D. Source Identification.**

1. Generally, Source Identification will be initiated only after Baseline Monitoring has identified contaminants that exceed County adopted Water Quality Standards or Thresholds or Wetland Vegetation Monitoring shows signs of significantly diminished health of a Wetland.
2. Before Baseline Monitoring is completed, the County may initiate Source Identification in some Watersheds, based on existing data..
3. Types of Source Identification shall include in order of typical use:
  - a) Increase the compilation and analysis of existing data;
  - b) Increase the number of Monitoring sites including Wetland Vegetation Monitoring sites and/or change the location of Monitoring sites;
  - c) Increase the frequency of water quality Monitoring or change the frequency of Wetland Vegetation Monitoring; and
  - d) When the above actions prove insufficient, implement different Monitoring methods such as analysis of DNA, optical brighteners or other specialized tracing methods.

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

**F. Adaptive Management.** Baseline Monitoring and Source Identification provide information used by the County to assist in determining the effectiveness of the County's Wetland regulations. The adaptive actions that may be triggered could be to make County regulations more stringent, less stringent or leave them unchanged. All three outcomes are possible. Adaptive Management actions to address worsening Trends are adversely affecting Wetland health shall conform to the guiding principles set forth in ICC 17.02.080.B and shall follow the steps set forth below:

1. **Step 1 - Compliance Assessment/Source Identification.** Compliance Assessment is the first adaptive management action the County will initiate after a decline in Wetland health has been detected. The purpose of the assessment is to determine whether there is compliance with applicable Critical Area regulations. When Compliance Assessment shows conformance with Critical Area requirements, then Source Identification will be initiated to determine the source or sources of the worsening Trend.
2. **Step 2 - Education.** If the County determines that decline in Wetland health is, at least in part, attributable to non-compliance with applicable Critical Area regulations, the County will initiate actions to secure voluntary compliance.
3. **Step 3 - Enforcement.** If reasonable efforts to achieve voluntary compliance are not successful, then the County will initiate enforcement actions under ICC 17.02A.050 D and 17.03.260.

4. Step 5 - Modification of Critical Area Regulations. This step shall be initiated when Monitoring shows signs of declining Wetland health attributable to County regulation; and, a change in regulations that are applicable countywide is needed to address the decline in Wetland health. Any modification of Critical Area regulations will be made after considering best available science.

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

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

#### **17.02B.090 Wetlands**

##### **A. Regulated Wetlands**

1. All wetlands 1,000 square feet or larger in surface area (approximately equal to a circle with a radius of 17.5 feet) are regulated under this Chapter.
2. Category A,B,C and D Wetlands that are less than 1,000 square feet (approximately equal to a circle with a radius of 17.5 feet) in size and Category E Wetlands less than 5,000 square feet in size are not regulated by this Chapter unless:

- a) The Wetland is considered a Mosaic Wetland; or
- b) The Wetland is known to contain either a Protected Species or a Species of Local Importance; or
- c) The Wetland receives a Rating score of 50 or greater.

## **B. Wetland Mapping**

1. The Department shall maintain and update Maps that depict the location and Type of all known Wetlands in Island County. However, not all Wetlands have been mapped. These Maps will be available at the offices of the Department and used as a guide to identify and locate Wetlands. The Planning Director shall propose and the Board of Commissioners shall adopt an administrative procedure for the update of Wetland Maps.
2. Both the term Wetland is defined in ICC 17.02B.030 as well as specific Types of Wetlands. Most of these Wetland Types have been mapped by the County and these Maps shall serve as a guide for determining the general location of Wetlands. However, the presence of a Wetland on a Lot shall be determined based on the definitions established by the New CAO not the County's Wetland Maps.
3. At any time, an Owner can provide the Department information prepared by a Wetland Professional to correct or clarify the County's Wetland Maps for property he or she owns. When the Planning Director finds that a Map is in error, a correction shall be approved as a Type I decision pursuant to Chapter 16.19 ICC.

