

# **EXHIBIT B**

## **Draft Revision to 3.40 ICC**

### **Chapter 3.40**

#### **Island County Public Benefit Open Space Rating System**

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**3.40.010 Summary**

The State Open Space Tax Act, RCW 84.34, provides an opportunity for landowners to apply for a reduction in property taxes for certain categories of open space, agricultural, and timber lands. This tax reduction is based upon a Current Use Assessment (CUA) of the land rather than on the traditional fair market value system of "highest and best use".

- A. The program will cause a modest tax shift from properties in the program to all other properties in the County. When a property enters the program and benefits from a reduced tax rate, the differential is shifted across all other properties in the County. County landowners effectively support the retention of the benefits recognized in the County's Public Benefit Rating System.
- B. The Open Space Act authorizes counties to set open space priorities and adopt, after a public hearing, an open space plan and Public Benefit Rating System (PBRs)(RCW 84.34.055). The open space plan must contain criteria for determining the eligibility of lands, the process for establishing a PBRs, and an assessed valuation schedule. A PBRs is required to contain a rating of parcel(s) of land classified as open space for the purpose of determining its CUA.
- C. Island County's proposed PBRs establishes a priority ranking system for various open space resources, classifies them into high, medium, or low priority open space resource categories, and assigns a point value for each category and for any additional public benefit features. The PBRs's assessed valuation schedule determines the percentage of tax reduction based upon the total number of points accumulated under its rating. The valuation schedule should work to reduce a property's tax assessment in direct relation to its merit for open space priorities. Applications for CUA open space would, after its adoption by the County, be rated and assessed according to the PBRs.

**3.40.020 Purpose and Intent**

- A. It is in the best interest of the County to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber, and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the County and its citizens. Additionally, it is in the County's interest to provide incentives that encourage the retention of open space in compliance with Growth Management Act principles.
- B. It is the intent of this chapter to implement RCW Chapter 84.34, as amended, by establishing procedures, rules, and fees for the consideration of applications for Public Benefit Rating System assessed valuation on "open space land" as defined in RCW 84.34.020. The provisions of RCW Chapter 84.34, and the regulations adopted thereunder shall govern the matters not expressly covered in this chapter.

**3.40.030 Operation of the County Public Benefit Rating System for Open Space Lands Rating system. To be eligible for open space classification under the County's Public Benefit Rating System, property must contain one or more open space resource listed below. These resources are defined in this chapter and ranked as high, medium or low priority open space resources. High priority open space resources receive five (5) points each, medium priority open space resources receive three (3) points each, and low priority open space resources receive one (1) point each. Properties can receive a maximum of thirty (30) points from no more than six (6) open space priority resources. In addition, bonus points and super bonus points may be awarded pursuant to this chapter and a property can achieve a maximum of fifty-seven (57) points through the rating system and the bonus system. Portions of property may also qualify for open space designation.**

- A. **High priority open space resources** – five (5) points each:
  - 1. Resource and Rural Agricultural Lands
  - 2. Rural Forest Lands/Woodlots
  - 3. Privately Owned Trails and Corridors
  - 4. Natural Shoreline Environments
  - 5. Significant Fish & Wildlife Habitat Conservation Areas, Special Plant Sites, and Category "A" or "B" Wetlands
  - 6. Historic Landmarks/Archeological Sites – Designated Site
  - 7. Private Lands Within Designated National Reserves
  - 8. Active or Passive Recreation Area

**B. Medium priority open space resources** - three (3) points each;

1. Conservancy Shoreline Environments
2. Flood Hazard Buffer Areas
3. Geologic Hazard Buffer Areas
4. Scenic Natural Resources, Viewpoints, and View Corridors
5. Urban Growth Area Open Space
6. Public Lands Buffer
7. Category "C" or "D" Wetlands
8. Historic Landmarks/Archeological Sites – Eligible Site

**C. Low priority open space resources** - one (1) point each;

Artificial or Category "E" Wetlands

**D. Bonus system.** Properties qualifying in the specific high, medium, or low priority open space resource categories may receive up to twenty-seven (27) bonus points if the following additional qualifications are met:

1. Public priority - five (5) points.
2. Voluntary Resource or Critical Area restoration - five (5) points.
3. Bonus surface water quality buffer – one (1), three (3), or five (5) points.
4. Contiguous parcels under separate ownership – three (3) points per contiguous parcel.
5. Conservation/historic/trail easement in perpetuity – twenty (20) points.
6. Properties with an approved Rural Stewardship Plan – five (5) points.

**E. Bonus public access points**

1. Unlimited public access – five (5) points.
2. Limited public access -sensitive area – five (5) points.
3. Privately owned tidelands access - five (5) points.
4. Limited public access - three (3) points.

**F. Super bonus system.** Properties with at least one (1) high priority open space resource and which allow unlimited public access, or limited public access if due to resource sensitivity, and which convey a conservation, historic, or trail easement in perpetuity, in a form approved by the County, shall be automatically eligible for current use value at ten percent (10%) of market value.

