

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

IN THE MATTER OF UPDATING ISLAND )  
COUNTY COMPREHENSIVE PLAN AND ) ORDINANCE C-02-08  
DEVELOPMENT REGULATIONS ) PLG-011-07  
RELATING TO WETLANDS )  
\_\_\_\_\_ )

**WHEREAS**, Island County first adopted wetland regulations in 1984 and re-adopted these regulations in 1992 under the Growth Management Act (GMA); and

**WHEREAS**, the County is required by the GMA to update its Comprehensive Plan and Critical Areas regulations and this ordinance constitutes the County's update of its Comprehensive Plan and regulations relating to wetlands; and

**WHEREAS**, in 2005-2006 the County completed field research to determine the condition of wetlands found in Island County and the effectiveness of existing policies and regulations; and

**WHEREAS**, in 2006 Island County published its research findings in a report authored by Dr. Paul R. Adamus; and

**WHEREAS**, in 2007 Island County published a report on the Best Available Science (BAS) applicable to Island County wetlands also authored by Dr. Paul R. Adamus; and

**WHEREAS**, in 2005-2007, the County completed technical studies relating to wetland review and published a series of reports and memos in a technical appendix; and

**WHEREAS**, in 2006-2007 the County completed workshops, public hearings and peer review of its proposed amendments relating to wetlands; and

**WHEREAS**, pursuant to WAC 197-11-600 the County SEPA official has determined that the proposed changes attached hereto as Exhibits A through I are not likely to have significant adverse environmental impacts; **NOW, THEREFORE,**

**IT IS HEREBY ORDAINED** that the Board of Island County Commissioners hereby adopts amendments to the Comprehensive Plan recommended by the Planning Commission attached hereto as Exhibit A; the amendments to Chapter 17.02 attached hereto as Exhibit B; the new CAO, Chapter 17.02A attached hereto as Exhibit C; the amendments to Chapter 17.03 attached hereto as Exhibit D; the amendments to Chapter 16.19 attached hereto as Exhibit E; the amendments to Chapters 16.06, 16.15 and 16.17 attached hereto as Exhibit F; the amendments to Chapter 3.40 attached hereto as Exhibit G; the Land Use Intensity and the Wetland Buffer Worksheets contained in the Wetlands Identification Guide attached hereto as Exhibit H; the application form contained in the Rural Stewardship Guide attached hereto as Exhibit I; and the Planning Commission's Findings attached hereto as Exhibit J. Material stricken through is deleted and material underlined is added.

BE IT FURTHER ORDAINED that this ordinance shall take effect ninety (90) days after adoption.

Reviewed this \_\_\_\_\_ day of \_\_\_\_\_, 2008 and set for public hearing at \_\_\_\_\_ .m. on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

The Public Hearing shall be limited to the following matters:

1. Changing the implementation to July 1, 2008.
2. Modifying the approval criteria for wetland mitigation banks. The current proposal references a WAC that does not yet exist. The modified proposal would require banks to be certified by DOE.
3. Further restricting the exemption that exempts operation and maintenance activities. This modification would remove language that allows landowners to take actions required to manage storm water that is intentionally or unintentionally directed to downstream property as a result of construction that occurs upstream subject to procedures established by the Department.
4. On January 14<sup>th</sup> the Board will determine whether to include modifications to the clearing limits that are used to determine intensity of land use. The Board requested that staff generate an alternative proposal and present it to the Board on January 14<sup>th</sup> upon which the Board would make a decision as to whether to add this to the January 28<sup>th</sup> public hearing.

BOARD OF COUNTY COMMISSIONERS  
ISLAND COUNTY, WASHINGTON

\_\_\_\_\_  
John Dean, Chairman

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Phillip Bakke, Member

\_\_\_\_\_  
Wm. L. McDowell, Member

ATTEST:

\_\_\_\_\_  
Elaine Marlow  
Clerk of the Board

APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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ISLAND COUNTY, WASHINGTON

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ATTEST:

\_\_\_\_\_  
Elaine Marlow  
Clerk of the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
David L. Jamieson, Jr.  
Deputy Prosecuting Attorney  
& Island County Code Reviser

**EXHIBIT A**

**Island County Comprehensive Plan**

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GENERAL LAND USE POLICIES

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CRITICAL AREAS

Goal:

Maintain healthy, functioning ecosystems to benefit the residents of the County through the protection of critical areas.

Policies:

1. Development regulations to protect critical areas should be adopted after considering scientific information judged by the County to be the best available at the time of enactment.
2. To the fullest extent possible, the protection of critical areas should be accomplished through the voluntary cooperation of land owners and should minimize the burdens imposed on land owners.
3. To the fullest extent possible, any regulation adopted to protect critical areas should be based on and adapted to the local circumstances unique to Island County.
4. When reasonable and practical, except when critical area regulations deny reasonable use of property, impacts from new uses or activities to critical areas or critical area buffers should be avoided.
5. When alteration of a critical area or critical area buffer by a new use or activity will adversely affect the critical area and cannot be reasonably and practically avoided, then the alteration should be reduced.
6. When alteration of a critical area or critical area buffer by a new use or activity will adversely affect the critical area and cannot be reasonably and practically avoided or reduced, then the alteration should be restored.
7. When alteration of a critical area or critical area buffer by a new use or activity will adversely affect the critical area and cannot be reasonably and practically avoided or reduced or restored, then the alteration should be compensated for through mitigation.
8. Generally, on-site mitigation for the adverse alteration of a critical area or critical area buffer should be preferred. Off-site mitigation should be preferred when on-site mitigation is not feasible, not practical or provides greater protection to critical areas. When neither on-site nor off-site mitigation is feasible, practical or provides greater

protection to critical areas, then compensation for the adverse alteration of a critical area or critical area buffer may occur through the payment of a fee in lieu of mitigation.

9. Regulations to protect critical areas:
  - a. Should not make any existing parcel or lot unusable;
  - b. Should not prevent the provision of needed public transportation and utility projects;
  - c. Should be sufficiently flexible to be adjusted on a case-by-case basis to meet site-specific conditions; and
  - d. Should utilize review processes that are proportional to the scope or scale of the proposal and or alteration under review.
  - e. When considering reasonable use of property, modifications of other regulations that may avoid or reduce the alteration is preferred before modifying critical areas standards.
10. Any changes to policies and regulations to protect critical areas should be applied in a fair and equitable manner based on a predictable process to allow property owners to transition from old to new rules and standards.
11. Development proposals that affect wetlands should incorporate measures and practices that reduce the quantity and improve the quality of storm water runoff by controlling pollutants at their sources and retaining natural vegetation, soils and drainage patterns.