## **C. Wetland Reports.**

1. A Wetland Report shall be prepared for all Development Proposals that the County determines may Alter a Wetland or Wetland Buffer except for activities and uses addressed in ICC 17.02B.050 or ICC 17.02B.060. Wetland Reports shall also be prepared for Buffer Modification requests under ICC 17.02.090.G. If requested by an applicant for a Single Family Dwelling and/or Accessory Structure, the County shall complete a site evaluation to determine the Type and location of the Wetland as well as establish the Mitigation Plan for any proposed Alteration that is required for the Development Proposal. Otherwise a Wetland Report shall be prepared by a Wetland Professional.
2. A Wetland Report shall at a minimum include:
  - a) A brief detailed description of the Development Proposal;
  - b) A description of assumptions and methodologies used to complete the analysis and appropriate documentation of all fieldwork;
  - c) A description of the Wetland Type, its specific location and the Buffer that is appropriate for the Wetland;
  - d) If an Alteration is proposed for the Wetland or Wetland Buffer, the Wetland Report shall describe actions that have been considered to avoid or reduce any Alteration;

- e) If an Alteration is proposed, a Wetland Mitigation Plan; and
- f) If a Buffer Modification is proposed, an explanation of why the modification will not adversely affect Wetland Functions.

**D. Land Use Intensity.**

The appropriate Buffer for a Wetland will, in part, be determined based on the intensity of a Development Proposal. Land Use Intensity shall be judged by the Department on a case-by-case basis for Development Proposals that contain or are affected by a Wetland or Wetland Buffer. The Department's intensity determination shall be based on all of the guidelines set forth below.

1. Land Use Intensity will be determined based on three considerations:
  - a) The Proposed Use or Structure and the size of the Lot on which the Use or Structure will be located;
  - b) The amount of Cleared Area proposed; and
  - c) The potential adverse impacts to Wetland Functions that may be generated by the Development Proposal.
2. Each of the considerations listed in subsection 1 will be used to determine Land Use Intensity. For example, a low intensity Use or Structure under subsection 2 may receive a higher intensity classification due to Cleared Area or because of potential adverse impacts. In turn, a Use or Structure that is classified as high intensity under subsection 2 may ultimately be classified in a lower intensity category because of Cleared Area or measures that reduce potential adverse impacts. Land Use Intensity determinations shall be reviewed under the review process applicable for the Development Proposal.
3. **Use or Structure and Lot size.** First, land Use Intensity shall first be determined based on Use or type of Structure using the following guidelines:
  - a) All new Uses and Structures located on Lots less than one (1) acre in size shall typically be classified as high intensity;
  - b) All new Non-Residential Uses and Structures located on Lots between one (1) acre and four and one-half (4.5) acres in size shall typically be classified as high intensity and medium intensity when located on Lots larger than four and one-half (4.5) acres;
  - c) All new Residential Uses and Structures located on Lots between one (1) and four and one-half (4.5) acres in size shall typically be classified as medium intensity; and
  - d) All new Residential Uses and Structures located on Lots over four and one-half (4.5) acres in size shall typically be classified as low intensity.

4. **Cleared Area.** Second, intensity will be determined based on Cleared Area using the following guidelines:

Lot Size/ Intensity	Cleared Area in %		
	High	Medium	Low
Lot Size greater than 1 acre	Exceeds 50%	25% to 50%	Less than 25%
Lot Size exceeds 4.5 acres	Exceeds 35%	10% to 35%	Less than 10%

