

Tax Incentives for the Prevention and Removal of Hard Armoring Along Shoreline Properties

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Executive Summary

The Puget Sound Partnership seeks to promote or develop tax-based incentives for residential landowners to prevent, reduce, or remove shoreline armoring along Puget Sound. One opportunity for such an incentive lies with the use of the Washington State Open Space Taxation Act. This Act provides property-tax relief for landowners who voluntarily elect to preserve their land in its current use or work to restore their land to its natural state.

The Open Space Taxation Act allows wide discretion as to how each county in Washington State implements the current use program. Counties may choose to apply the program using the criteria found in state statute, or counties may adopt their own open space plans and Public Benefit Rating Systems (PBRs). Nine of the twelve Puget Sound jurisdictions have PBRs programs in place, while only three counties in the Puget Sound region do not.

These efforts are often referred to as the “current use program” because tax relief is given by valuing land at its “current use” rather than its “highest and best use.”¹ The program was evaluated for two counties with PBRs programs, King County and Whatcom County, and for Mason County, a county without a PBRs program. The following are key observations:

Barriers to Implementation

1. **Tax relief offered by the Open Space Taxation Act or PBRs programs may not provide enough incentive for bulkhead prevention or removal.** Depending on the cost of bulkhead removal, the level of tax relief offered may not be enough to motivate homeowners to take action.
2. **The language of the Open Space Taxation Act is too broad.** The existing language of the Act is too vague to be implemented for the purposes of encouraging homeowners to either remove bulkheads or refrain from installing one. Only three counties are directly affected by this difficulty because they do not have PBRs programs.
3. **Without a county-specific program, the Act does not effectively target bulkhead prevention or removal.** The Open Space Taxation Act provides broad criteria for enrollment and leaves enrollment decisions up to the counties. Resources such as natural shorelines cannot be prioritized for conservation if there is no objective rating system to evaluate against.
4. **County-specific PBRs programs do not provide sufficient tax incentives to encourage shoreline restoration in urban areas.** The point systems in existing programs need to be higher to encourage restoration efforts, particularly in urban areas with small lots and limited area to be dedicated to open space for restoration purposes. In addition, the point systems should explicitly call out points for bulkhead removal or revegetation.
5. **The current use program’s tax shift can be a barrier to enrollment.** Assessors maintain records of both the fair market value and the current use value of a property. However, estimating the potential tax shift of property enrollment is difficult, and it can vary greatly depending on the tax district. A report for the City of Seattle provided some initial insight into the cost shift. Additional research is necessary to understand the full implications of reducing taxes on shoreline property owners.
6. **Enrollment in the Open Space Taxation Act program or a PBRs program does not continue in perpetuity.** Landowners can remove themselves from the program so long as back taxes and penalties are paid. There are limited circumstances in which removal from the program is not penalized.
7. **Awareness of the current use program is lacking.** The current use program is available statewide, and opportunities exist for property owners to receive tax relief for resource preservation. However, little to no outreach is done to inform property owners of the current use program and its benefits.

Opportunities for Changes to Programs:

1. Three counties in the Puget Sound region do not use PBRs programs. Their program enrollment is based on language codified in the Open Space Taxation Act. Targeting their current-use programs for bulkhead prevention and removal may require either administrative or legislative changes to the Open Space Taxation Act. The following opportunities exist for these counties:

A. PSP could analyze how Mason, Skagit, and Snohomish counties could use the Act for bulkhead prevention or removal. Opportunity exists to use the Act to conserve undeveloped shorelines and promote conservation of beaches; however, modifying definitions in the Open Space Taxation Act to specifically address shoreline bulkhead reduction would likely require a state-level legislative change. Alternatively, these counties could enroll applicable shoreline properties through strategic education and outreach to homeowners.

B. PSP could encourage Mason, Skagit, and Snohomish counties to adopt Public Benefit Rating Systems. Adoption of a PBRs is the most effective way to prioritize open space resources in a county and bring transparency and objectivity to the application process. Targeting shorelines through the current use program can be more easily accomplished with a PBRs.

2. The Open Space Taxation Act can most effectively motivate homeowners to voluntarily prevent or remove hard armoring if a Public Benefit Rating System is in place. Since nine of the twelve Puget Sound jurisdictions already have PBRs, the following opportunities exist:

A. PSP could build upon draft model language and continue its partnership with King and Whatcom counties to better target shoreline protection and restoration in these counties through changes in their Public Benefit Rating Systems. Both King County and Whatcom County have already enrolled shoreline properties for preserva-

tion under the open space classification of the current use program. The level of tax relief is dependent on the program evaluation criteria specified in a PBRs. Since the criteria for each county are different, hard-armoring prevention or removal is valued differently depending on the county PBRs. While enrollment of shoreline properties has already occurred, there remains opportunity for improvement. Changes to the Public Benefit Rating System of King or Whatcom would require approval by its respective legislative authority. The resulting language, its adoption, and the implementation process can serve as models for other counties with Public Benefit Rating Systems.

C. PSP could initiate a county-by-county analysis of the Public Benefit Rating Systems of Puget Sound counties. With the results of this analysis, the PSP should then recommend specific language modifications to target shoreline conservation that can then be recommended for adoption by the respective county legislative authorities. These efforts should be coordinated with ongoing outreach efforts to educate shoreline property owners about these issues.

D. PSP could support counties by raising awareness of the current use program in their jurisdictions. This outreach could be used to encourage enrollment in the Public Benefit Rating System by shoreline property owners who either remove their bulkheads or agree to refrain from installing bulkheads. These efforts should be coordinated with ongoing outreach efforts to educate shoreline property owners about these issues.

E. Training for assessors and current use staff could be conducted. Assessors and current-use staff can be educated on the program's potential for shoreline conservation. The Washington State Department of Revenue can include this in their annual current-use training.

Additional research could be conducted to determine how to make permanent restrictions prohibiting the construction of armoring or bulkheads, through conservation easements or other, similar methods.