## WETLANDS OVERLAY

### Goal:

To protect wetlands from a net loss in functions.

### Policies:

- A. Protect, preserve, and enhance wetlands with the intent to achieve no net loss of wetland functions:
  1. ~~Avoid land development that causes loss of wetland functions. When there is no reasonable alternative, minimize and mitigate adverse impacts to wetland functions.~~
  2. ~~Mitigation projects that add to existing wetlands or increase functions and values of degraded wetlands are preferred over efforts to create wetlands from non-wetland areas and should remain subject to wetlands protection regulations.~~

- ~~3. Prohibit alteration of land that results in degradation of wetlands, except for maintenance of existing public use or road or utility crossings that are the least environmentally damaging practical alternative or if necessary to permit reasonable use of the land. In such cases, minimize and mitigate the degradation.~~
- ~~4.1. Implement non-regulatory wetlands protection measures such as acquisition and incentive programs and the public benefit ratings system.~~
- ~~5.2. Provide continuity of natural systems by establishing protected corridors of native vegetation between wetlands systems using buffer averaging, density incentives, land acquisition, site design and other techniques.~~
- B. Consider economic, environmental, and cultural costs when evaluating proposals for wetland alterations, and recognize instances where development or alteration within or adjacent to wetlands ~~is~~ may be acceptable.
  - ~~1. Allow reasonable use of a property, provided all wetlands functions are evaluated, the least harmful alternative is pursued, and degraded functions are mitigated, on site as far as possible.~~
- C. When reasonable and practical, ~~D~~ development will be located away from regulated wetlands by use of buffers and PRDs.
- D. Maps, site-specific studies, and information collected by other agencies available for public review will be made readily accessible ~~to potential and existing landowners, interested citizens, and development interests~~ to aid in the protection of these areas.
- E. Adverse Alteration of wetlands will ~~occur~~ be permitted only after careful consideration of the function of the area, ~~the potential environmental costs of alterations,~~ the sensitivity of the area to disturbance, and the intensity and potential risks associated with a proposed land use.
- F. When a violation of ~~the policies and regulations of this area~~ is identified, the enforcement action and severity of any penalty will be proportional to the nature and circumstances of the violation and the damage or risk to ~~private and public resources~~ wetland.
- ~~G. Overlay policies and development regulations shall be implemented in addition to those associated with the underlying land use designation. When there is a conflict in policy statements or development regulations, the more restrictive shall apply.~~
- ~~H. Wetlands regulations are contained in ICC 17.02.~~

**EXHIBIT B**  
**Chapter 17.02**  
**OLD Critical Areas Ordinance**

**Sections:**

**17.02.010 Authority**

**17.02.020 Purpose**

**17.02.030 Definitions**

**17.02.040 Critical Areas**

- A. Purpose
- B. Applicability
- C. Permitted Uses
- D. Reasonable Use - Single Family Residence on Existing Lots
- E. Exemptions
- F. Alteration
- G. Reasonable Use Exception
- H. Physically Separated and Functionally Isolated Buffers
- I. Review Process
- J. Assessment
- K. Existing and On-Going Agricultural Activities
- L. Monitoring

**17.02.050 Overlay Zones**

- A. Wetlands (w)
- B. Geologically Hazardous Areas (gh)
- C. Fish and Wildlife Habitat Conservation Areas (fw)
- D. Penalties and Enforcement
- E. Airport and Aircraft Safety (as) (Reserved)
- F. Scenic Corridors (sc) (Reserved)
- G. Water Resource (wr) (Reserved)
- H. Critical Drainage (cd) (Reserved)
- I. Historic (h) (Reserved)

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

**17.02.070 Severability**

**Protected Species, Non-Native Wetland Species, Species of Local Importance, and Habitats of Local Importance**

**17.02.010 Authority**

This ordinance shall be known as the old Island County Critical Areas Ordinance (“Old CAO”) and is hereby adopted under the authority of Chapters 36.70, 39.34, 43.21C, 58.17, 76.09, 84.33, 84.34 and 90.58 RCW.

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**17.02.030 Definitions**

**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. ~~Farm~~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. ~~Farm use~~Agriculture also includes the growing of ornamental shrubs, Christmas trees, pulpwood and similar nursery stock.

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**17.02.040 Critical Areas**

- A. **Purpose.** This section establishes general requirements and regulations for the protection of Critical Areas pursuant to the Growth Management Act ~~which shall apply throughout this Title.~~
1. For a Development Proposal submitted prior to the effective date of Chapter 17.02A ICC, unless an Owner or applicant elects voluntarily to have a complete application reviewed under that Chapter, the application shall be reviewed under this Chapter.
  2. Unless an Owner or applicant elects voluntarily to comply with the Critical Area requirements of Chapter 17.02A ICC, all Agricultural practices, on lands that contain or are affected by Critical Areas or Critical Area Buffers, shall comply with this Chapter.
- B. **Applicability.** This section shall apply to all properties referenced in subsection A which are designated as critical areas by Island County contain or are affected by Critical Areas or Critical Area Buffers. Designated critical areas are:
1. Wetlands. Wetlands are regulated pursuant to the Wetlands Overlay Zone, ICC 17.02.050.A, the Land Use Standards governing wetlands, deepwater habitats and their surrounding buffers, ICC 17.02.060, 17.03.260.I and the Land Development Standards, Chapter 11.01 ICC.

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EXHIBIT C

**Chapter 17.02A**  
**NEW Critical Areas Ordinance**

**Sections:**

**17.02A.010 Authority**

**17.02A.020 Designated Critical Areas**

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- E. Wetland Classification System
- F. Wetland Buffers
- G. Wetland Buffer Modification
- H. Wetland Mitigation Standards
- I. Wetland Mitigation Ratios
- J. Wetland Mitigation Plan
- K. Wetland Mitigation Banks

**17.02A.100 Fish and Wildlife Habitat Conservation Areas (see Chapter 17.02 ICC)**

**17.02A.110 Severability**

**17.02A.120 Effective Date**

**17.02A.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. The New CAO shall not make any parcel or Lot unusable; or deny an Owner Reasonable Use; or prevent the provision of needed public transportation and utility projects.

