

EXHIBIT D

Chapter 17.03 Island County Zoning Code

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17.03.260 Penalties and Enforcement

The Planning Director is charged with enforcement of the provisions of this Chapter, Chapter 17.02**A and B, Chapter 17.04**, Chapter 17.05, Chapter 16.06, **Chapter 16.14C**, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, (~~Chapter 17.04,~~) and Chapter 14.01A. It shall be unlawful for any Person to construct, enlarge, alter, repair, move, demolish, use, occupy or maintain any Use or cause the same to be done in violation of any of the provisions of this Chapter, Chapter 17.02**A and B, Chapter 17.04**, Chapter 17.05, Chapter 16.06, **Chapter 16.14C**, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, (~~Chapter 17.04,~~) and Chapter 14.01A. Any such violation is declared to be a public nuisance and shall be corrected by any reasonable and lawful means as provided in this section.

A. Inspections

1. Whenever the Planning Director has reasonable cause to believe that a violation has been or is being committed, the Planning Director or his duly authorized inspector may enter any Building, Structure or property at any reasonable time to inspect the Use and perform any duty conferred on the Planning Director by this Chapter.
2. If the Building, Structure or property is occupied, the Planning Director shall first present identification credentials, state the reason for the inspection and demand entry. If consent to enter is not given and the Planning Director has probable cause to believe that a criminal violation of County regulations has occurred, then he may make an inspection after first obtaining a search warrant.
3. If the Building, Structure or property is not occupied, the Planning Director shall first make a reasonable effort to locate the Owner or other Person having control and request permission to enter. If he is unable to locate the Owner or Person having control, and he has probable cause to believe that a criminal violation of County regulations has occurred, he may make an inspection after first obtaining a search warrant.
4. Island County Superior Court and District Court shall have jurisdiction to issue inspection warrants under Island County Land Use Codes.

- B. **Cease and Desist Order.** Whenever a continuing violation of this Chapter, Chapter 17.02A and B, Chapter 17.04, Chapter 17.05, Chapter 16.06, Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, (~~Chapter 17.04~~) and Chapter 14.01A will materially impair the Planning Director's ability to secure compliance with said Chapters, or when any person is proceeding in defiance of permit requirements issued in conjunction with said Chapters, the Planning Director or his designee may issue a Stop Work Order and the following provisions shall apply:
1. A Cease and Desist Order shall be posted on the property in a conspicuous place and/or served on the persons engaged in the activity.
 2. All Cease and Desist Orders shall be mailed to the owner of the property by certified mail within one (1) working day of issuance to the owner of the property.
 3. A Cease and Desist Order may only apply to that portion of the activity that is found to be in violation.
 4. It shall be unlawful and punishable as a Class 1 civil infraction under Chapter 7.80 for any person to violate a Cease and Desist Order. The Island County Planning Director and his designees, the Island County Sheriff and his deputies, and any other law enforcement officer are enforcement officers within the meaning of Chapter 7.80 RCW and shall have the authority to issue the infraction. This provision shall not limit any other authority of these persons.
 5. Only the Planning Director or his designee shall have the authority to withdraw a Cease and Desist Order.
- C. **Violators Punishable by Criminal Fine and Imprisonment.** Any Person willfully and knowingly violating any provision of (~~this~~) the Chapters referenced above or amendments thereto or any Person willfully and knowingly aiding or abetting such violation is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1000) and/or imprisonment in the County jail for a term not to exceed ninety (90) days. Continued violation of the provisions of an issued enforcement order issued pursuant to Subsection E shall constitute notice. Each day such violation continues may be considered a separate offense.
- D. **Violators Punishable by Civil Penalties.** The Planning Director may:
1. Take appropriate informal action or institute a proceeding to require compliance with this Chapter or to enjoin, correct or abate any acts or practices which constitute or will constitute a violation. When appropriate, the Planning Director is authorized to waive the permit and/or restoration requirements of this ordinance as necessary to abate or correct a violation of a minor nature. If a violation can be remedied or abated through a permit process and the landowner agrees to submit all necessary applications, a period of up to forty-five (45) days shall be allowed for the landowner to make application for all necessary permits before an Enforcement Order may be issued;
 2. Issue an enforcement order pursuant to subsection E;