Introduction

On August 9, 2012, the Puget Sound Partnership (PSP) Leadership Council adopted the 2012 update of the PSP Action Agenda. The updated agenda includes Near Term Action (NTA) B2.3.1: "... [T]o develop and recommend incentives that help homeowners permanently remove armoring and encourage setback of houses by June 2014."

The PSP Ecosystem Coordination Board (ECB) created a subcommittee to evaluate regulatory issues associated with shoreline armoring in January 2013. The ECB directed the subcommittee to evaluate the effectiveness of Open Space Taxation Act policies and other tax-based incentives for shoreline process improvement. PSP contracted with Washington Sea Grant to prepare a report addressing tax incentives based upon recommendations from the subcommittee.

On October 31, 2013, the subcommittee convened and agreed to pursue the implementation of NTA B2.3.1 on three fronts:

1. Research potential modifications to state legislation on open space taxation to address removing armoring and restoring shoreline properties.
2. Provide case studies of county efforts in San Juan, King, and Whatcom counties to evaluate changes to their programs to address shoreline restoration, asking:
 - How does the program currently work?
 - How would it need to be changed to address reductions in shoreline armoring and shoreline restoration?
 - What are the implications of shifting costs to other property owners?
 - What are the barriers, both political and economic?

3. Identify other secondary incentives that could potentially be "bundled" with current-use enrollment to promote bulkhead prevention and removal. This will be a brief description of options and not an in-depth analysis.

A preliminary draft report was prepared and revised based on recommendations from the subcommittee at meetings on December 5, 2013, and January 8, 2014. This final report contains an example of how the current use program has been applied to a shoreline property in Mason County, a county without a Public Benefit Rating System. This is used to demonstrate the opportunities and barriers that may exist to implementing the program for purposes of creating an incentive for residential shoreline homeowners to either refrain from installing or remove bulkheads or other armoring on their property. The report identifies opportunities to modify this program and analyzes whether a guidance document would better target shoreline protection.

Two examples of county-specific programs, in King and Whatcom counties, have been evaluated to determine barriers to implementation and potential opportunities for modifications in order to use the program as an incentive for residential shoreline homeowners to either refrain from installing or remove bulkheads or armoring on their property. The report identifies opportunities to modify county-specific Public Benefit Rating Systems and provides draft language for further discussion.

Finally, the report includes a brief review of additional incentives that could be "bundled" with the tax incentive to ensure the properties enrolled permanently restrict bulkheads on site. Also, the tax incentive may not provide sufficient financial motivations for property owners. The report identifies additional financial incentives that could be provided along with the tax incentive.

Open Space Taxation Act — Overview

The Open Space Taxation Act was enacted in 1970 to enable property owners to qualify for property tax reductions in exchange for approved stewardship of their land.² Land enrolled in the program is assessed at its “current use” rather than its “highest and best use.” Three classifications of enrollment exist: *Open Space*, *Farm and Agricultural Land*, and *Timber Land*. This report will focus only on the open space classification, since the farm and agricultural and timberland classifications do not address residential shoreline properties.

In the open space classification, the program legislation contains broad guidelines for eligibility that apply to all counties. However, counties can also adopt a Public Benefit Rating System (PBRs) that clearly defines program enrollment criteria and prioritizes resources important to the public benefit of the community.³ A Public Benefit Rating System allows for a more objective and transparent assessment by applying the same criteria to every application.

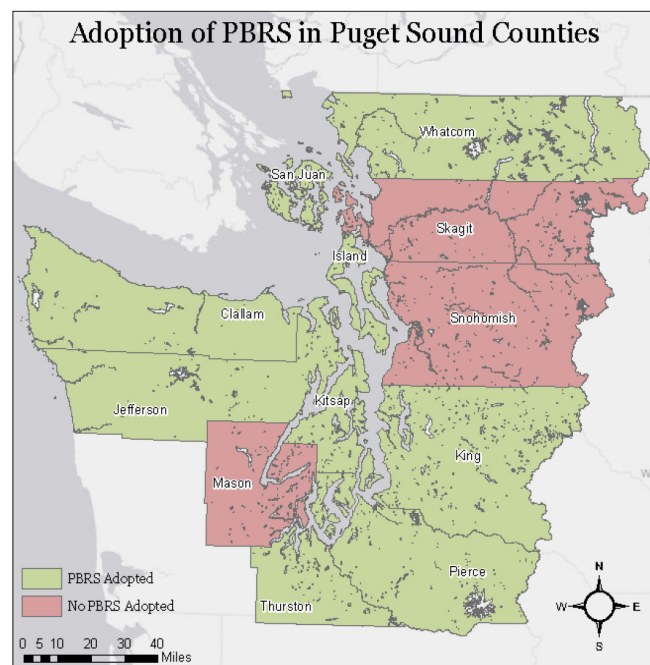
The following are the counties with and without PBRs programs:

Counties with PBRs:

Clallam
Island
Jefferson
King
Kitsap
Pierce
San Juan
Thurston
Whatcom

Counties without PBRs:

Mason
Skagit
Snohomish



The Open Space Taxation Act establishes the current use program, provides initial criteria for enrollment, and sets rules for program administration. The policies set in the legislation apply statewide. However, program language also leaves discretion to local jurisdictions, either county or city councils, to determine whether or not tax relief should be granted for a given property.

The process for enrollment in the open space classification (with or without an individualized PBRs program) is as follows:⁴

1. Landowners apply to the county legislative authority.
2. County staff reviews the application for program eligibility. If the property is located within incorporated city limits, city staff also takes part in reviewing the application.
3. Staff determines the level of public benefit through conservation. If a PBRs is used, the property is scored on a county-specific point system.
4. The legislative body of the area where the property is located approves or denies the application in part or in whole within six months of receiving the application.
5. The legislative body submits an Open Space Taxation Agreement to the applicant stating the conditions of enrollment. Applicants must sign and return the agreement within 30 days of receipt.
6. The assessor submits notice to the county auditor for the recording of state tax liens on real property.
7. Current-use valuation begins on January 1 of the year following the year the application was filed.