**17.02A.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 17.02 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 17.02 and 17.03 ICC; the health regulations governing the design and installation of on-site sewage systems, Chapter 8.07D 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 to herein as floodplains, are regulated by the Flood Damage Prevention Ordinance, Chapter 14.02A ICC.
- E. Areas with a Critical Recharging Effect on Aquifers Used 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 Source and Supply regulations and the Land Development Standards, Chapter 11.01 ICC.

**17.02A.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.

**Administrative Determinations:** A decision under this Chapter by the Director or Department for which an appeal has not otherwise been provided, including decisions that establish Wetland Type and location; Wetland Classification; Land Use Intensity and Mitigation.

**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 17.02A.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:

- (a) control soil loss and reduce water quality degradation; and
- (b) 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, which 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 Native and Non-Native Plant Species that are adequate to protect Wetland Functions.

**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 17.02A.060.G.

**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 Critical Area requirements. Compliance Assessment will routinely be initiated if a worsening Water Quality 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:** An 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 submerged 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, PRDs, Conditional Use Permits, Site Plan Approvals, Boundary Line Adjustments, Septic Permits and Clearing/Grading Permits.

**Enhancement:** An 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 Threshold that will trigger a responsive action.

**Exemptions:** Specific activities or Uses allowed by the County to be conducted in a Critical Area or Critical Area Buffer if it complies with the standards established in ICC 17.02A.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 17.02 ICC.

**Habitat of Local Importance:** An area designated by the County pursuant to Chapter 36.70A 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 17.02 ICC and the areas that have been designated are listed in Appendix A to that Chapter.

**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.

**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.

**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)  
Mukilteo 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 increased by the Planning Director as provided in ICC 17.02A.090.G when Highly Erodible Soils are not found to be present in the sloped area between the Development Proposal and the Wetland.

**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 Plant 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 Director 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, Cleared Area and Impervious Surfaces (as defined in Chapter 17.03 ICC) 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 (1) acre or larger in size in which the tree canopy within the vegetated part of the Wetland is comprised predominantly of trees having diameters eighteen (18) inches or larger measured at 4.5 feet above ground level or the oldest trees are 80-200 years old; crown cover may be less than 100%; and, decay, decadence, number of snags and quantity of downed material is generally less than found in old-growth forests. County maps will identify Mature Forested Wetlands as they are located through review 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 WAC 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-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).

**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.

**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, referred to herein as Director or Planning Director.

**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 17.02 ICC.

**Re-establishment:** An 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:** An action or actions that repair or revitalize 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 meet 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, Dugualla 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:** An action or actions 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 when it is not Practical and Reasonable to avoid or reduce a proposed Alteration or 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 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 36.70A RCW. The procedure and criteria for such designations are set forth in Chapter

17.02 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:

- a) 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
- b) 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 produces 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.

**Water Quality Standards:** A specific numeric measure established for a monitoring parameter that, if exceeded, will require immediate action by the County to identify the source of the contamination. Water Quality Standards are established by Chapter 173-201A WAC.

**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.

**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.

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

**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 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 Identification Guide:** A document prepared by the County. The Guide contains a Field Indicators Worksheet; a Land Use Intensity Worksheet; and a Wetland Buffer Worksheet.

**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 a Wetland Professional.

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

**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.

#### **17.02A.040 Critical Area Administration**

##### **A. Critical Area Review**

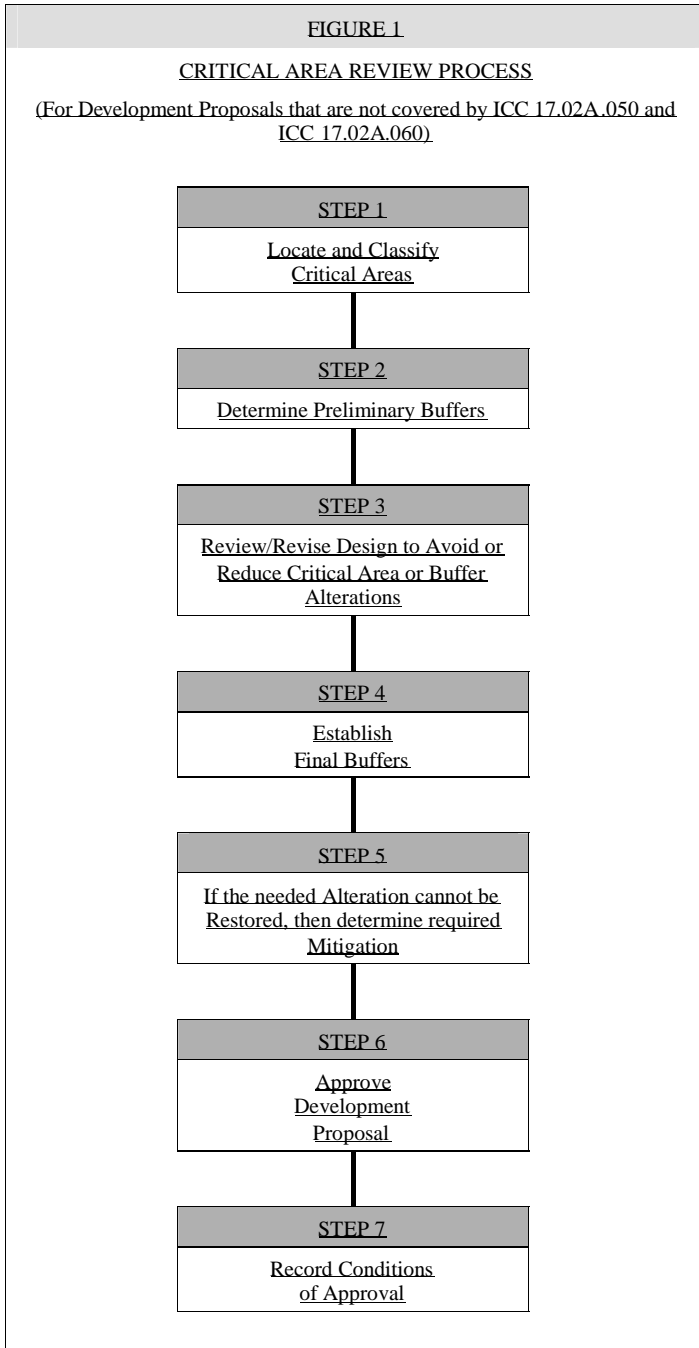
1. The New CAO applies to all Development Proposals. Unless expressly stated otherwise, Existing Uses are not affected by this Chapter. Before any new Development Proposal for a Lot that contains or is affected by a Critical Area or Critical Area Buffer may be approved by the County, a Critical Area 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 17.02 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. The County shall apply the following Critical Area review criteria, 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 17.02A.060 and that propose an Alteration of the Critical Area or Critical Area Buffer.
  - 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) Compensation. When action under subsections a), b) or c) is not Practical and Reasonable, then compensation for the Alteration shall be 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 17.02A.050 and ICC 17.02A.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 17.02A.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

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Area review shall be based on the more stringent requirement, regulation, restriction standard or limitation.