5. **Potential Adverse Impacts.** Third, intensity will be determined based on the potential adverse impacts to Wetland Functions expected to be caused because of site-specific characteristics and the orientation or location of the Use or Structure in relation to the Wetland. For example, the Development Proposal may qualify as Low Intensity under subsections 2 or 3. However, because topography or soils and site location or design of the proposed Structures may potentially generate adverse impacts to Wetland Functions, the Development Proposal may be classified in a higher intensity classification.
6. Any new Use or Structure classified as medium or high intensity may be classified in a lower intensity classification by the Department if the Use or Structure is modified to reduce potential adverse impacts to Wetland Functions or a Rural Stewardship Plan is prepared for the Lot.
7. Measures that have been found to reduce adverse impacts to Wetland Functions include the following:
- Setback structures from the required Buffer;
  - Direct exterior lighting and orient outdoor use areas such as decks and patios away from a Wetland or Wetland Buffer;
  - Limit the use of pesticides and fertilizers near a Wetland or Wetland Buffer;
  - Control and treat storm water before it reaches a Wetland or Wetland Buffer;
  - Manage household pets so they do not intrude into a Wetland or Wetland Buffer;
  - Use Low Impact Development techniques such as those that reduce impervious areas, limit storm water and improve water quality;
  - For Agricultural Activities, develop a Standard or Custom Farm Plan;
  - Limit or remove Invasive Plant Species: and
  - Establish or maintain Native Plants as ground cover.
8. When a Development Proposal contains more than one Use or Structure and the Uses or Structures are of differing Land Use Intensity, the Development Proposal shall be classified in the intensity classification that provides the greatest protection to the Critical Area.

**E. Wetland Classification System.**

Wetlands shall be classified based on the Type of Wetland and Buffers will be established based on the Wetland Classification. The Classification that provides the greatest protection shall be used for Wetlands that exhibit the characteristics of more than one Type.

<b>Wetland Classification System</b>	
<b>WETLAND CATEGORY</b>	<b>WETLAND TYPE</b>
<b>A</b>	<ul style="list-style-type: none"> <li>• Bogs</li> <li>• Coastal Lagoon Wetlands</li> <li>• Delta Estuary Wetlands</li> <li>• Mature Forested Wetlands</li> </ul>
<b>B</b>	<ul style="list-style-type: none"> <li>• Large Poned Wetlands</li> <li>• Anadromous Fish Stream Wetlands</li> <li>• Wetland Associated with a Bog or Coastal Lagoon or Delta Estuary</li> </ul>
<b>C</b>	<ul style="list-style-type: none"> <li>• Other Estuarine Wetlands</li> <li>• Resident Salmonid Stream Wetlands</li> <li>• Mosaic Wetlands</li> </ul>
<b>D</b>	<ul style="list-style-type: none"> <li>• Native Plant Wetlands</li> <li>• Small Poned Wetlands</li> </ul>
<b>E</b>	<ul style="list-style-type: none"> <li>• All Wetlands not otherwise classified</li> </ul>

**F. Wetland Buffers.**

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

1. Unless the activity or use is covered by ICC 17.02B.050 or ICC 17.02B.060, vegetated Buffers shall be required as follows:
  - a) For regulated Category A,B,C and D Wetlands less than 1,000 square feet in size and regulated Category E Wetlands less than 5,000 square feet in size, the required Buffer shall be fifteen (15) feet.
  - b) For Category A, B, C and D Wetlands 1,000 square feet or larger in size and Category E Wetlands 5,000 square feet or larger in size, the required Buffer shall be as set forth in Tables 1 through 4.
  - c) A required Wetland Buffer shall not exceed three hundred (300) feet.
2. The applicable Buffer can be determined using the following steps:
  - a) Step 1: Establish the Wetland Type and the Wetland size to determine whether a Buffer is required.
  - b) Step 2: Have the County determine the Land Use Intensity of the Development Proposal and the Wetland's Contributing Area.
  - c) Step 3A: For Wetlands regulated by this Chapter that are under 1,000 square feet in size, use the 15 foot Buffer required under subsection 1a) above.  
 Step 3B: For Bogs, Coastal Lagoon Wetlands, Delta Estuary Wetlands and other Estuarine Wetlands, the required Buffer can be determined from Table 1.  
 Step 3C: For all other Wetland Types, determine the Habitat Rating for the Wetland. If the score is 32 or higher, then use Table 2 to determine the required Buffer. If the Habitat Rating is less than 32, then go to Step 4.
  - d) Step 4: Determine whether the Wetland has a surface water Outlet and determine the Slope Gradient between the Development Proposal and the Wetland.
  - e) Step 5: Determine the applicable water Quality Buffer using Tables 3 and 4.
  - f) Step 6: Determine whether any Buffer modification standards are applicable.
  - g) Step 7: Determine which Buffer is larger. If the Habitat Buffer is larger then apply it to the entire Wetland. If the water Quality Buffer is larger then apply it to the Contributing Area and apply the Habitat Buffer to the non- Contributing Area.