In the Open Space Taxation Act, “open space” is defined as any parcel so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or one of various categories of land including, for the purposes of shoreline restoration: “any parcel(s) of land, whereby preservation in its present use would either *conserve or enhance* natural or scenic resources, protect streams or water supply, promote conservation of soils, wetlands, *beaches*, or tidal marshes. No size limitations are placed on these categories.”⁵ (Emphasis added.)

Preferential assessment of shoreline properties to prevent, reduce, or remove shoreline armoring is not explicitly written into classification definitions of the Open Space Taxation Act. However, the administrative code providing guidance on how to implement the Act clearly states that

local jurisdictions should consider whether the property would...“*Protect* streams, stream corridors, wetlands, *natural shorelines*, and aquifers.”⁶ The “preservation of beaches” also falls squarely within the definition of open space receiving property tax relief under the Open Space Taxation Act.⁷ This implies that the program could provide a tax incentive for owners who refrain from installing bulkheads or armoring on their property.

This is the very broad language each county may use to determine whether or not to grant tax relief to an applicant. No points are allocated within the Act, so counties relying solely upon the language in the Act must determine for themselves how to apply the program.

For those counties that create their own Public Benefit Rating System (described below) this broad language allows for maximum flexibility. However, for those counties relying solely on the language of the RCW and WAC the vague information can create limitations on how the program is implemented.

Enrollment in the current-use program does not continue in perpetuity. The land maintains its open space classification until the owner makes a request for removal, the use of the land no longer qualifies, or the ownership changes and the new owner does not sign a notice of continuance. If the land is removed from classification, it becomes subject to the payment of back taxes, applicable interest, and penalties. However, there are limited circumstances where property can be removed from classification without any penalty.

As a tax-relief program, the current-use program is structured to shift the cost of lost tax revenue to other taxpayers. Legislation requires that the granting authority consider the resulting tax burden in reviewing an application.⁸ Tax districts generally raise levies to make up for reductions in revenue. The decision to enroll is complicated further in districts where the levy rate approaches its legal limit, or “levy lid.”

Application of Current Use (Open Space Taxation Act) to Bulkhead Prevention and Removal *Without* a Public Benefit Rating System

Interviews with Mason County's current use program administrator provided information used to evaluate the current use program's ability to address bulkhead prevention or removal in a county without a PBRS program. As a non-PBRS jurisdiction, Mason County uses the standards for enrollment found in RCW 84.34 and the implementing regulations in WAC 458-30 in evaluating program applications.

The Mason County Assessor's Office provided the following information on a property currently enrolled as open space in the county's current use program.

Address: 40 NE Musqueti Point Way Tahuya, Washington

Property Size: 2.3 acres

Eligible Property Size (Total property minus homesite):

1.3 acres

2013 Market Land Value: \$117,900

2013 Assessed Land Value: \$32,865

Estimated Property Taxes before Current Use: \$1,081

Levied Taxes: \$301

***Tax Savings:* \$780⁹**

The property in the above example has been in the current use program since 2002. Every four years Mason County reevaluates the property for compliance. This was most recently completed in 2010. The above figures are from the 2013 data published by the Mason County Treasurer. *Current use program enrollment reduces the tax burden on the eligible property to 28 percent of its market rate.*

It is important to note that the portion of the site where the home is built (one acre) does not receive a reduced tax rate. The home is considered an *improvement* to the land and is not included in the current use valuation. Under state law, land on which improvements have been made cannot be enrolled as open space.¹⁰ A bulkhead would be considered an improvement to the property and therefore would not be included in the evaluation of open space subject to the tax relief. The Open Space Taxation Agreement signed by the property owner can state whether any improvements to the land affect classification.

This example demonstrates how the Open Space Taxation Act can be applied to shoreline properties. In the Mason County example, even with an acre of improved land removed from eligibility, the homeowners received a tax



savings of \$780 per year for simply leaving the land as it was. This is a large, 2.3-acre parcel of shoreline property. No examples were found where the program was applied to smaller parcels of land that might exemplify the typical shoreline property.

Barriers to Use of Open Space Taxation Act for Bulkhead Prevention and Removal

The following are aspects of the Open Space Taxation Act that limit its application for single-family homeowners of shoreline properties in non-PBRS counties:

- Broad definitions of open space classification.
- Interpretation of the Open Space Taxation Act at the county level.
- Equal treatment of enrollment criteria.
- Lack of specificity in targeting shorelines.

Without a Public Benefit Rating System, the current structure of the Open Space Taxation Act, does not provide tax relief commensurate with the level of the public benefit gained.¹¹ The minimum guidelines codified in state law do not reward the conservation of one resource over another and objective evaluation of an application remains difficult. According to the Mason County staff, an application for a parcel along a critical shoreline is the same as an

application for an inland property with large open spaces.

Based upon conversations with two of the three counties relying upon the Open Space Taxation Act, the language of RCW 84.34 is considered too broad, lacking in direction, or unclear as to how it should be applied to a property in order to prevent bulkheads or encourage bulkhead removal.

Opportunities to Modify Open Space Taxation Act: New Classification for Shoreline Armoring

There are two different options for modifying the Washington Open Space Taxation Act to provide incentives for removal of bulkheads and retention of natural shorelines by residential property owners. One way is to create a category within the state law that specifically states removal of armoring and refraining from installing armoring are considered elements of “open space” that should receive tax relief. The other option would be to create guidance applicable to those counties relying upon the RCW for implementation of their open space tax programs.

Washington State Department of Revenue (WSDOR) staff expressed skepticism about creating a separate shoreline classification for a number of reasons. First, the law is designed to give discretion to county authorities on how to implement the program.¹² Proposing a more detailed and structured program may run into opposition with counties who want flexibility in how they implement the program. A change to the Act would need to be tailored in such a way so as to avoid restricting those counties with their own programs.

Changes to the Open Space Taxation Act would require action at the state level and include the introduction of a bill in the House or Senate and subsequent passage into law. Changing the Open Space Taxation Act also has the potential to open the door for other interests to lobby for program modifications. This must be a consideration if more effort is given to legislative changes. Moreover, additional research is required to determine whether the efforts required to change the Open Space Taxation Act would yield sufficient results, particularly since only three counties do not have their own programs.