8. For any Development Proposal that proposes 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, 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.
  
10. No new Lot shall be created that is wholly comprised of wetlands or that would require alteration of a regulated wetland or its Buffer to provide buildable area unless a conservation easement encompassing the Lot is established and recorded.



**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 Planning Director 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. Construction Activity Setback. For clearing and grading activities, all Wetland Buffers shall be temporarily marked when they are within one-hundred (100) feet of identified and approved clearing limits. For construction of new Structures, all Wetland Buffers shall be temporarily marked as required by the Planning Director. Temporary markers shall be removed upon completion of the approved Development Proposal.
5. 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.
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 Planning Director. 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 17.02A.040.A.5.

**C. Rural Stewardship Plans**

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 Planning Director 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 Planning 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 Planning Director. 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 Planning Director.
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. Improvement and Restoration Plans. Voluntary Wetland Improvement 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.
7. Administrative Determination. Administrative determinations made under this Chapter by the Planning Director or Department, that are not otherwise reviewable, shall be reviewed under the process for Type I decisions in Chapter 16.19 ICC.

**E. Alteration of Critical Areas**

Specific standards are established for some Uses in ICC 17.02A.050 and some Uses and activities are covered by ICC 17.02A.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 17.02A.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 and 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

**17.02A.050 Specific Use Standards**

**A. Single Family Dwellings on Existing Lot**

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 17.02A.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 17.02A.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 17.02A.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 proposes an

Alteration of a Critical Area or Critical Area Buffer that cannot be avoided as required by ICC 17.02A.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 17.02A.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 17.02A.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 that cannot be avoided as required by ICC 17.02A.040.A.5 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 17.02A.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 17.02A.040.A.5, the project includes Mitigation required by this Chapter.

**D. Voluntary Wetland Improvement Projects**

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 improvement is encouraged of these Altered Wetlands and Wetland Buffers as well as Wetlands Altered before the County

had Wetland regulations. Improvement action cannot reduce Wetland Functions and may include Re-establishment, Rehabilitation or Enhancement and shall be approved by the Planning Director upon approval of a specific plan for the voluntary improvement.

#### **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 17.02A.040.A.5; and
4. If the Alteration cannot be Restored as required by ICC 17.02A.040.A.5, the Development Proposal includes Mitigation required by this Chapter.

#### **F. Agricultural Activities**

Existing Agricultural Activities that are on lands that contain or are affected by Critical Areas or Critical Area Buffers may comply voluntarily with the requirements of this subsection. Otherwise, Agricultural Activities shall continue to comply with the Old Critical Areas Ordinance, Chapter 17.02 ICC.

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 Planning 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 C-150-05; unless such modification is required by ICC 17.03.230. This shall include fencing that was installed, stream crossings that were constructed, filter strips that were established, nutrient management systems implemented, barns erected, etc.
9. New Non-agricultural Uses on lands previously devoted to Agricultural Activities that conformed to the requirements of this subsection shall comply with the requirements of this Chapter that are applicable to such Uses.

#### **17.02A.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 Planning Director. 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. All operation and maintenance activities shall be conducted consistent with ICC 17.02A.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 17.02A.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 Planning Director 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 Planning Director, 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 17.02A.040.A.5 and review procedures established by the Department.
- E. Recreation on Small Lakes.** Swimming, boating, hunting 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:
1. The removal or control of noxious weeds listed in Chapter 16-750 WAC; and
  2. 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 Planning Director. 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

3. 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 control, 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 control, trapping or removal is authorized by the Washington State Department of Fish and Wildlife (DFW) through the issuance of a Hydraulic Project Approval (HPA).

#### **17.02A.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, reduced or Restored as required by ICC 17.02A.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 ICC17.02A.090 and for Fish and Wildlife Habitat Conservation areas in Chapter 17.02 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 within one (1) year following the Alteration. Construction of Mitigation projects shall be timed to minimize impacts to plants and animals. The Planning 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 Practical and Reasonable 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 17.02A.090.J.

#### **17.02A.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. This Program is set forth in Chapter 17.02 ICC.

In addition to Monitoring water quality for surface waters, the County intends to initiate a parallel Monitoring Program for Wetlands, to begin on the effective date of this Chapter. 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 or 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 that are adversely affecting Wetland health shall conform to the guiding principles set forth in subsection B above 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 Chapter 17.03 ICC.
4. Step 4 - 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 17.02A.050.
6. A review of activities and Uses that are exempt under ICC 17.02A.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.

**17.02A.090 Wetlands****A. Regulated Wetlands**

1. All Category A, B, C and D wetlands 1,000 square feet or larger in surface area (approximately equal to a circle with a radius of 17.5 feet) and all Category E Wetlands 5,000 square feet or larger in surface area 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 surface area and Category E Wetlands less than 5,000 square feet in surface are regulated by this Chapter only if:
  - 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 as well as specific Types of Wetlands are defined in ICC 17.02A.030. 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 Identification**

1. The Planning Director shall determine Wetland Type, location and Classification for any Development Proposal on a Lot that contains or is affected by a Wetland or Wetland Buffer. This determination will use information provided to the County through the Field Indicators Worksheet contained in the Wetland Identification Guide or a Wetland Report. As provided herein, except for activities and uses addressed in ICC 17.02A.060, a Worksheet shall be required for all Development Proposals.
2. Wetland Identification Guide. The purpose of the County's Wetland Identification Guide is to assist an owner and/or an applicant in the identification of Wetlands. Generally, the Field Indicators Worksheet shall be submitted with all Development Proposals regardless of whether the Lot may contain or be affected by a Wetland or

Wetland Buffer. For Single Family Dwellings or Accessory Uses and Structures for Single Family Dwellings, the owner or applicant shall have the option of submitting a Wetland Report instead of the Field Indicators Worksheet.