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

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

4. Habitat Buffers for Wetlands not covered by Table 1 shall be determined based on the score achieved through the County's Habitat Rating System. Habitat Buffers are established in Table 2.

<b>Table 2: Habitat Buffers</b>					
<b>Land Use Intensity</b>	<b>Habitat Functions Score</b>				
	<b>50 or higher</b>	<b>42-48</b>	<b>39-41</b>	<b>32-38</b>	<b>Less than 32</b>
<b>Low</b>	150 ft	125 ft	100	75 ft	Use Tables 3 and 4
<b>Moderate</b>	225 ft	175 ft	150	110 ft	
<b>High</b>	300 ft	200 ft	175	150 ft	

5. Water quality Wetland Buffers for Wetlands that are not covered by Tables 1 or 2 are established in Table 3. For Development Proposals on Lots that have a percent slope of 5% or greater between the Development Proposal and the Wetland, the water quality Buffer from Table 3 will need to be adjusted using Table 4.
6. Visible evidence of an Outlet is required to determine that a Wetland has an Outlet. If the presence of an Outlet is unclear or uncertain, then the presumption will be that a Wetland does not have an Outlet.

<b>Table 3: Water Quality Buffers</b>						
<b>Land Use Intensity</b>	<b>Wetland Outlet</b>	<b>Wetland Category</b>				
		<b>A*</b>	<b>B</b>	<b>C**</b>	<b>D</b>	<b>E</b>
<b>Low</b>	Yes	40 ft	35 ft	30 ft	25 ft	20 ft
	No	75 ft	50 ft	40 ft	35 ft	25 ft
<b>Moderate</b>	Yes	90 ft	65 ft	55 ft	45 ft	30 ft
	No	105 ft	90 ft	75 ft	60 ft	40 ft
<b>High</b>	Yes	125 ft	110 ft	90 ft	65 ft	40 ft
	No	175 ft	150 ft	125 ft	90 ft	50 ft
* Use Table 1 for Buffers for Bogs, Coastal Lagoon Wetlands and Delta Estuary Wetlands						
** Use Table 1 for Buffers for Other Estuarine Wetlands						

- For Development Proposals on Lots that are sloped between the Development Proposal and the Wetland, the water quality Wetland Buffer established in Table 2 shall be increased using the following multipliers:

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

- Water quality Buffers established in Table 3 and 4 shall apply only to a Wetland's Contributing Area. For the non-Contributing Area of a Wetland, the Habitat Buffer shall be applied.
- Except for Mitigation Banks, no Buffers shall be required for voluntary Wetland and Wetland Buffer Restoration.

10. For Wetlands regulated by this Chapter, Mitigation shall be required when the approved Alteration of any Wetland or Wetland Buffer cannot be Restored.
11. Permissible Maintenance activities for Wetland Buffers shall be specified in the approval conditions for a Development Proposal. Otherwise Buffers shall remain undisturbed or, if Re-established, Rehabilitated, Created or Enhanced, in the condition established after completion of the approved activity.

**G. Wetland Buffer Modification.**

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

1. A required Wetland Buffer may be reduced when the reduction will not adversely affect Wetland Functions as documented in a Wetland Report and:
  - a) A legally established road crosses a Wetland Buffer; or
  - b) For sloped Lots, the sloped area between the Development Proposal and the Wetland does not contain Highly Erodible Soils.
2. In lieu of a Buffer reduction, Buffer Averaging may be approved when:
  - a) The total area contained in a Buffer after averaging is not less than that which would be contained within the Buffer if Buffer averaging was not permitted; and
  - b) Buffer averaging will not adversely affect Wetland Functions as documented in a Wetland Report;
3. For a Category A and B Wetland, a Buffer Modification under subsection 1 or 2 above shall not reduce the Buffer to less than seventy-five percent (75%) of the otherwise required Buffer or thirty-five (35) feet, whichever is greater.
4. For a Category C, D and E Wetland, a Buffer modification shall not reduce the Buffer to less than fifty percent (50%) of the otherwise required Buffer or twenty (20) feet, whichever is greater.
5. A Wetland Buffer may be increased up to twenty-five percent (25%) when:
  - a) The increase is needed to protect Wetland Functions; or
  - b) To compensate for a lack of Buffer vegetation when Buffer Re-establishment, Rehabilitation, Creation or Enhancement is not Practical and Reasonable; or
  - c) When the Wetland has a Small Contributing Area; or
  - d) The Wetland is a Relict Bog.