After discussions with the current use specialist at the Washington State Department of Revenue (WSDOR) and with county program administrators of the three counties

relying upon the Act, a more productive approach would be to focus on the county level. WSDOR staff expressed skepticism about creating a separate shoreline classification because the law leaves so much discretion to county authorities.¹³

Another option considered is to develop guidance (as opposed to legislative changes) that would implement a robust program targeting shoreline preservation and restoration which could be a tool for the three counties relying upon the Act. As the administrator for Mason County’s open space program, Phillip Franklin, Appraiser III at the Mason County Assessor’s Office, provided insights about whether a guidance document would be a useful tool.

The current Mason County Open Space program can offer substantial tax relief to shoreline properties. Upon submittal, a property is first evaluated to ensure that it meets the minimum enrollment qualifications under state law. All properties enrolled as open space in Mason County is then valued at the county’s highest farm and agricultural land rate. In 2012, that rate was \$426 per acre.¹⁴ If, for example, a parcel along the shoreline is assessed at its highest and best use value of \$200,000 per acre¹⁵, enrollment as open space would lower its assessed value to \$426 per acre, providing the property owners with a 99% reduction in property taxes.

Given the current valuation procedures in Mason County, a guidance document would not have the effect of encouraging shoreline preservation or restoration. Under the current system all shoreline properties, whether or not the property includes a proposal for bulkhead removal or preservation of a natural beach, would potentially receive tax relief so long as the shoreline property meets the qualifications for enrollment found in RCW 84.34 and WAC 458-30. There is no system for the assessor or program administrator to provide extra benefits for the purpose of encouraging restoration or preservation of shorelines without creation of a county-adopted public-benefit rating program. Therefore, guidance would not necessarily improve the use of the Mason County program for the purposes set forth in this report.

However, awareness of the current use program is lacking. In most instances counties report that lack of knowledge of the current use program accounts for low participation. Outreach targeted specifically to homeowners who have natural shorelines or are engaged in efforts to remove bulkheads would provide significant tax savings based on the existing Mason County program. There is an opportunity to increase enrollment in the current use program through targeted outreach.

Application of County-Specific Public-Benefit Rating Systems to Bulkhead Prevention and Removal

The Open Space Taxation Act grants counties in Washington State authority to create their own Public Benefit Rating Systems (PBRs).¹⁶ The Open Space Taxation Act provides the following authority for PBR adoption:

“The county legislative authority may direct the county planning commission to set open space priorities and adopt, after a public hearing, an open space plan and public benefit rating system for the county.”

Each county establishes its own criteria to determine eligibility and an assessed valuation schedule along with an open space plan. As long as counties use the guidance found in RCW 84.34.020(1)(a) and WAC 458-30-330, each county can interpret enrollment criteria and valuation as it sees fit, and a PBR can differ widely from county to county.

Counties that have adopted PBRs build upon codified enrollment criteria by prioritizing the public benefit of resources in their respective jurisdictions. The Public Benefit Rating Systems of King County and Whatcom County were evaluated to determine how these two PBR programs applied to shoreline properties and how they could be used as incentives to encourage residential property owners to remove or refrain from installing bulkheads.

Application of King County's PBR Program to Bulkhead Prevention and Removal

The King County Department of Natural Resources and Parks administers the current use program in King County.¹⁷ The County uses a point-based Public Benefit Rating System adopted in 1990 based on qualifying resources. There are 25 different categories, and anywhere from five to 35 points are allocated for each. Those categories include aquifer protection areas; buffers for public and current use-classified land; scenic resources, viewpoints, and view corridors; significant wildlife or salmonid habitat; and surface water quality buffers, among others. Additionally, bonus categories such as resource restoration, additional surface water quality buffers, and conservation and historic preservation easements can be

applied for higher scoring. A minimum public benefit rating of five points is required to enroll in the program, and a maximum of 52 points can be earned.

Upon evaluation by county staff, applications are scored based on the above criteria. The resulting tax reduction and current use value of the eligible property are calculated, and tax relief of up to 90 percent can be awarded based on the Public Benefit Rating earned.

The following example is a shoreline property enrolled as open space just south of Discovery Park in Seattle. Information was provided by the King County Department of



Natural Resources and Parks.

Address: 3425 Perkins Lane West
Seattle, Washington 98199

Property size: .65 acres

Eligible property: .58 acres (total property minus home site)

2012 assessed value: \$576,000

2012 property taxes before current use: \$5,855.43

2013 assessed value: \$303,394

2013 property taxes after open space classification:
\$3,200.61

2012 - 2013 reduction in taxes: \$2,654.82

County staff reviewed the property and recommended the application of only three of the six categories requested by the applicants: 1) urban open space, 2) resource restoration, and 3) limited access categories. The county enrolled the property in the PBR program, granting a total public-value rating of 15 points.¹⁸

Of particular note is the county's reasoning for not applying the significant wildlife or salmonid habitat and surface water quality designations to the property. It noted that the shoreline armoring on the property did not provide a buffer of native vegetation, so it could not receive credit for these categories.

This example demonstrates that the existing King County PBRs program could potentially be used for shoreline properties. The property still received a significant tax reduction even with the rock seawall in place. The restoration criteria were met because the landowners had been working with EarthCorps to remove invasive plant species and restore native vegetation. The property owner in the example above would have received an even greater tax benefit for removal of the property's rock wall.

Barriers to Use of King County PBRs Program for Bulkhead Prevention and Removal

A 2007 report commissioned by Seattle Public Utilities and authored by Evergreen Funding Consultants considered whether to customize and more actively promote the King County Conservation Program for the city of Seattle. The report stated that enrollment in the King County PBRs program is a cost-effective conservation method when compared to public acquisition of property.¹⁹ And the tax reductions under the program would be offset by small increases in property taxes paid by Seattle taxpayers. As illustrated in the example above, the high property values in King County, and in turn the large potential tax relief, make enrollment in the program very attractive.

The report also notes that the consequences for other Seattle taxpayers appear to be manageable. If all 815 lots in the study's priority areas enrolled and received an average 60 percent tax reduction, an increased levy of \$0.15 per taxpayer would make up for lost revenue.