**3.40.040 Assessed Valuation Schedule - Public Benefit Rating System for Open Space Land**

The Public Benefit Rating System for open space land bases the level of assessed fair market value reduction on the total number of awarded points. The market value reduction establishes the current use value. This current use value will be expressed as a percentage of market value based on the public benefit rating of the property and the valuation schedule below:

<b>PUBLIC BENEFIT RATING POINTS</b>	<b>CURRENT USE VALUE</b>
• (0-4 points)	100% of assessed value
• (5-9 points)	80% of assessed value
• (10-14 points)	70% of assessed value
• (15-19 points)	60% of assessed value
• (20-24 points)	50% of assessed value
• (25-29 points)	40% of assessed value
• (30-34 points)	30% of assessed value
• (35-39 points)	20% of assessed value
• (40-52 points)	10% of assessed value

**3.40.050 Basis of Assessment**

In determining the market value reduction of a tax lot comprised of property qualifying for a current use assessment as an open space priority resource with non-open space land areas, the open space current use value is applicable to only that portion of the lot containing one (1) or more of the priority open space resources defined in this chapter, except in the case of public access and parcels with an approved Rural Stewardship Plan. For each priority resource, the County will determine the appropriate land area that receives credit for a particular priority resource and accompanying tax reduction. Those portions of a tax lot qualifying for a current use tax assessment shall be assigned separate Assessor tax lot numbers for tax purposes only and shall not be construed to be a division of land.

**3.40.060 Ineligible Lands**

The following properties shall not be eligible for open space classification:

- A. Properties less than five (5) acres in size unless otherwise specified herein.
- B. Properties that do not contain an open space resource identified as either high, medium, or low priority.
- C. Open space areas required by zoning or other land use regulation, unless the owner provides additional public benefit, such as additional public access, resource restoration, or a native growth protection easement. Ineligible lands include open space areas dedicated under zoning or subdivision conditions or which are used to achieve maximum development potential under zoning.

- D. Buffer areas required as part of a development, subdivision, zoning, or other regulatory requirement are not eligible as a surface water quality buffer area priority open space resource, unless other conditions beyond those required by regulation are imposed.

**3.40.070 Application to the County Under the Public Benefit Rating System**

An owner of open space land desiring assessed valuation under the Public Benefit Rating System shall make application to the Board of County Commissioners by filing an application with the County Planning Department. The application shall be upon forms supplied by the County and shall include such information deemed reasonably necessary to properly classify an area of land under RCW Chapter 84.34 with a notarized verification of the truth thereof.

**3.40.080 Application Fee**

Each application for current use open space taxation as defined in RCW 84.34.020, must include an application fee, as established in the most current Island County Permit Fee Schedule. .

**3.40.090 Time to File**

Applications shall be made by December 31st of the calendar year preceding the year in which such classification is to begin. Actual tax reduction will not be recognized until one year after the classification of the property has been made.

**3.40.100 Application Review**

- A. Applications under the Public Benefit Rating System shall be reviewed by the County and approved directly by the Board of Island County Commissioners. By RCW 84.34 such applications are exempt from the Comprehensive Plan Annual Review Amendment cycle and are SEPA exempt.
- B. In determining whether an application made for open space current use taxation status should be approved or disapproved, pursuant to RCW 84.34.020 and this chapter, the County shall consider whether or not preservation of the current use of the land, when balanced against the resulting revenue loss or tax shift from granting the application under the provisions of this chapter will:
  - 1. Conserve or enhance natural, cultural or scenic resources,
  - 2. Protect streams, stream corridors, wetlands, natural shorelines, and aquifers,
  - 3. Protect soil resources and unique or critical wildlife and native plant habitat,

4. Promote conservation principles by example or by offering educational opportunities,
5. Enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations, or sanctuaries or other open spaces,
6. Enhance recreation opportunities,
7. Preserve historic and archeological sites, or
8. Affect any other factors relevant in weighing benefits to the general welfare or preserving the current use of the property as delineated in this chapter.

#### **3.40.110 Board Decision**

The Board of County Commissioners shall consider an application to the Public Benefit Rating System as defined by RCW 84.34.037. They shall approve the application, with or without terms and/or conditions, and set the public benefit rating for assessment abatement, or deny the application. In so doing the following provisions will apply:

- A. They shall rate the land applying for classification according to the Public Benefit Rating System;
- B. They may approve the application with respect to only part of the land that is the subject of the application;
- C. If any part of the application is denied or conditions attached the applicant may withdraw the entire application.

#### **3.40.120 Unincorporated Lands**

In all unincorporated areas, the Board of County Commissioners shall act as the granting authority for applications for classification as open space land.

#### **3.40.130 Incorporated Lands**

Applications for open space classification of land in an incorporated area shall be acted upon by a determining authority composed of the three (3) members of the Board of County Commissioners and three (3) members of the city legislative body in which the land is located (RCW 84.34.037). Where the County legislative body concurs with a recommendation of the city council to accept or reject an application for open space classification, such council's recommendation will be adopted as the decision of the determining authority.

#### **3.40.140 Length of Time in Classification**

Once land has been classified as an open space resource land under the Public Benefit Rating System, it shall not be applied to any other use for a period of not less than ten (10) years. The land shall continue in classification after the ten (10) year period until the owner makes a request for withdrawal or until the use of the

land has changed or it has been sold and the new owner has not signed a notice of continuance.

#### **3.40.150 Monitoring for Compliance**

- A. Monitoring of lands for continuing eligibility for current use assessment as open space lands shall include an affidavit, to be submitted annually by the landowner, of continuing compliance with the terms and conditions under which open space classification was granted and the current uses of the property. The requisite form and contents of the affidavit required for monitoring shall be described more fully in the County guidelines implementing this chapter. The failure of the owner to submit the affidavit of compliance shall be grounds for the County to reevaluate the property under the PBRs.
- B. The Planning and Community Development Department shall monitor the property to determine the continuing compliance with all of the conditions under which open space classification was granted and the current uses of the property. Where the Planning and Community Development Department determines that the land is no longer being used for the purpose for which the classification was granted or there has been a change in use, it will report its findings within thirty (30) days to the County Assessor.