## **H. Wetland Mitigation Standards.**

1. Mitigation shall be required only if the Alteration cannot be Restored, within two (2) years of the Alteration. Generally, Mitigation for Alteration of a Wetland or Wetland Buffer shall provide equal or better Wetland Functions.
2. Wetland Alterations. No Alteration of a Category A Wetland is permitted unless the activity or Use is covered by ICC 17.02B.050 and ICC 17.02B.060. Alteration of Category B, C, D and E Wetlands may be permitted only after applying the review criteria set forth in ICC 17.02B.040.A.5.
3. Mitigation for Wetland Alterations that cannot be Restored shall occur in the following order of preference:
  - a) Re-establishing Wetlands on sites that were formerly Wetlands. These sites commonly exist on Soils classified as hydric by the NRCS;
  - b) Rehabilitating Wetlands by restoring natural and/or historic Wetland Functions;
  - c) Creating or establishing Wetlands on upland sites such as those consisting primarily of non-native, invasive plant species or to expand on existing Wetland;
  - d) Enhancing degraded Wetlands;
  - e) Providing a fee established by the County in lieu of on-site or off-site Mitigation; or
  - f) Preserving, protecting or maintaining Category A, B, C or D Wetlands that are under imminent threat of significant and undesirable ecological change. Provided that, Preservation shall only be allowed on sites in the Altered Wetland's Watershed; and when the Planning Director determines that the overall Mitigation Plan replaces the Wetland Functions lost due to the Development Proposal with improved Wetland Functions.
4. Buffer Alteration. Compensatory Mitigation for any Wetland Buffer Alteration that cannot be Restored as required by ICC 17.02B.040.A.5 shall be determined by the Planning Director on a case-by-case basis. Buffer Mitigation may include any action that can achieve equal or improved Wetland Functions. When Enhancement of the Altered Buffer is not Practical or Reasonable, Mitigation preferences will be the same as for Wetland Mitigation.
5. Mitigation by Re-establishing, Rehabilitating, Creating, Enhancing or Preserving Wetlands or Wetland Buffers should be completed in advance of a Development Proposal whenever Practical and Reasonable and must be based on a Mitigation Plan approved by the Department.

## I. Wetland Mitigation Ratios

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

<b>Table 5: Wetland Mitigation Ratios</b>			
<b>Standard Mitigation Ratio*</b>			
<b>Wetland Category</b>	<b>Re-establishment or Creation</b>	<b>Rehabilitation</b>	<b>Enhancement</b>
<b>A**</b>	6:1	10:1	20:1
<b>B</b>	3:1	6:1	12:1
<b>C &amp; D</b>	2:1	4:1	8:1
<b>E</b>	1.5:1	2:1	4:1
* Ratio is the Mitigation area: area of Alteration			
** Alteration of a Category A Wetland is allowed only for Development Proposals for activities or Uses covered by ICC 17.02B.050 and ICC 17.02B.060.			

2. Mitigation ratios for Wetland Preservation shall be determined by the Planning Director on a case-by-case basis. Generally, the Mitigation ratio for Preservation will be greater than 20:1 because Preservation is the last priority Mitigation option. However, Preservation of a higher Category Wetland would allow the Mitigation Ratio to be reduced. A lower ratio may also be allowed when Preservation is combined with other types of Mitigation.
3. Unless the activity is voluntary, a site for Wetland that is Re-established, Rehabilitated, Created, Enhanced, or Preserved shall have adequate room for the Buffer required under this Chapter.
4. The Planning Director shall have the authority to reduce the Wetland Mitigation ratios by up to forty percent (40%) when the proposed Mitigation:
  - a) Has a very high likelihood of success based on experience with similar Mitigation projects; or
  - b) Will provide more significant Wetland Functions than the Functions of the Wetland being Altered as documented in a Wetland Report