3. Wetland Report. A Wetland Report shall be submitted for all Development Proposals, other than Building Permits for Single Family Dwellings or Accessory Uses and Structures for Single Family Dwellings, when the Development Proposal is located on a Lot that contains or is affected by a Wetland or Wetland Buffer. A Wetland Report will also be required for any request to modify a required Wetland Buffer. Wetland Reports shall be prepared by a Wetland Professional.
4. 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 determined by the Planning Director on a case-by-case basis for Development Proposals that contain or are affected by a Wetland or Wetland Buffer. The Land Use Intensity Worksheet from the Wetlands Identification Guide shall be submitted with all Development Proposals on a Lot that contains or is affected by a Wetland or Wetland Buffer and will be used by the Planning Director in the determination of Land Use Intensity. The Planning Director shall determine Land Use Intensity as follows:

1. High Intensity
  - a) All Uses and Structures located on Lots less than one (1) acre in size shall typically be classified initially as high intensity;
  - b) All Non-Residential Uses and Structures located on Lots equal to one (1) acre but less than five (5) acres in size shall typically be classified initially as high intensity;

c. For Residential Uses and Structures:

- (i) More than ten (10) percent of the Lot is Cleared Area; or
- (ii) The Cleared Area exceeds the following thresholds:

<u>Lot Size</u>				
<u>1 to 2.49</u> acres	<u>2.5 to 4.99</u> acres	<u>5 to 9.99</u> acres	<u>10 to 19.99</u> acres	<u>&gt; 20 acres</u>

2. Medium Intensity

- a) All Non-Residential Uses and Structures located on Lots equal to one (1) acre but less than five (5) acres in size shall typically be classified initially as medium intensity;
- b) All Residential Uses and Structures that do not meet the Cleared Area and Impervious Surface ratios established for high and low intensity Uses shall typically be classified initially as medium intensity.

3. Low Intensity

a) For Residential Uses and Structures:

- (i) Less than five (5) percent of the Lot is covered with an Impervious Surface; and
- (ii) The Cleared Area exceeds the following thresholds:

	<u>Lot Size</u>				
	<u>1 to 2.49</u> acres	<u>2.5 to 4.99</u> acres	<u>5 to 9.99</u> acres	<u>10 to 19.99</u> acres	<u>&gt; 20 acres</u>
<u>Cleared Area</u>	<u>&lt;35 %</u>	<u>&lt;30 %</u>	<u>&lt;25 %</u>	<u>&lt;20 %</u>	<u>&lt;15 %</u>

b) Low Intensity Uses and Structures shall adhere to the following standards:

- (i) Structures, patios and decks shall be set back fifteen (15) feet from the outer edge of the Buffer; and
- (ii) Exterior lighting fixtures shall comply with the lighting standards of Chapter 17.03 ICC and shall be shrouded and directed away from the Wetland or Wetland Buffer; and
- (iii) Fertilizers, pesticides and herbicides shall not be applied in a manner that adversely impacts Wetland Functions or Wetland Buffers; and
- (iv) Storm water from Impervious Surfaces shall be controlled before it

reaches the Wetland Buffer.

4. Intensity determinations will consider the potential adverse impacts to Wetland Functions expected to be caused because of site-specific characteristics and the orientation or location of the proposed Use or Structure in relation to the Wetland. For example, the Development Proposal may qualify as Low Intensity under subsection 3. However, topography or soils and site location or design of the proposed Structures may potentially generate adverse impacts to Wetland Functions. Therefore, if it is not modified by the applicant, the Development Proposal may be finally classified by the Planning Director in a medium or high intensity classification.
5. Any new Use or Structure classified as medium or high intensity may be lowered by one intensity classification by the Planning Director if the Use or Structure is modified to reduce potential adverse impacts to Wetland Functions through the approval of a Rural Stewardship Plan.
6. 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 by the Planning Director based on the Type of Wetland and Buffers will be established by the Planning Director 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. The Field Indicators Worksheet or a Wetland Report will be used by the Planning Director as well as the County's Wetland Maps and site investigations to determine the appropriate Wetland Classification.

<u>Wetland Classification System</u>	
<u>WETLAND CATEGORY</u>	<u>WETLAND TYPE</u>
<u><b>A</b></u>	<ul style="list-style-type: none"> <li>• <u>Bogs</u></li> <li>• <u>Coastal Lagoon Wetlands</u></li> <li>• <u>Delta Estuary Wetlands</u></li> <li>• <u>Mature Forested Wetlands</u></li> </ul>
<u><b>B</b></u>	<ul style="list-style-type: none"> <li>• <u>Large Poned Wetlands</u></li> <li>• <u>Anadromous Fish Stream Wetlands</u></li> <li>• <u>Wetland Associated with a Bog or Coastal Lagoon or Delta Estuary</u></li> </ul>
<u><b>C</b></u>	<ul style="list-style-type: none"> <li>• <u>Other Estuarine Wetlands</u></li> <li>• <u>Resident Salmonid Stream Wetlands</u></li> <li>• <u>Mosaic Wetlands</u></li> </ul>
<u><b>D</b></u>	<ul style="list-style-type: none"> <li>• <u>Native Plant Wetlands</u></li> <li>• <u>Small Poned Wetlands</u></li> </ul>
<u><b>E</b></u>	<ul style="list-style-type: none"> <li>• <u>All Wetlands not otherwise classified</u></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. The Habitat Rating System is included in the Wetland Buffer Worksheet contained in the Wetland Identification Guide. This Worksheet shall be submitted with all Development Proposals on a Lot that contains or is affected by a Wetland or Wetland Buffer. Buffers are set forth in Tables 1-4 below.

Buffer widths are presumed to be vegetated with Native and/or Non-Native Plant Species that are adequate to protect Wetland Functions. If Buffer vegetation is determined by the Planning Director to be inadequate to protect Wetland Functions, then if Practical and Reasonable, Buffer vegetation shall be Re-established, Rehabilitated and/or Enhanced so

that it is adequate to protect Wetland Functions. Otherwise, expansion of the Buffer may be required pursuant to ICC 17.02A.090.G.

1. Unless the activity or use is covered by ICC 17.02A.050 or ICC 17.02A.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 with a fifteen (15) foot setback for Buildings and Structures.
  - 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: Have the County 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 plus 15 foot setback 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 22 or higher, then use Table 2 to determine the required Buffer. If the Habitat Rating is less than 22, 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 a 20 foot 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. The Wetland Buffer Worksheet contained in the Wetland Identification Guide shall be submitted with all Development Proposals that are on land that contains or is affected by a Wetland or Wetland Buffer and will be used to assist the Planning Director in the determination of the applicable Habitat Buffer. Habitat Buffers are established in Table 2.