#### **3.40.160 Removal of Land Classification by County Assessor**

- A. Classified land may be removed from the Public Benefit Rating System classification if it is no longer used for the purpose for which classification was granted or for any other classified use within the current use program. The Assessor may determine, after giving the owner written notice and an opportunity to respond, that the land classified as open space is no longer primarily devoted to and used for the purposes for which it was granted classification.
- B. When land is removed from classification an additional tax, applicable interest, and penalties are due unless the removal meets one of the exceptions listed in this chapter. The owner may appeal the removal of classification to the Board of Equalization.

#### **3.40.170 When Removal of Land not Subject to Additional Tax, Interest, and Penalties**

Removal of land is not subject to additional tax, interest, and penalties in the following instances:

- A. Land is transferred to a government entity in exchange for other land located in the state of Washington;
- B. Land is taken by power of eminent domain or transferred in anticipation of the exercise of such power;

- C. Land is sold or transferred within two (2) years of the death of the owner of at least fifty-percent (50%) interest in the land;
- D. A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of an act of the landowner which changes the use of such property;
- E. Official action by the state, County or city disallows the present use of such land;
- F. The land is transferred to a church, such that the land would qualify for a property tax exemption;
- G. Acquisition of property interests by state agencies or agencies or organizations qualified under chapters 84.34.210 and 64.04.130 RCW for the purpose of protecting, preserving, maintaining, improving, restoring, limiting the future use of, or otherwise conserving, selected open space land as defined in chapter 84.34 RCW for public use and enjoyment.

#### **3.40.180 Transfer of Lands between Certain Current Use Taxation Classifications**

Land reclassified between the following current use assessment resource categories pursuant to RCW 84.34.070 are not considered withdrawals and are not subject to the additional tax interest and penalties:

- A. Reclassification between farm and agricultural lands and timber lands;
- B. Reclassification of farm and agricultural lands or timber lands to open space lands;
- C. Reclassification of farm and agricultural lands or timber lands to forest land classified under RCW 84.33; and
- D. Reclassification from open space designated farm and agricultural conservation land under RCW 84.34.020(1)(c) to farm and agricultural land under RCW 84.34.020(2) if the land was previously classified as farm and agricultural land.

An application fee must be paid at the time the application is submitted, as established by the Island County Permit Fee Schedule for Reclassification. If the type of transfer is not listed above it is considered to be a new application for which the applicable fees will be applied.

#### **3.40.190 Owner May Request Withdrawal From Classification**

- A. After eight (8) years of the initial ten (10) year period has passed, the landowner may request that all or part of his/her land be withdrawn from the classification. The landowner must submit the request to withdraw classification to the Assessor at least two (2) years prior to the date upon which it is to be removed from the Current Use Assessment classification.

The request to withdraw classification may be revoked at any time until the land is withdrawn from classification.

- B. If a portion of a parcel is removed from classification the remaining portion must meet the same requirements, as did the entire parcel when the land was originally granted classification. Following withdrawal from classification, future valuation of such land as open space resource property under the Public Benefit Rating System is contingent upon reapplication and approval under this chapter.

#### **3.40.200 Action on Withdrawal From Classification**

Upon receipt of a request for withdrawal, the Assessor shall notify the legislative authority that originally approved the classification, and when two (2) years have elapsed the Assessor shall withdraw the land from classification. The land which is removed shall be subject to a tax equal to the difference between the amount of tax paid under the open space classification and the tax at true and fair value for seven (7) years last past, plus the statutory interest rate charged on delinquent property taxes.

#### **3.40.210 Owner to Notify Assessor of Change in Use in Classification**

If an owner changes the use of the classified land, the owner must notify the County Assessor of the change within sixty (60) days. The Assessor shall then impose an additional tax equal to the difference between the tax paid on current use value and the tax that would have been paid on that land had it not been so classified, payable for the seven (7) years last past, plus interest on this additional tax at the same rate as charged on delinquent property taxes, plus a penalty of twenty percent (20%) of the total amount.

#### **3.40.220 Sale of Open Space Classified Land**

When classified open space land is sold, the seller or transferor becomes liable at the time of sale for the additional tax, interest, and penalty of all or a portion of classified lands, unless the new owner signs the notice of continuance which is attached to or shown on the excise tax affidavit. The County Auditor shall not accept an instrument of conveyance on any classified land unless the notice of continuance has been signed or the additional tax has been paid.

#### **3.40.230 Review of Previously Approved Open Space Applications**

- A. Upon adoption of a Public Benefit Rating System, the Planning Department shall re-rate the existing open space land current use assessment program participants according to the Public Benefit Rating System in determining whether an application. Re-rating of all existing program participants shall be performed in conjunction with the physical inspection cycle as funds become available or when the property is sold, whichever comes first.
- B. The process for re-rating existing open space land current use assessment program participants under the Public Benefit Rating System shall be conducted in accordance with the provisions for processing a new application

for open space land current use assessment, except filing fees shall be waived.

- C. Properties which do not qualify under Public Benefit Rating System and whose owners choose not to be removed shall not be removed from the open space land current use assessment program, but shall be rated according to the public benefit rating system land current use assessment valuation schedule.
- D. Owners of properties classified under the existing open space land current use assessment program shall be notified of their new assessed value in the same manner as provided in RCW 84.40.045. These lands may be removed from classification under the existing open space land current uses assessment program without payment of penalties, back taxes, and interest upon request of the owner, within 30 days of notification of value under the public benefit rating system.