5. Mitigation ratios for Wetland Buffer Alterations shall be determined by the Planning Director on a case-by-case basis. Generally, the Mitigation ratio shall be at a 1:1 ratio but shall be established based on the nature and extent of the Buffer intrusion and the Wetland Type and Wetland Functions.
6. The Planning Director shall also determine, on a case-by-case basis, Mitigation ratios for temporary Alterations of Wetlands or Wetland Buffers and the conversion of a Wetland from one Wetland Type to another. Generally, these ratios will be one-quarter (1/4) (Temporary Alteration) to one-half (1/2) (Conversion to another Wetland Type) of the ratios for permanent Alterations.

**J. Wetland Mitigation Plan.**

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

1. The plan shall be based on applicable portions of the Washington State Department of Ecology's *Guidelines for Developing Freshwater Wetland Mitigation Plans and Proposals*, 2004 or other appropriate guidance document.
2. Typically, if a Wetland Report is prepared, and an Alteration is proposed or Buffer modification requested, then the Mitigation Plan shall be included with the Wetland Report. The Plan shall contain sufficient information to demonstrate that the proposed activities are Practical and Reasonable, ecologically sustainable and likely to succeed. Unless the Planning Director establishes the scope and content of a Mitigation Plan, the Plan shall include:
  - a) A detailed description of the proposed Mitigation and the rationale for the selection of the Mitigation site. If off-site Mitigation is proposed, an explanation of why on-site mitigation is not Practical and Reasonable;
  - b) An assessment of Existing site conditions for the Mitigation site including vegetation type, Structure and composition; topography, hydrology and soil conditions; Existing Wetland Functions if any; and for off-site Mitigation, an estimate of future conditions of the site should Mitigation not occur;
  - c) A grading and planting plan showing proposed post-construction topography hydrologic patterns, spacing and distribution of plants, species, actions to provide or improve Habitat, size and type of proposed plant stock, irrigation and other information that is relevant to the proposed Mitigation;
  - d) A management plan that includes Mitigation goals, benchmarks and review criteria; site treatment measures for the maintenance of the Mitigation; and legal documents to be recorded by the County after approval of the Plan;
  - e) A Monitoring Plan that specifies the standards and time period that will be used

to Monitor whether the Mitigation is successful; and

- f) A Contingency Plan that establishes the actions that will be taken should Monitoring identify that the Mitigation is not achieving the established benchmarks.
3. All Mitigation projects shall be Monitored, typically by the applicant, for a time period necessary to establish that Mitigation goals and benchmarks have been met. The Monitoring time period shall be established based on the type, complexity and uncertainty of the proposed Mitigation. Five years of Monitoring will usually be the minimum required to establish whether Mitigation has successfully achieved equal or improved Wetland Functions. Ten years may be typical for Re-establishment, Rehabilitation or Creation.
  4. Reports shall be submitted at a frequency established by the Planning Director for the Monitoring time period to document the achievement of Mitigation goals and benchmarks and recommended actions relating to the Mitigation.

**K. Wetland Mitigation Banks.**

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

1. The bank is certified under Chapter 173-700 WAC;
2. The Director determines that the Wetland Mitigation Bank provides appropriate compensation for the authorized Alteration;
3. The Proposed use of credits is consistent with the terms and conditions of the Bank's certification;
4. Replacement ratios for projects using Bank credits shall be consistent with replacement ratios specified in the Bank's certification;
5. Credits from a certified Wetland Mitigation Bank may be used to compensate for impacts located within the service area specified in the Bank's certification. In some cases, the service area of the Bank may include portions of more than one adjacent Drainage Basin for specific Wetland Functions.

**17.02B.100 Fish and Wildlife Habitat Conservation Areas (Reserved)**

**17.02B.110 Severability**

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

**17.02B.120 Effective Date**

Chapter 17.02B ICC shall go into effect ninety (90) days after enactment.