It was noted that the current King County PBRs program provides only limited points for restoration, which could be used for removal of armoring or bulkheads. The Evergreen report noted that in order to encourage restoration the following changes to the program would be necessary:

- A well-defined baseline standard of eligibility for site restoration.
- An expanded point scale for restoration activities in order to accommodate the range of treatment from less-expensive revegetation to more-expensive bulkhead removal.
- Combination of the PBRs program with additional financial incentive programs.²⁰

The report notes that either administrative or legislative changes would be required to implement this approach. King County could administratively increase points for existing categories to boost the level of tax reduction. Alternatively, a legislative approach would be to amend the authorizing legislation to create an expanded scale of bonus points for site restoration activities, with simple revegetation perhaps continuing to receive five bonus points but more complex and expensive treatments, such as bulkhead removal, receiving as many as 15 to 20 points. This would provide an additional financial incentive for more consequential restoration work.²¹

The Evergreen report provides an assessment of the tax shift for Seattle associated with implementing this type of incentive. It may be necessary to conduct such an analysis for King County in order to encourage changes in the program.

Application of Whatcom County's PBRs Program to Bulkhead Prevention and Removal

The current use program is administered by the Planning & Development Services Department (PDS) of Whatcom County. The Whatcom County Planning Commission serves in an advisory role to the Whatcom County Council in reviewing enrollment applications. A Public Benefit Rating System was adopted in 1986 and most recently amended in 1995.

In evaluating an application, county staff rate the property on a 0 to 10-point scale based on "basic value criteria" such as the protection of streams, stream corridors, wetlands, natural shorelines, and aquifers and the enhancement of the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces; among others.³

The applicant's score is increased further by the addition of public benefit value criteria such as public access, water resource protection, and other priority resources. The higher the public benefit rating, the higher the level of tax relief awarded. A minimum public benefit rating of 45 is needed to enroll in the Whatcom County current use program.

For example, if a 20-acre parcel of land gets assigned a public benefit rating of 75 in Whatcom County, the following tax relief would be awarded:

Public benefit rating: 75
Fair market value: \$600,000
Current use value: \$24,000
New current use value: \$168,000
Fair market value tax: \$7,200
Current use value tax: \$2,016
***Tax savings:* \$5,184**

In this hypothetical example, the landowner is provided a substantial tax savings of \$5,184 by enrolling the property as open space in Whatcom County.

Barriers to Use of Whatcom County's PBRs Program for Bulkhead Prevention and Removal

While the Whatcom County PBRs already takes into consideration whether enrollment of a property would “protect streams, stream corridors, wetlands, natural shorelines and aquifers,” staff noted that the program can be structured to more effectively target the protection and restoration of shorelines.²³ The existing program is not structured to provide sufficient points to target shoreline restoration.

Administratively, staff can still choose to score a shoreline property higher using the existing PBRs criteria. However, by modifying the PBRs to prioritize keeping shoreline in its current use, applications can be more consistently evaluated and shoreline areas more effectively targeted.

There is no analysis of the financial impact associated with providing this type of a tax shift in Whatcom County. Such an analysis may be required to determine whether there would be sufficient support for implementing changes to this program to provide this incentive.

Recommendations for Modifying PBRs Programs

Based upon conversations with staff at King County and Whatcom County, these two existing PBRs programs could be modified in order to better protect shorelines. Since 1995, King County has revisited its PBRs and made changes in priority resource categories and the numerical rating system. Most relevantly, a specific “shoreline” category was removed from the PBRs in 2005. The category had awarded either three or five points for marine conservation, but was found to duplicate points that were awarded for similar criteria under the “Surface Water Quality Buffer” category.

King County believes that its PBRs does a good job of enrolling shoreline properties. The major area of improvement that it would make would be changing the points associated with the “resource restoration” category. Under the current King County PBRs, five points are awarded for the restoration of an open space resource category. However, this point structure does not differentiate between levels of restoration. For example, replacing a

bulkhead with soft armoring, a very labor-intensive and financially intensive project, and restoring native vegetation, a less intensive project, would both earn five points. A sliding point scale would provide more incentives, and more accurately award property owners for restoration, with bulkhead removal receiving the most points. The more points awarded to a property owner, the higher the amount of tax relief. However, it should be noted that the structure of the King County program lends itself to a greater tax relief for larger waterfront parcels. Smaller urban waterfront parcels may not be able to earn enough points to create incentives for homeowners.

Whatcom County Planning & Development Services is in the process of updating its Public Benefit Rating System. It has agreed to work with the ECB Regulatory Subcommittee on drafting revisions to the PBRs to address shoreline-related issues. The following recommendations and model language for a PBRs program are designed to address changes for Whatcom County and provide model language that can be applied to the other Puget Sound PBRs programs.

1. Allocation of Property Tax Reductions

In a draft report, Whatcom County Planning and Development Services recommended the county adopt a new public-benefit rating formula that is easier to calculate and to understand. The first issue it addressed is to propose a new tax-relief formula similar to that of Pierce County's Public Benefit Rating System.

Table 1: Point Allocation and Tax Reduction

Total Resource Points	Percent Reduction of Market Value
0-2 points	0%
3 points	20%
6 points	30%
9 points	40%
12 points	50%
15 points	60%
18 points	70%
20 points	80%
25 points or more	90%

The formula above awards tax relief based upon the presence of priority resources on the property, with each resource allocated a range of points.

2. Model Shoreline-Related PBRS Provisions

The following is proposed model language related to shoreline restoration. This language, targeted to the Whatcom County PBRS program, is based upon the language from the current King County Public Benefit Rating System that is most frequently used for shoreline properties.

The following draft model language and associated numerical rating system are based on the recommended draft public-benefit rating formula and not the current formula used by Whatcom County. The language is largely drawn from the existing King County PBRS program and modified to address Whatcom County-specific issues.