3. Abate the violation if corrective work is not commenced or completed within the time specified in an enforcement order;
4. Suspend or revoke any approvals or permits issued for the same property and/or the property Owner pursuant to this Chapter, Chapter 17.02**A and B, Chapter 17.04,** Chapter 17.05, Chapter 16.06, **Chapter 16.14C,** Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 11.01, Chapter 11.02, Chapter 11.03, (~~Chapter 17.04,~~) and Chapter 14.01A ICC. **Unless the permit is required as a means to achieve compliance, ((with the violation cited in the Enforcement Order; and/or)) the Director may also suspend review of any pending permit applications and refuse to process any permit applications applied for through the aforementioned Chapters until compliance is achieved,**
5. File a lien against the property for costs of abatement and/or civil fines pursuant to subsection H.

- E. **Administrative Notice and Order.** Within twenty (20) days of discovery or receiving notice of a potential violation, the Planning Director shall make a determination of whether a violation has occurred, and, if there is a determination that a violation has occurred that cannot otherwise be abated pursuant to subsection D.1, issue an enforcement order. The Planning Director shall notify the complainant of his determination in writing.

Additionally, whenever the Planning Director has reason to believe that a Use or condition exists in violation of this Chapter and that violation will be most promptly and equitably terminated by an administrative proceeding, he may commence an administrative notice and order proceeding to cause assessment of a civil penalty, abatement or suspension of work or revocation of any approvals or permits issued pursuant to this Chapter, Chapter 11.01, Chapter 11.02, Chapter 11.03, Chapter 14.01A, Chapter 16.06, **Chapter 16.14C,** Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 17.04, Chapter 17.05 or Chapters **17.02A and B** ICC.

1. Enforcement Order. The order may be issued without written or oral notice. The Planning Director shall cause the enforcement order to be directed to and served upon the property Owner on whose property the violation exists, and/or operator of the source of the violation, and/or the Person in possession of the property where the violation originates, and/or the Person otherwise causing or responsible for the violation. In addition, the Order may be posted on the subject property and may be filed in the Office of the Island County Auditor. The order shall require immediate cessation of such work or activity and may temporarily suspend any approval or permit issued under this Chapter, Chapter 11.01, Chapter 11.02, Chapter 11.03, Chapter 14.01A, Chapter 16.06, **Chapter 16.14C,** Chapter 16.15, Chapter 16.17, Chapter 16.21, Chapter 17.04, Chapter 17.05 or Chapter 17.02**A and B** ICC. The notice and order shall contain:
 - a) The street address, when available, and a legal description of the real property;
 - b) A statement that the Planning Director has found the Person to be in violation of this Chapter, a brief and concise description of the conditions found to be in violation, and a specific description of the procedure of appeal and to stay the hearing before the Hearing Examiner;