<b>Table 2: Habitat Buffers</b>						
<b>Land Use Intensity</b>	<b>Habitat Functions Score</b>					
	<b>Wetland Outlet</b>	<b>40 or higher</b>	<b>32-39</b>	<b>29-31</b>	<b>22-28</b>	<b>Less than 22</b>
<b>Low</b>	Yes	125 ft	75 ft	75 ft	75 ft	Use Tables 3 and 4
	No	150 ft	125 ft	100 ft	75 ft	
<b>Moderate</b>	Yes	200 ft	110 ft	110 ft	110 ft	
	No	225 ft	175 ft	150 ft	110 ft	
<b>High</b>	Yes	250 ft	150 ft	150 ft	150 ft	
	No	300 ft	200 ft	175 ft	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>	<u>Yes</u>	<u>40 ft</u>	<u>35 ft</u>	<u>30 ft</u>	<u>25 ft</u>	<u>20 ft</u>
	<u>No</u>	<u>75 ft</u>	<u>50 ft</u>	<u>40 ft</u>	<u>35 ft</u>	<u>25 ft</u>
<b>Moderate</b>	<u>Yes</u>	<u>90 ft</u>	<u>65 ft</u>	<u>55 ft</u>	<u>45 ft</u>	<u>30 ft</u>
	<u>No</u>	<u>105 ft</u>	<u>90 ft</u>	<u>75 ft</u>	<u>60 ft</u>	<u>40 ft</u>
<b>High</b>	<u>Yes</u>	<u>125 ft</u>	<u>110 ft</u>	<u>90 ft</u>	<u>65 ft</u>	<u>40 ft</u>
	<u>No</u>	<u>175 ft</u>	<u>150 ft</u>	<u>125 ft</u>	<u>90 ft</u>	<u>50 ft</u>
* Use Table 1 for Buffers for Bogs, Coastal Lagoon Wetlands and Delta Estuary Wetlands						
** Use Table 1 for Buffers for Other Estuarine Wetlands						

7. For Development Proposals on Lots that are sloped between the Development Proposal and the Wetland, the water quality Wetland Buffer established in Table 3 shall be increased using the following multipliers:

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

8. 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 Buffer shall be twenty (20) feet in width.

9. Except for Mitigation Banks, no Buffers shall be required for voluntary Wetland and Wetland Buffer Improvement projects.
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 17.02A.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 a legally established road crosses a Wetland Buffer and the reduction will not adversely affect Wetland Functions as documented in a Wetland Report.
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 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; or
  - e) For sloped Lots, the sloped area between the Development Proposal and the Wetland contains Highly Erodible Soils.

## **H. Wetland Mitigation Standards**

1. Mitigation shall be required only if the approved 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 17.02A.050 and ICC 17.02A.060. Alteration of Category B, C, D and E Wetlands may be permitted only after applying the review criteria set forth in ICC 17.02A.040.A.5.
3. Mitigation for approved 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 an 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 approved Wetland Buffer Alteration that cannot be Restored as required by ICC 17.02A.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 otherwise 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 activities that will disturb Wetlands whenever Practical and Reasonable and must be based on a Mitigation Plan approved by the Planning Director. If Mitigation is not completed in advance, then it should be completed before completion of the approved Development Proposal. Otherwise, Mitigation shall be completed within one (1) year of the decision to require Mitigation.

## **I. Wetland Mitigation Ratios**

1. Compensatory Mitigation for approved 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 17.02A.050 and ICC 17.02A.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 a 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 approved 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 17.02A.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 by the Washington State Department of Ecology;
2. The Planning 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.

**17.02A.100 Fish and Wildlife Habitat Conservation Areas (See ICC 17.02.050C)**

**17.02A.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.

**17.02A.120 Effective Date**

Chapter 17.02A ICC shall go into effect on July 1, 2008.

**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, Chapters ~~17.02 and 17.02A, 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, Chapters ~~17.02 and 17.02A, 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, Chapters 17.02 and 17.02A, ~~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 a 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 ~~and 17.02A~~, ~~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 and/or the Planning 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; and
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 17.02 ~~and 17.02A~~ 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 Chapters 17.02 ~~and 17.02A~~ 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;

12/28/07

- 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; ~~and~~
  - 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 Planning 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 17.02 and 17.02A 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 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, 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 two years from the date of the disturbance, the Planning Director shall establish Restoration requirements including monitoring in a compliance letter. ~~Where any wetland, deep water habitat, or fish and wildlife conservation area or their buffers has been disturbed or a structure has been built or constructed on a steep slope or geologically hazardous area in violation of this Chapter, the applicant shall cause to be prepared, by a qualified biologist, plan ecologist, geologist or similarly qualified professional, as appropriate, a restoration plan which shall include as a minimum the following:~~
    - ~~(i) The extent of disturbance including an inventory of all vegetation cleared; and~~
    - ~~(ii) Measures necessary to restore the wetland, habitat or their buffers, or the slope, 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 and removal of structures; and~~

~~(iii) A schedule for restoration; 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.~~

b) ~~When a Restoration plan is required, the plan shall be prepared by a qualified professional and shall include the following: In preparing and approving the restoration plan, the applicant and the County, respectively, should consult with the Department of Fish and Wildlife and the Department of Natural Resources and the Department of Ecology.~~

~~(i) 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 Critical Area or Critical Area Buffer including grading and planting plans 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 Restoration; and~~

~~(iii) A management plan that includes Restoration goals, benchmarks and review criteria; site treatment measures for maintenance of the Restoration, including but not limited to supplemental watering schedules and non-native/invasive vegetation management; and~~

~~(iv) A monitoring plan that specifies the 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.~~

~~c)b) In preparing and approving the Rrestoration plan, the applicant and the County, respectively, should may consult with the Department of Fish and Wildlife and the Department of Natural Resources and the Department of Ecology.~~

~~d)e) The Rrestoration plan shall be prepared at the applicant's violator's cost and shall be approved by the Hearing Examiner 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. The Hearing Examiner may approve, reject or approve the plan with conditions. All restoration shall be consistent with the approved Rrestoration plan.~~

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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 be conducted by a qualified professional. Generally monitoring will be required for five (5) 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. ~~In a wetland, deep-water habitat, a fish and wildlife conservation area, their buffers, or a steep slope or geologically hazardous area 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 of a wetland, deep-water habitat, or fish and wildlife conservation area or their buffers, or a steep slope or geologically hazardous area, 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.