#### **3.40.240 Planning Commission's Duties**

The Planning Commission shall review the Open Space Program at the inclusion of the first additional one thousand (1,000) acres approved for open space classification under the County's current use assessment program or, after the first three (3) years after adoption of this chapter, whichever occurs sooner, and thereafter once every three (3) years. The Planning Commission shall make written recommendation to the Board of County Commissioners on the following matters:

- A. The fundamental elements of the Public Benefit Rating System, including such as the assessed valuation schedule and the other PBRs procedures defined in this chapter, open space resource definitions, etc.; and
- B. The overall administrative process, including such issues as staffing, outreach to prospective applicants, application form and application processing, monitoring, etc.; and
- C. The public benefit of the open space designated properties, the magnitude of the tax shift resulting from the designated properties and recommendations for expanding or restricting the program.

#### **3.40.250 High Priority Open Space Resources**

##### **A. Resource and Rural Agricultural Lands**

1. **Definition.** Land primarily devoted to the current production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock, and which has significance for agricultural production. Or, land that has been traditionally in or is still capable of production for the above and which could be returned to productive commercial agriculture.

2. **Source.** Island County Commercial Agriculture Land Study, Planning and Community Development Department, February 1998.
3. **Eligibility.** Eligible sites are those that are currently not enrolled in existing current use assessment programs and meet any of the following criteria:
  - a) Lands of at least five (5) acres which are on prime or unique soils as identified in the data source; or
  - b) Lands of at least five (5) acres which meet the definition of resource and rural agricultural lands above; or
  - c) Lands that have been traditionally in or is still capable of production of the above as demonstrated by sales receipts, income tax statements, or other materials which the County accepts as proof that farming once occurred on the property and that the property could be returned to productive commercial agriculture.

**B. Rural Forest Lands/Woodlots**

1. **Definition.** Rural forest lands/woodlots shall mean any parcel of land that is greater than two (2) acres but less than five (5) acres which is devoted primarily to the growth and harvest of forest crops for commercial purposes. A timber management plan shall be filed with the County legislative authority at the time application is made for classification as timber land pursuant to this chapter.
2. **Source.** Island County Commercial Forest Land Study, Crescent Springs Management, January, 1998.
3. **Eligibility.** Eligible sites are those that are currently not enrolled in existing current use assessment programs and meet the definition for forestlands/woodlots, above.

**C. Privately Owned Trails and Corridors**

1. **Definition.** Privately owned trails and corridors that are publicly accessible and used for hiking, biking, walking, horseback riding, and jogging. The trails may vary in scale and surfacing and may also be used as a means of non-motorized transportation connecting one destination point to another. Streets, roads, and highways with widened shoulders or bike lanes are not included in this category.
2. **Source.** County Non-Motorized Trail Plan.
3. **Eligibility.** Eligible lands must be used as a public trail or corridor that remains in private ownership. Public access on the trail from a public road or public trail is required.

**D. "Natural" Shoreline Environment**

1. **Definition.** A marine, lake, or river shoreline and its "associated wetlands" designated "natural" in the Shoreline Management Master Program for the County.

2. **Source.** Shoreline Management Master Program.
3. **Eligibility.** Eligible lands are those identified as natural shoreline environments and their associated wetlands in the adopted Shoreline Master Plan governing the area in which the shoreline is located. Eligible land must be adjacent to the water. To qualify there must be no structures or buildings within 200 feet upland from the ordinary high water mark (OHWM); this area is within the Shoreline jurisdiction, and is based on the Shoreline Master Program; and there must be no structures within 200 feet from the edge of an associated wetland boundary. If there is a bluff, any buildings must be at least 200 feet back from the edge of the bluff in a “Natural” Shoreline Environment. Eligibility for this resource category cannot overlap with the “Conservancy Shoreline Environment” category or other wetland categories of the Public Benefit Rating System.

E. **Significant Fish and Wildlife Habitat Conservation Areas, Species and Habitats of Local Importance, Category A and B Wetlands and Special Plant Sites**

1. **Definitions**

- a) **Significant Fish and Wildlife Habitat Conservation Areas.** Those areas identified as being of critical importance to the maintenance of fish and wildlife species including areas with which endangered, threatened, and sensitive species have a primary association; habitats and species of local importance; streams; commercial and recreational shellfish areas; kelp and eelgrass beds; herring and smelt spawning areas; state natural area preserves, and state natural resource conservation; or
- b) **Species and Habitats of Local Importance**
  - i. Those areas containing vascular plant species as identified and listed in the Natural Heritage Program as being either endangered, threatened, or sensitive and areas identified in the Natural Heritage Program as high quality ecosystems.
  - ii. Those areas or species designated as Species or Habitats of Local Importance set forth in Chapter 17.02 ICC.
- c) **Category A and B Wetlands.** Wetlands that are classified Category “A” or “B” by Chapter 17.02A ICC and “A” by Chapter 17.02 ICC.
- d) **Special Plant Sites**
  - i. Those sites where preservation, restoration or enhancement of native plant communities is maintained subject to an approved management plan, or
  - ii. Those areas where Blue Flag Iris (*Iris missouriensis*) can be identified or where the property owner proposes a

management plan to introduce and maintain a population of Blue Flag Iris.

**2. Sources**

- a. Those areas containing vascular plant species as identified and listed in Department of Natural Resources (DNR) the Natural Heritage Program as being either an endangered, threatened, or sensitive and areas identified in the Natural Heritage Program as high quality ecosystems.
- b. Those features identified on the Critical Area Maps maintained by Island County.