- c) A statement that the violator may be subject to a civil penalty up to five-hundred dollars (\$500) for each day that the violation continues and, if applicable, the conditions on which assessment of such civil penalty is contingent;
 - d) An assessment of a civil penalty, if any, in an amount up to five-thousand dollars (\$5,000) for any critical areas or shoreline violation and up to one-thousand dollars (\$1,000) for any other violations which occurred prior to the issuance of the order;
 - e) A statement of the corrective action required to be taken. If the Planning Director has determined that corrective work is required, the order shall require that all required permits be secured and the work be physically commenced and completed within such time as the Planning Director determines is reasonable under the circumstances; and
 - f) Statements advising that:
 - (i) If any required work is not commenced or completed within the time specified, the Planning Director will proceed to abate the violation and cause the work to be done and charge the costs thereof as a lien against the property and any other property owned by the Person in violation and as a Personal obligation of any Person in violation; and
 - (ii) If any assessed civil penalty is not paid by the specified date, the Planning Director may commence proceedings to charge the amount of the penalty including interest from the date of entry of the order at the maximum rate permitted under RCW 19.52.020 on the date of entry of the order, as a lien against the property and as a Personal obligation of any Person in violation.
 - g) For unauthorized Alterations of a Critical Area or Critical Area Buffer, a description of the terms and conditions for Restoration of the Critical Area or Critical Area Buffer.**
2. Withdrawal. The Planning Director shall withdraw an order if compliance is achieved within ten (10) days of posting or service thereof. The Director may withdraw an order if the applicable permit processes are commenced within thirty (30) days of the posting or service, and the Planning Director determines satisfactory progress is being made toward compliance. If the violation is subsequently continued or repeated, the Planning Director shall cause a second order to be served on Persons engaged in any work or activity in violation of this Chapter and may also cause the order to be posted on the subject property. The second order involving the same violation shall not be withdrawn.
 3. Appeal of Enforcement Order.
 - a) An enforcement order, including a supplemental order, any assessed civil penalty, or both, may be appealed to the Island County Hearing Examiner within fourteen (14) calendar days of service on the Person(s) to whom such order is directed, in accordance with the provisions of Chapter 16.19 ICC. Lack of actual receipt of an enforcement order, served by certified mail, due to extraordinary circumstances, such as the alleged violator not receiving mail due to being on a

trip or in the hospital, shall toll the time period for filing an appeal. The burden of proving such extraordinary circumstances is on the party making such a claim. The hearing before the Hearing Examiner may be stayed for a period not to exceed sixty (60) days for the purpose of negotiating an agreed order upon a written request from the alleged violator.

- b) The Hearing Examiner shall hold at least one (1) public hearing thereon as provided in ICC 16.13.100. The Hearing Examiner has the authority to reject or modify the enforcement order including the civil penalty. The burden of proof regarding commission of a violation is upon the Planning Director.
 - c) The enforcement order shall become final upon issuance of the Hearing Examiner's written decision.
4. Supplemental and Agreed Order. The Planning Director may at any time add to, rescind in part, or otherwise modify an enforcement order by causing a supplemental order to be served, pursuant to subsection E.1, on Persons engaged in any work or activity in violation of this Chapter. The supplemental order may also be posted on the subject property and may be filed in the Office of the Island County Auditor. The Planning Director shall also have the authority to negotiate and modify the enforcement order and issue an agreed enforcement order Signed by both the Planning Director and alleged violator consistent with the time frame specified in section E.3.a) above.
5. Service. Service of the enforcement order shall be made upon all Persons identified in the order either Personally or by mailing a copy of such order by certified mail, postage prepaid, return receipt requested. If the address of any such Person cannot reasonably be ascertained, a copy of the order shall be mailed to such Person at the address of the location of the violation. The failure of any such Person to receive such notice shall not affect the validity of any proceedings taken under this Chapter. Service by certified mail in the manner provided in this section shall be effective five (5) calendar days after the date of postmark, unless postal records show actual receipt prior to that date. The order may be, but is not required to be, posted on the subject property.
- F. **Violation of Order.** If, after any order has been duly issued by the Planning Director, or an order appealed to the Hearing Examiner has become final, the Person to whom such order is directed fails, neglects, or refuses to obey such order, including refusal to pay a civil penalty assessed under such order, the Planning Director may:
- 1. Cause such Person to be prosecuted under the provisions of this section; and/or
 - 2. Institute any appropriate action to collect a civil penalty assessed under this section; and/or
 - 3. Abate the violation using the procedures of this section; and/or
 - 4. Pursue any other appropriate remedy at law or equity.