MODEL PBRS SHORELINE PROVISIONS

Surface Water Quality Buffer (5 points)

An undisturbed area that has a plant community in which native plants are dominant adjacent to a lake, pond, stream, shoreline, wetland, or marine waters, that provides buffers beyond those required by any applicable regulation. The qualifying buffer area must be preserved from clearing and intrusion by domestic animals and protected from grazing or use by livestock.

Resource Restoration (5-15 points)

To be eligible for resource restoration points, the property owner must develop and implement a restoration plan for an eligible priority resource(s) in consultation with Whatcom County Planning & Development Services and other appropriate state or county agencies. The owner shall provide to PDS a yearly monitoring report for at least five years following enrollment in the Public Benefit Rating System program.

Significant Wildlife or Salmonid Habitat (5 points)

For the purposes of this category, "significant wildlife or salmonid habitat" means:

- A. An area used by animal species listed as endangered, threatened, sensitive, or candidate by the Washington Department of Fish and Wildlife;
- B. An area where the species listed in subsection (a) of this category are potentially found with sufficient frequency for critical ecological processes such as reproduction, nesting, rearing, wintering, feeding, and resting to occur;
- C. A site that meets the criteria for priority habitats as defined by the Washington Department of Fish and Wildlife; or
- D. A site that meets criteria for a wildlife habitat conservation area as defined by the department or a local jurisdiction.

Perpetual Stewardship (25 points)

Perpetual stewardship points are awarded if a property owner voluntarily places development restrictions on the property that continue in perpetuity. These can take the form of conservation easements, historic preservation easements, or the transfer of development rights, among other measures. The type of development restriction must be approved by Whatcom County Planning & Development Services and be recorded on the title of the land.

Bonus Criteria – Marine Nearshore Restoration (10 points)

To be eligible for marine resource restoration points, the property owner must develop and implement a restoration plan in consultation with Whatcom County Planning & Development Services and other appropriate state or county agencies. The property must be located within an area recommended for marine nearshore restoration by the Whatcom County Shoreline Management Program. The owner will provide to PDS a yearly monitoring report for at least five years following enrollment in the Public Benefit Rating System program. Marine nearshore restoration includes, but is not limited to, the following:

- Removal of shoreline armoring (bulkheads);
- Conversion of bulkhead to soft armoring;
- Enhanced habitat for fish and other aquatic species;
- Low impact development techniques;
- Enhancement or restoration of native vegetation
- Enhancement or restoration of aquatic vegetation;
- Installing woody debris;
- Replacing dock decking with light-passing material;
- "Daylighting" culverted or piped streams, and associated buffer plantings;
- Lawn reduction in setback areas.

The above model PBRS language for shoreline restoration combines efforts by King County and proposals from Whatcom County. The intent is to create a tiered point system that will provide more points, and therefore more tax benefits, for property owners who remove bulkheads. As noted in Table 1 above, the higher the points allocated, the greater the tax relief. In the model language, the greater the restoration efforts, the higher the points allocated (between 5 and 15). An additional 10 points can be awarded through the "bonus criteria" category.

Issues Associated with Adoption of a Public Benefit Rating System

The prior section of this report demonstrates the value of adopting a PBRS program to address shoreline restoration issues. However, there are implications counties need to consider when transferring from use of the Open Space Taxation Act to a PBRS program. One consideration is the political interest in creating a program that will grant tax relief to property owners. The second is both political and administrative.

For counties without a PBRS program that already have significant numbers of property owners enrolled in the open space program, creating a PBRS program may entail some currently enrolled properties receiving a tax increase and others a tax decrease based on the new program criteria. In addition, staff would be required to re-rate all enrolled properties based upon the new program assessment, a process that could require additional resources or take several years to complete depending on the total number of properties involved.

This report analyzes the process by which a Washington county converted to a PBRS program. Only one county has adopted a PBRS program within the last ten years. Of the 19 counties in Washington with PBRS programs, a majority adopted them in the 1980s and 1990s. Franklin County, located in southeastern Washington, adopted a PBRS in 2007, but it does not currently have any properties enrolled as open space, and the story behind the adoption of that program provides few lessons for the three Puget Sound counties in the transition process.

Franklin County started the process of creating a Public Benefit Rating System in 2005. Steve Marks, the assessor of Franklin County, and the Franklin County Planning and Building Department used the Okanogan County PBRS as a blueprint and tailored it to fit the needs of Franklin County. County staff hosted a series of workshops to educate Franklin County commissioners and the public on the Public Benefit Rating System. A public hearing was held, and in January of 2007 the Franklin County Commissioners approved the PBRS.²⁴

Once a PBRS is adopted, properties enrolled under the county's old open space classification must be rated according to the new Public Benefit Rating System.²⁵ Statute also dictates that previously enrolled open space properties cannot be removed from classification by the county once a PBRS is adopted, even if they do not meet the new qualifications for enrollment. Those properties instead must be rated using the PBRS.

Franklin County did not have any properties enrolled as Open Space at the time its PBRS was adopted. Thus, it did not have to go through the re-rating process. By contrast, the King County Department of Natural Resources went through a very complex re-rating process due to revisions to its PBRS program in 1995. At the time the revisions to its PBRS program were adopted, there were 200 properties enrolled in King County. Due to the 1995 program changes, all 200 enrolled properties were re-rated, creating some political problems for the county, although not as significant an issue as anticipated. More important was the significant amount of staff time required to complete the re-rating.

Re-rating properties, whether because of adoption of a PBRS program or due to significant program revisions, can be very labor-intensive. King County estimates that its three-member current use program staff can process an average of 75 applications per year.²⁶ If staff time were allocated to re-rating old open space enrollments in addition to evaluating new applications, it would be expected that more staff resources would be needed for transitioning to a PBRS in counties with high enrollment under the old open space program.

Statute does not set a timeline for old open space properties to be re-rated under a new Public Benefit Rating System. However, the adoption of a PBRS does give property owners 30 days to voluntarily withdraw from classification without payment of back taxes or penalties.²⁷

Secondary Incentives to Consider

Combining supplementary incentives with enrollment in the current use program can address some of the limitations of the program and provide further motivation to property owners. Examples of what could be “bundled” with these programs are described below.