**3. Eligibility**

- a) Areas which have a primary association with federally- or state-listed endangered, threatened, or sensitive species of fish or wildlife, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. A Habitat Management Plan shall be submitted which identifies the area to be protected and appropriate mitigation, management and/or protection strategies that will be employed.
- b) Habitats and species of local importance are to be based on the following criteria:
  - (i) The species or habitat is native to the County;
  - (ii) Locally declining populations that are in danger of extirpation;
  - (iii) Sensitivity to habitat manipulation; and
  - (iv) Commercial, game, other special value.
  - (v) A Habitat Management Plan shall be submitted which identifies the area to be protected and appropriate mitigation, management and/or protection strategies that will be employed.
- c) Streams, provided that the stream buffer is at least twice the size of that required under Chapter 17.02 ICC. Buffer averaging shall not be utilized;
- d) Commercial and recreational shellfish areas, provided that the fish and wildlife habitat conservation area buffer is at least twice the size of that required under Chapter 17.02 ICC. Buffer averaging shall not be utilized;
- e) Kelp and eelgrass beds; herring and smelt spawning areas, provided that the fish and wildlife habitat conservation area buffer is at least twice the size of that required under Chapter 17.02 ICC. Buffer averaging shall not be utilized;

- f) State natural area preserves and natural resource conservation areas;
- g) Sites listed in the Natural Heritage database as containing endangered, threatened, or sensitive vascular plant species or high quality ecosystems, or which are verified by an expert in the field as containing the same plants or communities and which are acceptable by the state agency for addition to the database. A Habitat Management Plan shall be submitted which identifies the area to be protected and appropriate mitigation, management and/or protection strategies that will be employed.
- h) Eligible sites are those wetlands classified Category "A" or "B" by Chapter 17.02A ICC or Category "A" by Chapter 17.02 ICC.

Items a) through h) listed above require protection through easements, or voluntary buffers in those cases where buffers are not established through Chapter 17.02 or 17.02A ICC and, in certain cases, shall require preparation and submittal of a Biological Site Assessment or Habitat Management Plan. The BSA or HMP shall provide a description of the fish and wildlife habitat conservation area, the location of the protected features, the location of buffers and a description of efforts to protect the fish and wildlife habitat conservation area, or a description of restoration efforts in those instances where the critical area has been damaged.

#### F. **Historic Landmarks/Archaeological Sites – Designated Site**

1. **Definition.** Historic landmark or archaeological site – designated: land which constitutes or upon which is situated a historic landmark or formally designated landmark. Historic landmarks include buildings, structures, districts, or sites of significance in the County's historic or prehistoric heritage, such as Native American settlements, trails, pioneer settlements, farmsteads, roads, industrial works, bridges, burial sites, prehistoric and historic archaeological sites, or traditional cultural properties. To be eligible as a designated site, a property must be listed on a National Registry or on a County or other certified local government list or register of historic places or landmarks for which there is local regulatory protection.
2. **Source.** Listing on a National, County, or other local lists or registers of historic places or landmarks, as well as listings on the State inventory of Archaeological Sites (State Office of Archaeology and Historic Preservation) or the County Historical Society.
3. **Eligibility.** Eligible properties must be listed on the County or other local list or register of historic places or landmarks for which there is local regulatory protection. Eligible properties only include contributing properties within designated historic districts or land that has been verified through an archaeological report prepared by a qualified

archaeologist that contains archaeological resources. Improvements to the land are not eligible for other federal or state tax credits. Eligibility for this resource category cannot overlap with the “Historic Landmarks/Archaeological Sites – Eligible Site” category. The County will review and make determinations on eligibility.

**G. Private Lands Within Designated National Reserves**

1. **Definition.** Officially designated areas under private ownership located within national reserves that remain undeveloped and are maintained to protect the landscape of the reserve.
2. **Source.** National Park Service, the Trust Board of the Ebey's Landing National Historical Reserve.
3. **Eligibility.** Eligible lands are privately owned parcels within the Ebey's Landing National Historical Reserve, five (5) acres or greater in size, that remain undeveloped and are maintained to protect the landscape of the reserve.

**H. Active or Passive Recreation Area**

1. **Definition.** Property which is currently devoted to providing active or passive non-motorized recreation use or which complements or substitutes for government facilities. The facility must be open to the public and charging a use fee no higher than the fee charged by a like public facility and the facility must provide recreation or other services to youth, senior citizens, the handicapped, or similar groups.
2. **Source.** Determination by Island County Parks or by appropriate parks department of incorporated cities or towns.
3. **Eligibility.** An eligible site is that identified by an appropriate parks department as meeting the definition of active or passive recreation areas.

Eligible examples include:

- A. Sports fields on private property that are open to the public;
- B. Golf courses open to public with fees comparable to local public golf courses and which adhere to Best Management Practices. Annual monitoring reports are required;
- C. A community garden;
- D. Other recreational uses determined to be consistent with the definition of Active or Passive Recreation as determined by the Island County Parks Department.

Ineligible examples include:

- A. Properties with public trails: These are covered under the Privately Owned Trails resource;

- B. Recreational vehicle park portions of sites and related improvements to the land, including parking;
- C. Golf courses which do not adhere to Best Management Practices or charge a fee not comparable to public golf courses;
- D. Indoor recreation centers, gambling establishments, arcades, fun centers, etc.

### 3.40.260 Medium Priority Open Space Resources

#### A. "Conservancy" Shoreline Environment

1. **Definition.** Marine and Lake Shoreline and associated wetlands designated as "conservancy environment" in an adopted Shoreline Management Master Plan. Conservancy shoreline areas are intended to preserve their existing character. The area must consist of native vegetation.
2. **Sources.** Shoreline Management Master Program.
3. **Eligibility.** Eligible sites must be identified as "conservancy shoreline environment" in an adopted Shoreline Master Plan. The property must not be in another shoreline category of the PBRs. The area to be considered eligible is a maximum of two hundred (200) feet upland from the ordinary high water mark, within the one hundred (100) year floodplain, or the edge of the associated wetland, whichever is greater. To qualify there must be no structures or buildings within 150 feet upland from the ordinary high water mark (OHWM); this area is within the Shoreline jurisdiction, and is based on the Shoreline Master Plan; and there must be no structures within 150 feet from the edge of an associated wetland. If there is a bluff, any buildings must be at least 150 feet back from the edge of the bluff in a "Conservancy" Shoreline Environment. Eligibility under this resource category cannot overlap with the "Natural Shoreline Environment" category or other wetland categories of the PBRs.