G. Revocation of Approvals or Permits

1. Basis for revocation. The Planning Director may revoke any approval or permit issued under this Chapter, Chapter 11.01, Chapter 11.02, Chapter 11.03, Chapter 14.01A, Chapter 16.06, **Chapter 16.14C**, Chapter 16.15, Chapter 16.17, Chapter 17.04, Chapter 17.05 or Chapters **17.02A and B** ICC until compliance is achieved for:
 - a) Failure of the holder to comply with the requirements of such Chapters; or
 - b) Failure of the holder to comply with any order issued pursuant to this section; or
 - c) Discovery by the Planning Director that an approval or a permit was issued in error or on the basis of incorrect information supplied to the County which was material to the decision or approval.
2. Revocation Process. Such approval or permit revocation shall be carried out as follows:
 - a) A revocation notice and order shall be issued by the Planning Director in general conformance with the provisions of subsection E.1;
 - b) Within ten (10) calendar days following issuance of the revocation notice and order, a public hearing shall be scheduled before the Hearing Examiner;
 - c) The revocation shall be final upon issuance of the Hearing Examiner's written decision; and
 - d) A permit may be suspended by the Planning Director pending action by the Hearing Examiner.

- H. Lien.** Following affirmative review by the Hearing Examiner, Island County shall have a lien for any civil penalty imposed or for the cost of any work of abatement done pursuant to this section, or both, against the real property on which the civil penalty was imposed or any of the work of abatement was performed.

The lien shall be subordinate to all Existing special assessment liens previously imposed upon the same property and shall be superior to all other liens, except for state and County taxes, with which it shall be on a parity.

The Board may cause a claim for lien to be filed for record with the Auditor within ninety (90) days from the date the civil penalty is due or within ninety (90) days from the date of completion of the work or abatement performed by Island County pursuant to this section. The claim of lien shall contain the following:

1. The authority for imposing a civil penalty or proceeding to abate the violation, or both;
2. A brief description of the civil penalty imposed or the abatement work done, or both, including the violations charged and the duration thereof, the time the work is commenced and completed and the name of the Persons or organizations performing the work;
3. A legal description of the property to be charged with the lien;

4. The name of the known or reputed Owner; and
5. The amount, including lawful and reasonable costs, for which the lien is claimed.

The lien may be foreclosed by a civil action in Island County Superior Court.

- I. Restoration. Restoration shall be required for any unauthorized Alteration of a Critical Area or Critical Area Buffer. The purpose of Restoration is to return the Critical Area or Critical Area Buffer to the condition that predated to the unauthorized Alteration.** ~~((For property which contains a Category A or Category B wetland, deep water habitat, or a fish and wildlife conservation area or their buffers which has been disturbed, or a steep slope or geologically hazardous area on which a structure has been built or located in violation of this Chapter, or when a Critical Area has been altered by agricultural activity in violation of this Chapter or Chapter 17.02 ICC no permit or approval or development of the property shall be authorized or granted for a period of up to three (3) years from completion of restoration as determined by the Island County Planning Director. Provided that this section shall not apply to an owner who demonstrates by notarized affidavit that he/she is an innocent purchaser for value and had no actual or constructive notice of the violation. In the event of intentional or knowing violation of this Chapter, the County may bring an action against the owner or the land or the operator who committed the violation.))~~

1. Restoration Plan. **Except in those circumstances described below in subsection (a), Restoration shall be based on a specific plan.**
 - a) **In the event that the Planning Director determines that an unauthorized Alteration is unintentional, temporary in nature and that Restoration will occur through natural revegetation within a reasonable time period, the Planning Director may establish Restoration requirements including monitoring in a compliance letter.**
 - a)b) When a Restoration **plan** is required, ~~((the applicant shall cause to be))~~**the plan shall be** prepared by a ~~((qualified biologist, plant ecologist, geologist or similarly))~~ qualified professional ~~((, as appropriate, a restoration plan which))~~ **and** shall include ~~((as a minimum))~~ the following:

 - (i) ~~((The extent of disturbance including an inventory of all vegetation cleared))~~ **A description of the unauthorized Alteration and the condition of the Critical Area or Critical Area Buffer before Alteration;** and
 - (ii) Measures necessary to Restore the ~~((wetland, habitat or their buffers, or the slope,))~~ **Critical Area or Critical Area Buffer** including removal of fill, regrading to original contours, if necessary, replacement of excavated material, revegetation of all cleared areas with ~~((native trees and/or plants))~~ **appropriate vegetation** and removal of structures; and
 - (iii) A schedule for Restoration, **including but not limited to dates for the various restoration activities, supplemental watering schedules and non-native/invasive vegetation management;** and
 - (iv) A monitoring plan ~~((to evaluate periodically the success of the~~

restoration and provide for amendments to the plan which may become necessary to achieve its purpose)) **that specifies the benchmarks, standards, photo points, time period and frequency of reports that will be used to determine whether the Restoration is successful; and**

(v) A contingency plan that establishes the actions that will be taken should monitoring identify that the Restoration is not successfully achieving the established benchmarks and standards within the established time periods.

- b)c) In preparing and approving the Restoration plan, the applicant and the County ((should)) **may** consult with the Department of Fish and Wildlife, the Department of Natural Resource, the Natural Resource Conservation Service or the Department of Ecology.
- e)d) The Restoration plan shall be prepared at the ((applicant's)) **violator's** cost and shall be ((approved by the Hearing Examiner. The Hearing Examiner may approve, reject or approve the plan with conditions.)) **reviewed under the process set forth for Type II decisions in Chapter 16.19 ICC.** All Restoration shall be consistent with the approved Restoration plan.
2. Restoration Monitoring. **All Restoration projects will be monitored for a time period necessary to establish that the Restoration is successful. When a Restoration plan has been required, monitoring shall conducted by a qualified professional. Generally monitoring will be required for at least two growing seasons. The Planning Director shall have the authority to extend the Monitoring time period for up to ten (10) years when a longer time period is needed due to the type or complexity of the Restoration.** ((Where restoration has been required, the applicant, at its own cost, shall provide for seasonal monitoring of the site by a qualified biologist or other qualified professional for a period of three (3) years after completion. The applicant shall submit an annual report to the Planning Director which discusses: a) the condition of introduced or reintroduced plant species; b) the condition of open water areas or other water features; c) use of the site by fish and wildlife species; d) any disturbances or alterations and their affects on the restoration; e) additional or corrective measures which should be taken to ensure the success of the restoration; and, f) other information which the Planning Director considers necessary to assess the status of the restoration.))
3. Restoration Bond. **When a Restoration plan is required for an unauthorized Alteration, the Planning Director may require that the violator post a bond or other security in an amount sufficient to secure the successful completion of the Restoration. The Planning Director may also establish such conditions as are needed to determine when the violator, is in default for failing to carry-out or complete the Restoration.** ((Prior to commencing restoration, the applicant shall post with the Hearing Examiner a bond or other security in an amount sufficient to cover the cost of conformance with the conditions of the restoration plan, including corrective work necessary to provide adequate drainage, stabilize and restore disturbed areas, and remove sources of hazard associated with work which is not completed.)) After the Hearing Examiner determines that Restoration has been

successfully completed in compliance with approved plans and the monitoring period has expired, the bond or other security shall be released. ((The County may collect against the bond when work which is not completed is found to be in violation of the conditions set forth in the restoration plan and/or the Hearing Examiner determines that the site is in violation of the purposes of this Chapter.))

- 4. Development Moratorium. When a Restoration plan is required for an unauthorized Alteration, no Development Proposal for the property may be authorized or granted during the period of Restoration. Provided that this subsection shall not apply to an owner who demonstrates by notarized affidavit that he/she is an innocent purchaser for value and had no actual or constructive notice of the violation.**

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