Methods for Ensuring Permanent Protection of Unarmored Shorelines:

The first category of secondary incentives addresses the issue that the current use program, whether in a PBRS or non-PBRS county, is not a permanent restriction on the use of a property. Future property owners may elect to leave the program and install a bulkhead on the property. These are opportunities to create more permanent restrictions on use:

Conservation Easements: A conservation easement is an agreement between a landowner and a land trust or a government agency that permanently limits use of the land in order to protect its conservation values. The King County PBRS already places a high value on conservation easements by giving 35 points to the applicant’s public benefit rating. The organization Friends of the San Juans is also working to tie conservation easements to enrollment in the current use program.

Transfer of Development Rights or Purchase of Development Rights: A Transfer of Development Rights (TDR) program is structured as a voluntary, incentive-based approach to conserving land and steering development towards targeted growth areas. In essence, the right to develop one’s property is purchased by another entity looking to develop in another, usually denser area. Ownership of the property is not transferred to the purchaser of the development rights, only the legal authority for further development. The application of TDRs to shoreline preservation has not been studied and should be considered.

A Purchase of Development Rights program is a voluntary program that compensates owners of property in exchange for a permanent deed restriction on their land that limits future development of the land. This type of a program is applied to agricultural lands. Further study would be required to determine its applicability to shoreline residences.

Methods to Provide Additional Financial Incentives:

The amount of tax relief offered by the Open Space Taxation Act or a county-specific PBRS program may not be sufficient enticement to encourage property owners to participate. The following are additional financial incentives that could be bundled with the tax programs to create a greater incentive.

Low- or Zero-Interest Loans: The State of Maryland has aggressively addressed shoreline armoring through several statutory measures. The Living Shoreline Protection Act of 2008 requires that construction projects along tidal wetlands use nonstructural forms of shoreline stabilization unless granted exemption by the Maryland Department of the Environment.²⁸ In addition, the Shoreline Erosion Control Law of 1998 provides interest-free loans for non-structural projects adjacent to any body of water in Maryland. The Maryland Department of the Environment also administers the Maryland Link Deposit and the Small Creeks and Estuaries Grant Program to provide low-interest loans and cost-share funding specifically for shoreline projects.²⁹ A program such as this one could be explored for shoreline homeowners in Washington.

Grants: There are a number of grant programs that can be investigated to see if they would apply to these types of small-parcel shoreline restorations. Some of these grant programs are highlighted in the Futurewise report on incentives.³⁰

Federal Tax Credit: The Open Space Tax Act and the county PBRS programs are property-tax programs. A number of states with income taxes provide tax credits for conservation easements.³¹ Washington State does not have an income tax program to provide that type of a tax incentive.

Without a state income tax in Washington, such a deduction is not an option. However, Washington landowners could take advantage of a federal tax credit for conservation efforts if one existed. No such federal tax credit exists, and no federal tax credit exists for shoreline properties.

Existing and prior federal programs with tax credits provide insight into how such a tax credit might apply to shoreline restoration. Here are a few examples:

A. Purchase of Energy-Efficient Products for

Homes These tax credits were established by the Energy Policy Act of 2005, the federal tax credit for residential energy property. They initially applied to solar electric systems, solar water-heating systems, and fuel cells. The Energy Improvement and Extension Act of 2008 extended the tax credit to small wind-energy systems and geothermal heat pumps, effective January 1, 2008. Other key revisions included an eight-year extension of the credit to December 31, 2016; a provision for taking the credit against the alternative minimum tax; and the removal of the \$2,000 credit limit for solar electric systems beginning in 2009.³²

B. Electric Vehicle Tax Credit Electric vehicles (EVs) purchased in or after 2010 may be eligible for a federal income tax credit of up to \$7,500. The credit amount will vary based on the capacity of the battery used to power the vehicle.³³

These types of federal tax credits relate to federal legislation aimed at energy efficiency. They influence consumers by providing incentives to purchase energy-wise products. The tax credits were initiated as part of overall federal efforts to encourage energy conservation. Other tax credits typically stem from federal legislative actions that use tax credits as one method for encouraging actions. For example, the Low Income Housing Tax Credit was created as part of the Tax Reform Act of 1986 as a way to provide more low-income housing.

In order to create federal tax credits that promote environmentally friendly shoreline treatment by property owners, there would likely need to be a federal effort related to national coastal issues and a federal act that would drive the initiation of a tax credit.

Based upon initial conversations with shoreline program managers in other states, it appears that a federal tax credit for shorelines has not been pursued due to the complexity of changing federal tax laws.

Conclusion

The current use program could potentially be used as a financial incentive to encourage residential property owners to prevent, reduce or remove armoring along the shores of Puget Sound. State law provides a broad framework by which each county can implement its own program. However, that framework may be too broad and vague to be effective if there is no Public Benefit Rating System in place.

There are three counties in the Puget Sound region relying upon the language of the Washington State Open Space Taxation Act to implement an Open Space Taxation Program. If changes are made to the Act they should focus on these three counties. The following changes should be considered:

PSP could analyze how Mason, Skagit, and Snohomish counties could use the Act for bulkhead prevention and removal. Opportunities exist to use the Act to conserve undeveloped shorelines and promote conservation of beaches; however, modifying definitions in the Open Space Taxation Act would require a state-level legislative change. Alternatively, these counties could enroll applicable shoreline properties through strategic education and outreach to homeowners.

PSP could encourage Mason, Skagit, and Snohomish counties to adopt Public Benefit Rating Systems. Adoption of a PBRs is the most effective way to prioritize resources in a county and bring transparency and objectivity to the application process. Targeting shorelines through the current use program can be more easily accomplished with a PBRs.