#### B. Flood Hazard Areas Buffers

1. **Definition.** Land buffering a floodplain within the County subject to a one percent (1%) or greater chance of flooding in any given year. These areas include, but are not limited to, streams, lakes, coastal areas, and wetlands.
2. **Source.** Flood Damage Prevention Ordinance, Chapter 14.02A ICC. One hundred (100) year floodplains as listed and mapped by the Federal Emergency Management Agency and the National Flood Insurance Program.
3. **Eligibility.** Those buffer areas located adjacent to or in the immediate vicinity of and which provide at least two (2) times the additional buffer width beyond that required by regulation for areas located within a

hundred (100) year floodplain as identified on the FEMA Flood Insurance Program Maps.

**C. Geologic Hazard Area Buffers**

1. **Definition.** Land buffering areas not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns due to their susceptibility to sliding or other slope failures, erosion, earthquake, or other geologic events.
2. **Sources.** Steep/Unstable Slopes Overlay Zone, ICC 17.03. Areas indicated in the Washington Department of Ecology's Coastal Zone Atlas as being unstable, and areas determined by site-specific geologic reports as being unstable. Areas identified in the USDA Island County Soil Survey as having severe water erosion hazards.
3. **Eligibility.** Those areas of undisturbed vegetation located adjacent to or in the immediate vicinity of geologically hazardous areas and which provide at least two (2) times the additional buffer/setback width beyond that required by regulation for areas indicated in the Washington Department of Ecology's Coastal Zone Atlas; USDA Island County Soil Survey; or areas with slopes forty percent (40%) or greater and with a vertical relief of ten (10) feet or more, except areas of consolidated rock.

**D. Scenic Natural Resources, Viewpoints, and View Corridors**

1. **Definitions**
  - a) **Scenic Natural Resource:** An area of ten (10) or more acres of natural features which is visually significant to the aesthetic character of the County or contains features which otherwise qualifies as a historic landmark or archaeological site; or
  - b) **Viewpoint:** Property that provides a view of an area which is visually significant to the aesthetic character of the County and which provides unlimited public access identified by a permanent sign readily visible from a road or other public right-of-way; or
  - c) **View Corridor:** An area of adjoining parcels which individually may be less than one (1) acre but which, when combined, total at least one (1) acre and create a view corridor critical to maintaining a view of a scenic resource area or other visually significant area.
2. **Source.** None available.
3. **Eligibility**
  - a) No lands that have been subject to commercial logging or mineral extraction within twenty five (25) years of the date of the open space classification application are eligible under the Public Benefit Rating System.
  - b) **Scenic Natural Resource:** Eligible sites must be significant to the identity of the local area and be visible to a significant

number of the general public from public rights-of-way. Such lands must be of sufficient size to substantially preserve the scenic resource value and must be at least ten (10) acres in size.

- c) **Viewpoint:** Eligible sites must provide a view of a scenic natural resource in the County or other visually significant areas and must provide for unlimited public access.
- d) **View Corridor:** Eligible sites must meet the definition of view corridor above.

#### E. **Urban Growth Area Open Space**

- 1. **Definition.** Five (5) or more acres of land, open to the public, and located within the boundaries of an Urban Growth Area designated by the County. For purposes of this definition, land shall be considered open to the public if it qualifies for receiving any points for public access under the Public Access section of this Open Space Taxation Program.
- 2. **Sources.** City, Town or County Comprehensive Plan and the Natural Lands Plan.
- 3. **Eligibility.** Eligible lands are those meeting the definition above.

#### F. **Public Lands Buffer**

- 1. **Definition.** Native growth land lying adjacent to neighborhood parks, forests, wildlife preserves, natural area preserves, or sanctuaries. Eligibility for this exception does not extend to properties where plantings are required under local zoning codes, development mitigation requirements, or other local regulations.
- 2. **Source.** County Comprehensive Plan.
- 3. **Eligibility.** Lands being buffered shall be in public ownership, or private lands shall be enrolled in the open space program.

#### G. **Category “B,” “C” and “D” Wetland**

- 1. **Definition.** Wetlands classified Category “C” or “D” by Chapter 17.02A ICC and “B” by Chapter 17.02 ICC.
- 2. **Sources.** County Wetland Maps, ICC 17.03.030 and 17.03.110.A and Land Use Standards governing wetlands, deepwater habitats, tributary streams and their surrounding buffers, ICC 17.03.150.N. National Wetlands Inventory Mapping System, U.S. Fish and Wildlife Service. Shoreline Management Act, 90.58 RCW and the County Shoreline Management Master Program ICC 16.21.
- 3. **Eligibility.** Eligible lands are those wetlands designated the Category B rating under the County Wetland Maps classified Category “C” or “D” by Chapter 17.02A ICC and “B” by Chapter 17.02 ICC.