**EXHIBIT E**

**Chapter 16.19**  
**Land Use Review Process**

**16.19.040 Application/Decision Types, Permit Classifications, and Urban Growth Area/Joint Planning Area Procedures**

- A. Application Types. Applications and decisions for review pursuant to this Chapter shall be categorized as a Type I, II, or III decision as set forth in Table A.

TABLE A

APPLICATION/DECISION TYPES				
	I	II	III	IV
Type of Decision	Ministerial	Administrative	Quasi-Judicial	Legislative
Pre-Application Conference	Optional	Optional	Required	N/A
Final Decision or Recommendation	Planning Director or Public Works Director	Planning Director or Public Works Director	Hearing Examiner	Planning Commission or Hearing Examiner
Notice of Application	No	Yes	Yes	N/A
Open Record Pre-decision Hearing	No	No	Yes	N/A
Open Record Appeal Hearing	Yes*	Yes	No	No
Closed Record Appeal	No	No	Yes	No
Judicial Appeal	Yes	Yes	Yes	Yes

\*Only appeals by the Applicant permitted

....

B. Permit Classifications: Land Use decisions shall be categorized by Application type as set forth in Table B.

TABLE B  
Permit Classifications

CODE CHAPTER	I	II	III	IV
Chapters 11.02, 11.03 and 11.04	Administrative Determinations			
Chapter 14.01A	Building Permits not categorically exempt from SEPA review			
Chapter 16.06	Administrative Determinations Boundary Line Adjustments Final Subdivision and Short Subdivision Decisions	Preliminary Short Subdivision Decisions Alterations, Withdrawal or Vacation of a Short Subdivision	Preliminary Subdivision Decisions Alterations, Withdrawal or Vacation of a Subdivision	
Chapter 16.14C	SEPA Categorical Exemptions	SEPA Threshold Determinations		
Chapter 16.15	Administrative Determinations	Administrative Conditional Uses (see 16.15 and 17.03)	Quasi-Judicial Conditional Uses (see 16.15 and 17.03)	
Chapter 16.17	Administrative Determinations	PRDs of 4 or less units	PRDs of 5 or more units	

CODE CHAPTER	I	II	III	IV
Chapter 17.02 & <u>17.02A</u>	Permitted Use/Reasonable Use Determinations Adaptive Mgt Orders <u>Administrative Determinations</u> <u>Single Family On Existing Lot</u> <u>Wetland Map Corrections</u> <u>Rural Stewardship Plans</u> <u>Voluntary Improvement Plans</u>	Permitted Use/Reasonable Use Determinations <u>Reasonable Use Compliance Restoration Plans</u>	Alterations of <del>Wetlands</del> , Deepwater Habitat or FWHCA Permitted Use/Reasonable Use Determinations <u>Base Density Exceptions</u>	Designation of Habitats or Species of Local Importance
Chapter 17.03	Animal Management Plan RA, and RF Rezones Temporary Use Approvals Permitted Uses Farm (BMP) Management Plan	Zoning Code Interpretations Zoning Variances Zoning Setback Reductions Certificates of Zoning Compliance Administrative Conditional Uses Enforcement Orders	Quasi-Judicial Conditional Uses CA, RA and RF Rezones Revocations of Permits and Approvals	Special Review District Approvals Zoning Code Amendments Farm/EDU Management Plan Approvals CA/RA/RF Verifications
Chapter 17.05	Shoreline Exemptions Administrative Determinations	Shoreline Substantial Development Permits Shoreline CUP and Variances	Shoreline Permit Approvals for Quasi- Judicial Uses	Shoreline Master Program Amendments

....

**EXHIBIT F**

**Chapter 16.06  
Land Divisions and Dedications**

....

**16.06.030 Applicability**

Every division of land for the purpose of development, lease, sale, gift, transfer of Ownership, or other conveyance and every adjustment of property lines shall proceed in compliance with this Chapter. Use or development of all Lots shall comply with all County development regulations including Lots created following procedures that are exempt from the requirements of this Chapter. The Subdivision and Short Subdivision provisions of this Chapter shall not apply to:

....

- F. Testamentary Divisions. Any division made by testamentary provision or the laws of descent. ~~Any development on Lots created by this means must comply with all applicable development regulations;~~

....

**16.06.060 Application Requirements**

- A. Short Subdivision and Subdivisions. All Applications for preliminary approval of Short Subdivisions and Subdivisions shall include:

....

- 10. A legible map that shall include or show the requirements listed below. Where location of a feature or Structure is required, a site specific survey by a registered land surveyor is encouraged but not required:

....

- k) Approximate location of the natural features of the site, including but not limited to:
  - (i) Ravines and slopes greater than thirty-five percent (35%) with tops and toe of slope identified;
  - (ii) ~~If known, Critical Areas and their buffers on site or within one hundred (100) feet of the boundaries of off-site when they may affect the proposal;~~ and
  - (iii) Shorelines and approximate line of ordinary high water mark;

**Chapter 16.15  
Site Plan Review**

....

**16.15.040 Application Requirements**

Except as provided in section 16.15.050, each application for Site Plan Review shall include the following information:

....

- B. A legible map that shall include or show the requirements listed below. Where location of a feature or Structure is required, a site specific survey by a registered land surveyor is encouraged but not required:

....

- 11. Approximate location, to scale appropriate map, of the natural features of the site, including but not limited to:
  - a) Ravines and slopes greater than thirty-five percent (35%) with tops and toe of slope identified;
  - b) Critical areas and their buffers on site or ~~within one hundred (100) feet of the boundaries of off-site when they may affect~~ the proposal; and
  - c) Shorelines and approximate line of ordinary high water mark;

....

**Chapter 16.17  
Planned Residential Development**

....

**16.17.040 Application Requirements**

Except as provided in ICC 16.17.050, each application for approval of a Planned Residential Development shall include the following information:

....

- B. A legible map that shall include or show the requirements listed below. Where location of a feature or Structure is required, a site specific survey by a registered land surveyor is encouraged but not required:

....

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11. Approximate location and dimensions to appropriate map scale of the natural features of the site, including but not limited to:
  - a) Ravines and slopes greater than thirty-five percent (35%) with tops and toe of slope identified;
  - b) Critical areas and their Buffers on site or ~~within one-hundred (100) feet of the boundaries of~~ off-site when they may affect the proposal; and
  - c) Shorelines and approximate line of ordinary high water mark.