There are nine counties implementing their own PBRs programs. Opportunities exist to encourage the use of the program as an incentive for shoreline restoration. Here are some of the key points:

PSP could build upon draft language and continue its partnership with King and Whatcom counties to better target shoreline protection and restoration through changes in their Public Benefit Rating Systems. Both King County and Whatcom County have already enrolled shoreline properties for preservation under the open space classification of the current use program. The level of tax relief is dependent on the program evaluation criteria specified in the PBRs. Since the criteria for each county are different, hard armoring prevention or removal is valued differently depending on the county PBRs. While enrollment of shoreline properties has already occurred, there has been little focus on armoring removal and there

remains opportunity for improvement. Changes to the Public Benefit Rating System of King or Whatcom would require approval by its legislative authority. The resulting language, its adoption, and the implementation process can serve as models for other counties with Public Benefit Rating Systems.

PSP could support ongoing efforts to identify priority shoreline areas for conservation in PBRs counties. Targeting specific geographic areas can provide focus to outreach and conservation efforts. Both King and Whatcom counties have already expressed the need for the identification of priorities to target shoreline conservation or restoration work. The Washington Department of Natural Resources, Washington Department of Fish and Wildlife, and other organizations are currently funding preliminary technical assessments of priority shoreline areas.

PSP could initiate a county-by-county analysis of the Public Benefit Rating Systems of Puget Sound counties. With the results of this analysis, PSP should then recommend specific language modifications to target shoreline conservation that can be recommended for adoption by the respective county legislative authorities. These efforts should be coordinated with ongoing outreach efforts to educate shoreline property owners about these issues.

PSP could support counties by raising awareness of the current use program in their jurisdictions. This outreach could be used to encourage enrollment in the Public Benefit Rating System by shoreline property owners who either remove their bulkheads or agree to refrain from installing bulkheads. These efforts should be coordinated with ongoing outreach efforts to educate shoreline property owners about these issues.

Training could be conducted for assessors and current use staff. Assessors and current use staff can be educated on the program's potential for shoreline conservation. The Washington Department of Revenue can include this in its annual current use training.

Further research could be conducted to determine methods to maintain conservation in perpetuity. A major limitation of the current use program is the ability to withdraw from it. Even with the back taxes, penalties, and fees associated with leaving the program, some landowners still find it worthwhile to withdraw, defeating efforts to use the tax incentive as a preservation tool.

The tax shift associated with the current use program should be analyzed further. Assessors have only a vague

sense of what the expected tax shift from program enrollment may be. A thorough analysis of the program's tax shift would clarify its effect on individual property owners in different tax districts. In addition, assessors could greatly benefit from a targeted training program explaining the overall purpose and value of removing armoring and retaining natural shorelines.

As pointed out in the Evergreen Report, by themselves the tax incentives in the PBRs program may not provide

sufficient incentives for homeowners to participate in the program. Additional research should be conducted to determine how to create more financial incentives by bundling tax incentives, loans, and grants. Moreover, a tax incentive does not ensure that a homeowner will refrain from installing a bulkhead in the future, so there should be additional research into how to combine the tax incentive with a conservation easement or similar device to permanently restrict construction of bulkheads.

Endnotes

¹ Washington State Department of Revenue, Open Space Taxation Act, June 2012. Available at http://dor.wa.gov/docs/pubs/prop_tax/openspace.pdf

² See RCW 84.34. The administrative code provisions for implementing this Act are found at Washington Administrative Code WAC 458-30-200.

³ RCW 84.34.055

⁴ Washington State Department of Revenue

⁵ WAC 458-30-230(4)(b)(ii)(B)(II)

⁶ WAC 458-30-230(4)(b)(ii)(B)(II)

⁷ RCW 84.34.020(1)(b)(iii)

⁸ RCW 84.34.037(2)(a)

⁹ Office of the Treasurer, Mason County

¹⁰ Farm and Agricultural land can include "appurtenances" to the land, or improvements that are necessary for the basic function of the land.

¹¹ Personal conversation with Phillip Franklin, Mason County Assessor's Office, November 21, 2013.

¹² Personal conversation with Leslie Mullin at WSDOR on November 14, 2013.

¹³ Personal conversation with Leslie Mullin at WSDOR on November 14, 2013.

¹⁴ Personal communication with Phillip Franklin at the Mason County Assessor's Office.

¹⁵ This number is based upon random sample of vacant waterfront parcels for sale in Mason County.

¹⁶ RCW 84.34.055(1)(a)

¹⁷ See King County Public Benefit Rating System, Open Space Resource Information, (updated April 2011).

¹⁸ A maximum Public Benefit Rating of 28 or 30 points would be possible if all conditions were met. An 80% reduction in assessed property value would have resulted.

¹⁹ Canty, Dennis, Evergreen Funding Consultants, Use of the King County Public Benefit Rating System to Meet Aquatic Habitat Restoration Needs in Seattle, (December 2007).

²⁰ Id.

²¹ Id.

²² See Whatcom County Open Space Policy and Criteria and Public Benefit Rating System, (as amended August 1995), on the web at <http://www.co.whatcom.wa.us/council/1995/ord/ord1995-040.pdf>

²³ Personal communication with Erin Osborn, Planner & PDS Open Space Current Use Program Administrator, Whatcom County.

²⁴ Personal conversation with Steve Marks, Franklin County Assessor

²⁵ RCW 84.32.037(3), WAC 458-30-330(6)(b)

²⁶ Personal conversation with Bill Bernstein and Ted Sullivan, King County Department of Natural Resources

²⁷ RCW 84.34.055(3)

²⁸ Maryland Department of the Environment. New Tidal Regulations for Living Shorelines

²⁹ Atlantic States Marine Fisheries Commission. Living Shorelines: Impacts of Erosion Control Strategies on Coastal Habitats.

³⁰ Dean Patterson, Heather Trim, and Tim Trohimovich, Practical Guide: Incentives to Help Meet Priority Shoreline Restoration Objectives, October 2013.

³¹ There are 16 states with state tax credits for conservation easements Colorado, Georgia, New Mexico, South Carolina and Virginia, Arkansas, California, Connecticut, Delaware, Iowa, Maryland, Massachusetts, Mississippi, New York, and North Carolina. See Land Trust Alliance available at <http://www.landtrustalliance.org/policy/tax-matters/campaigns/state-tax-incentives>.

³² See <http://energy.gov/savings>

³³ See <http://www.fueleconomy.gov/feg/taxevb.shtml>



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