#### H. **Historic Landmarks/Archaeological Sites – Eligible Site**

1. **Definition.** For the purposes of this category, "historic landmark or archaeological site: eligible site" means land that constitutes or upon which is situated a historic property that has the potential of being formally designated by a certified local government jurisdiction, including buildings, structures, districts, or sites of significance in the County's historic or prehistoric heritage, such as Native American settlements, pioneer settlements, farmsteads, roads, industrial works, bridges, burial sites, prehistoric and historic archaeological sites, or traditional cultural properties. An eligible property must be determined by the County, or other certified local government program in the jurisdiction in which the property is located, to be eligible for designation and listing on the National, County, or other local register of historic places or landmarks for which there is local regulatory protection.
2. **Source.** Determination by the County or other certified local government program in the jurisdiction in which the property is located to be eligible for listing on the National, State, County, or other local lists or registers of historic places or landmarks, as well as those found to be eligible with the State inventory of Archaeological Sites (State Office of Archaeology and Historic Preservation) and the County Historical Society.
3. **Eligibility.** Eligible properties only include properties that are determined to have the potential of being formally designated by a certified local government jurisdiction for listing on the County or other local register of historic places or landmarks for which there is local regulatory protection. Additionally, lands that has been verified through an archaeological report prepared by a qualified archaeologist that contains archaeological resources but are not formally designated as such are also eligible. Improvements to the land are not eligible for other federal or state tax credits. Eligibility for this resource category cannot overlap with the "Historic Landmarks/Archaeological Sites – Designated Site" category. The County will review and make determinations on eligibility.

### **3.40.270 Low Priority Open Space Resources**

#### **A. Artificial/Category "C" and "E" Wetlands**

1. **Definition.** Wetlands classified as Category "E" by Chapter 17.02A ICC and "C" by Chapter 17.02 ICC.
2. **Sources.** County Wetland Maps, ICC 17.02 and 17.02A and Land Use Standards governing wetlands, deepwater habitats, tributary streams and their surrounding buffers.
3. **Eligibility.** Eligible lands are those wetlands classified Category "E" by Chapter 17.02A ICC and "C" by Chapter 17.02 ICC.

### **3.40.280 Bonus System**

Additional point values may be applied for the following eligible lands:

A. **Public Priority** - five (5) points

1. **Definition.** Land containing one (1) or more of the following community Natural Lands priorities of County residents:
  - a) Critical Aquifer Recharge Areas which materially protect watersheds for drinking water sources and supply;
  - b) Significant undisturbed natural communities and ecosystems; or
  - c) Natural shoreline systems, including lagoons, saltwater tidal flats, marshes and accretion beaches that serve a diversity of ecological functions.
2. **Source.** Periodic surveys or opinion polls conducted by the County to assess the relative priorities of County residents for the conservation/protection of natural lands. DNR, Division of Geology and Earth Resources, surficial geology maps based on USGS Quad maps.
3. **Eligibility.** Eligible sites are those that contain one (1) or more of the defined public priority open space resources.

B. **Voluntary Resource or Critical Area Restoration** - five (5) points

1. **Definition.** Restoration of any high, medium or low open space resource defined above. Emphasis shall be placed on restoration of anadromous fish-rearing habitat, wildlife and plant habitat areas, and upland, stream, and wetland habitats.
2. **Source.** No inventory available.
3. **Eligibility.** Eligible sites are those that qualify for any high, medium or low open space resource classification above without this category. Sites are eligible to receive five (5) bonus points for the resource being restored. The owner must have an implemented restoration plan developed in cooperation with, or approved by appropriate federal, state, County, or local agency.

C. **Surface Water Quality Buffer Areas** – One (1), three (3), or five (5) points

1. **Definition.** An undisturbed zone of native growth vegetation adjacent to a lake, pond, stream, wetland, or marine waters of a sufficient buffer width, but no less than fifty (50) feet, that will contribute to the protection of water quality in a surface water body. Bonus points are awarded for a streamside or wetland buffer width of at least one and a half (1-1/2) that required by the applicable local Critical Areas Ordinance or for a streamside or wetland buffer, of no less than fifty (50) feet, in agricultural lands otherwise exempted from buffering requirements. The buffer width is measured upland from the ordinary high water mark or the outer edge of a regulated wetland. The buffer does not include the body of water waterward of the ordinary high water mark or the wetland itself.

2. **Sources.** Catalog of Washington Streams, Shoreline Master Programs, County or local Sensitive Areas Ordinance streams and wetlands maps as basis for determination.
3. **Eligibility.** Sites qualifying under the "Surface Water Quality Buffer Area" or Shorelines classifications would receive additional points through the provision of additional buffer which is preserved from clearing and from livestock intrusion. All such lands in or adjacent to pasture land must be fenced to prevent intrusion by domesticated animals. Eligibility requires property use and access restriction beyond those specified in the Critical Areas Ordinance or other surface water protection regulations. The bonus points are awarded as follows:
  - a) One and a half (1-1/2) times additional buffer width beyond that required by regulation - one (1) point
  - b) Two (2) times additional buffer width beyond that required by regulation – three (3) points
  - c) Three (3) times additional buffer width beyond that required by regulation - five (5) points
  - d) At least seventy-five (75) feet of buffer width in agricultural lands otherwise exempted from buffering requirements - five (5) points

**D. Contiguous Parcels Under Separate Ownership** - three (3) points

1. **Definition.** Contiguous parcels of land with the same open space resources are eligible for treatment as a single parcel if open space classification is sought under the same application. "Contiguous parcels" are defined as parcels abutting each other or abutting a publicly owned open space without any significant manmade barrier that materially restricts the free movement of wildlife or interferes with the visual continuity between the two (2) or more properties.
2. **Source.** Not applicable.
3. **Eligibility.** Treatment as contiguous parcels shall include the requirement to pay only a single application fee. The total area of all parcels combined must equal or exceed any required minimum (rather than each parcel being required to meet such minimums). This contiguous parcel bonus must be accepted by all the applicants within the configuration under identical terms and conditions of access, easements, and restrictions. Individual parcels may be withdrawn from open space classification consistent with all applicable rules and regulations without affecting the continued eligibility of all other parcels accepted under the same application, provided that the combined area of the parcels remaining in open space classification must equal or exceed any minimum size requirement established in the PBRs and that access to the remaining parcels is not affected. Contiguous parcels must meet the following conditions:

- a) The application must include two (2) or more parcels;
- b) Each parcel included in the application must contain qualifying open space resources as defined by the Public Benefit Rating System;
- c) The owner(s) of parcels included in the application must agree to such terms and conditions for inclusion in the program that are consistent with the open space resource of the property;

E. **Conservation/Historic Easement in Perpetuity** - twenty (20) points.

- 1. **Definition.** An easement that restricts in perpetuity, further potential development, or other uses of a property, and which may include a requirement for native growth protection.
- 2. **Sources.** Available sources include the Conservation Easement Handbook.
- 3. **Eligibility.** Eligible lands are those that qualify for any high, medium or low open space resource classification. The conservation/historic easement will be in a form, and with such conditions, as are acceptable to the County.

F. **Public Access** - zero (0) to five (5) points.

- 1. **Definition.** Access to the County's open space lands by the general public should be encouraged for all lands unless it is determined that such access would damage or endanger the resource. Property owners who allow access to the property, beyond that which is otherwise required by the open space resource category, should be afforded consideration in the level of tax reduction they receive depending on the level of access allowed and the conditions under which access is permitted.
- 2. **Source.** Not applicable.
- 3. **Eligibility.** Properties shall be awarded additional points to the extent that such public access is available to the open space site, to a maximum of five (5) points. For open space resource categories which either contain public access requirements in the definition or eligibility criteria, no public access bonus points shall be awarded. The applicant shall specify the type of access that will be available in the application. Access points shall be awarded on the following scale:
  - a) **Unlimited Public Access** – five (5) points  
Year-round access to the general public is allowed without special arrangement with the property owner.
  - b) **Limited Public Access/Sensitive Area** – five (5) points

Access may be reasonably limited due to the sensitive nature of the resource, with access provided only to appropriate user groups. The access allowed must generally be for an educational, scientific, or research purpose and available through special arrangements with the owner.

c) **Privately Owned Tidelands Access** - five (5) points

Public access to tidelands and such portions of the upland property necessary to provide access to the water line. Eligibility for public access points requires that the property is able to provide public access to the tidelands from a public right-of-way. Entry points and uses may be posted so that it does not detract from the resource.

d) **Limited Public Access** - three (3) points

- (i) Access to the public is allowed, with or without special arrangements with the property owner, for any period of less than the full year.
- (ii) Access is available to any and all of the general public during any period of the year upon special arrangements with the owner or upon the payment of a use fee that may not exceed twice the cost for members of the organization utilizing the facility.

e) **No Public Access** - zero (0) points

- (i) No public access is allowed.
- (ii) Members only access. Access is restricted at all times to members of the organization utilizing the facility.

f) **Signage**

For properties allowing public access and receiving access points under a) and d) above, the County shall furnish and maintain, at its own expense, signage according to County specifications which designates the property as part of the Open Space Taxation Program and states the conditions of access.

g) **Accessibility**

For properties allowing access and being considered for receiving access points under a) through c) above, no points will be allowed if the property is not reasonably accessible. Off-road parking may be required where necessary to provide safe vehicular or pedestrian access. The property owner may, at their own expense and without any deduction in the number of access points awarded, limit access to the property to a reasonable number of locations through the use of fences, berms or other access barriers. Such physical barriers must be approved by the

appropriate agency in advance, so as not to defeat the purpose of a resource category - for instance restricting wildlife in a wildlife corridor or construction of a visually incompatible fence near an historic resource.

h) **Limitations on Access and Use**

Reasonable limitations on access and use of properties may be imposed without a deduction in the number of access points a property receives. For example, prohibiting access before a reasonable time in the morning and after a reasonable time in the evening, prohibiting the use of any motorized or wheeled vehicles (except those required by disabled persons), prohibiting the use of the property for any kind of social gathering, prohibiting the consumption of any alcoholic beverages on the property, prohibiting the use of the property for picnics, etc. are all examples of reasonable limitations on the use of the property by the public which would likely not result in a reduction of points received by the property in the public access category. All such restrictions must be included in such documents or easements that establish the property as eligible for current use taxation.

G. **Properties with an approved Rural Stewardship Plan – five (5) points.**

1. **Definition.** A detailed site plan prepared 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 under Chapter 17.02A ICC available to Owners of Lots one (1) acre or larger in size. Properties who receive an approved Rural Stewardship Plan can be eligible for the PBRS benefit with one (1) or more acres of eligible property.
2. **Sources.** A County approved Rural Stewardship Plan.
3. **Eligibility.** A Rural Stewardship Plan approved under Chapter 17.02A ICC.

**3.40.290 Super Bonus Category – Current Use Value of Ten Percent (10%) of Market Value**

Properties with at least one (1) high priority open space resource AND which allow unlimited public access or limited public access for a sensitive area (due to resource sensitivity) AND which convey a conservation, historic, or trail easement in perpetuity, in a form and with such conditions as are acceptable to the County, shall be automatically eligible for current use value at ten percent (10%) of market value.

**3.40.300 Severability**

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

**3.40.310 Effective Date**

This Chapter shall take effect on October 1, 1998 and shall apply to new applications submitted on or after that date. Amendments take effect upon the terms of their adoption.

DRAFT