**EXHIBIT G**

**Chapter 3.40  
Island County Public Benefit Open Space Rating System**

**Sections:**

- 3.40.010 Summary**
- 3.40.020 Purpose and Intent**
- 3.40.030 Operation of the County Public Benefit Rating System for Open Space Lands**
- 3.40.040 Assessed Valuation Schedule – Public Benefit Rating System for Open Space Land**
- 3.40.050 Basis of Assessment**
- 3.40.060 Ineligible Lands**
- 3.40.070 Application to the County Under the Public Benefit Rating System**
- 3.40.080 Application Fee**
- 3.40.090 Time to File**
- 3.40.100 Application Review**
- 3.40.110 Board Decision**
- 3.40.120 Unincorporated Lands**
- 3.40.130 Incorporated Lands**
- 3.40.140 Length of Time in Classification**
- 3.40.150 Monitoring for Compliance**
- 3.40.160 Removal of Land Classification by County Assessor**
- 3.40.170 When Removal of Land not Subject to Additional Tax, Interest, and Penalties**
- 3.40.180 Transfer of Lands Between Certain Current Use Taxation Classifications**
- 3.40.190 Owner May Request Withdrawal From Classification**
- 3.40.200 Action on Withdrawal From Classification**
- 3.40.210 Owner to Notify Assessor of Change in Use in Classification**
- 3.40.220 Sale of Open Space Classified Land**
- 3.40.230 Review of Previously Approved Open Space Applications**

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- 3.40.240 Planning Commission's Duties**
- 3.40.250 High Priority Open Space Resources**
- 3.40.260 Medium Priority Open Space Resources**
- 3.40.270 Low Priority Open Space Resources**
- 3.40.280 Bonus System**
- 3.40.290 Super Bonus Category – Current Use Value of Ten Percent (10%) of Market Value**
- 3.40.300 Severability**
- 3.40.310 Effective Date**

### **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 deferential 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. It is not the intent of this chapter that open space classifications become the basis of land use zoning classifications, or that owners of open space property that has been previously approved

for current use assessment prior to the adoption of the Public Benefit Rating System be adversely affected.

### **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
7. Private Lands Within Designated National Reserves

**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 “B” “C” or “D” Wetlands

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

Artificial Category “C” 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 ~~two~~three (2)(3) points per contiguous parcel.
  5. Conservation/historic/trail easement in perpetuity – 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.
- E. Property that contains a Critical Area or Critical Area Buffer which has been altered without authorization from Island County, except that a landowner who is not responsible for the violation intends to voluntarily restore the critical area under the provisions of ICC 3.40.280.B.

### **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 Assessor's office~~ 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 of ~~two~~ three hundred dollars (~~\$200~~) (\$300).

**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 of 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.

A thirty dollar (\$30) application fee must be paid at the time that the application for transfer is submitted.

**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**

Open space property that has been previously approved for current use assessment prior to the adoption of the Public Benefit Rating System will retain its current use assessment status unless the landowner is found to be out of compliance with the open space requirements of Chapter 84.30 RCW, or the landowner requests reclassification under the Public Benefit Rating System. If a request for reclassification is made, the property will be reassessed under the Public Benefit Rating System at no cost to the landowner, pursuant to the procedures outlined in this chapter. Until the reassessment is completed, previously approved open space property will retain its current tax rate. Within thirty (30) days of receipt of this notice of new assessed value, the owner may request that the parcel(s) of land be removed from the Public Benefit Rating System classification without additional tax, interest, or penalty.

### **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 and their associated buffers where there is a presence of a protected species or an outstanding habitat for a protected species, or there is a predominance of native wetland species over introduced or non-native wetland species, and the area is greater than one-eighth (1/8) of an acre, 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 ~~designated the Category A rating under the County Wetland Overlay Zone with (a) a minimum buffer area of one hundred fifty (150) feet landward from the edge of the wetland, or (b) such amount of the minimum buffer as contained within the site.~~ 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 Chapters 17.02 or 17.02A ICC, ~~or if buffers are already required, a voluntary increase in buffer size, as verified by the Island County Planning and Community Development Department~~ 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**

1. **Definition.** Historic and archaeological resources: land which constitute or upon which is situated an historic landmark formally designated by the County or a local jurisdiction, including buildings, structures 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 and landscapes, or traditional cultural properties and landscapes.
2. **Source.** County or other local lists or registers of historic places or landmarks and the State inventory of Archaeological Sites (State Office of Archaeology and Historic Preservation) and 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 include contributing properties within designated historic districts. Improvements to the land are not eligible for other federal or state tax credits. Additionally, land that has been verified through an archaeological report prepared by a qualified archaeologist that contains archaeological resources. 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.

### **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 Area 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.** ~~Areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland is designated the Category B rating if all the following criteria are met:~~
  - a) ~~A wetland is designated the Category B rating if it does not meet the criteria for a Category A rating as defined herein; and~~
  - b) ~~Is one (1) acre or greater in size, provided that a Category B wetland that is enhanced through an authorized alteration or mitigation process so that it meets the Category A designation criteria shall continue to be designated as a Category B wetland. Wetlands classified Category “C” or “D” by Chapter 17.02A ICC and “B” by Chapter 17.02 ICC.~~
2. **Sources.** County Wetland ~~Overlay Zone 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 ~~Overlay Zone Maps~~ with (a) a minimum buffer area of twenty-five (25) feet landward from the edge of the wetland, or (b) such amount of the minimum buffer as contained within the site, ~~classified Category “C” or “D” by Chapter 17.02A ICC and “B” by Chapter 17.02 ICC.~~

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

##### **A. Artificial /Category “C” and “E” Wetlands**

1. **Definition.** ~~Areas that meet the definition of “wetland” as described in this chapter because of human action which impounded water by means such as construction of a dam or an embankment or excavation of a depression which was planned and executed for the specific purpose of creating a wetland where no wetland before existed. Wetlands created for mitigation purposes will not be eligible under the Public Benefit Rating System. Wetlands classified as Category “E” by Chapter 17.02A ICC and “C” by Chapter 17.02 ICC.~~
2. **Sources.** ~~County Wetland Overlay Zone Maps, ICC 17.02 and 17.02A and Land Use Standards governing wetlands, deepwater habitats, tributary streams and their surrounding buffers, ICC 17.02. National Wetlands Inventory Mapping System, U.S. Fish and Wildlife Service.~~
3. **Eligibility.** ~~Eligible lands are those wetlands designated the Category C rating under the County Wetland Overlay Zone. Creation of the wetland shall not have changed the drainage off the subject property. If drainage was altered and neighboring properties have been impacted, as a result of wetland creation, then an application is ineligible, 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** - five (5) 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.
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.

12/28/07

**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.