

REVISED

Subsequent to the Planning Commission meeting, one applicant withdrew their application. Discussion on the withdrawn application is shown with strikethroughs

WHATCOM COUNTY PLANNING & DEVELOPMENT SERVICES STAFF REPORT

STAFF RECOMMENDATIONS TO THE WHATCOM COUNTY PLANNING COMMISSION ON TWO APPLICATIONS TO CLASSIFY LAND AS "OPEN SPACE LAND" AS AUTHORIZED UNDER CHAPTER 84.34 RCW & WHATCOM COUNTY ORDINANCE NO. 1995-040

Open Space Applications 2018

Introduction:

This report summarizes staff findings and recommendations on a total of two applications for classification of land as "Open Space Land" as authorized under the Open Space Taxation Act, Chapter 84.34 RCW, and Whatcom County Ordinance No. 1995-040.

This report is prepared for the Whatcom County Planning Commission and staff requests that the Planning Commission consider them and make recommendations as to whether they should be approved in whole or in part, or denied. At the conclusion of the Planning Commission public hearing and work session, staff will forward recommendations made by the Planning Commission to the Whatcom County Council acting as granting authority, for its review in making a final decision on each application.

The report is composed of five main parts:

1. Summary of two applications to classify land pursuant to applicable state and local regulations;
2. Application review, staff findings of fact, proposed conclusions, and staff recommendations;
3. Background information on the Open Space Taxation Act;

4. Role of Staff, Planning Commission, and County Council in application review, approval or denial;
5. Open Space Land evaluation criteria: Public Benefit Rating System (PBR).

I. Applications Summary

1. OSP2018-00001 – Tony & Shanda Kelstrup

Application to reclassify property from Open Space Farm and Agriculture to Open Space Land (4.67 +/- OSL acres)

6610 Vista Dr, Ferndale

GEO ID: 390207166150: 4.67 Open Space Land application acres (5.67 total parcel acres)

Public Benefit Rating: 34.05

Estimated change in taxes paid by the applicant if approved: +**\$739.91.**

~~2. OSP2018-00002 – Randy & Vicki VerMulm~~

~~Application to reclassify property from Open Space Farm and Agriculture to Open Space Farm and Agricultural Conservation Land (8 +/- OSL Acres)~~

~~**9606 Van Buren Road, Lynden**~~

~~GEO ID: 400405025440: 8 Open Space Land application acres (9.78 total parcel acres)~~

~~**Public Benefit Rating: 18.90**~~

~~Estimated change in taxes paid by the applicant if approved: +**\$1,663.57**~~

II. Application Review & Staff Findings

Staff findings for 2018 Open Space applications are listed in summary below.

All applications have been reviewed by staff, and have received a site inspection. Attached for reference at the end of this report are site evaluation worksheets, maps, and other supporting documents. A power point slide show of each property along with staff comments and recommendations will be presented to the Planning Commission.

Open Space Land (OSL) Applications for Open Space Land are evaluated by staff in accordance with Whatcom County Open Space Policy and Criteria

and Public Benefit Rating System (1995), often referred to as the Whatcom County **PBRS**. A Public Benefit Rating or **PBR** (evaluation score) is calculated based on overall aggregate points assigned after review with the PBRS, based on a formula developed by the County Assessor. Applications must receive a Public Benefit Rating of at least 45 points for a *staff recommendation of approval*.

Open Space Land (OSL)

1. OSP2018-00001 – Tony & Shanda Kelstrup

Application to reclassify property from Open Space Farm and Agriculture to Open Space Land (4.67 +/- OSL acres)

6610 Vista Dr, Ferndale

GEO ID: 390207166150: 4.67 Open Space Land application acres (5.67 total parcel acres)

Public Benefit Rating: 34.05

Estimated change in taxes paid by the applicant if approved: +**\$739.91**.

Discussion: On September 10, 2018, Planning & Development Services Department received an application from Tony and Shanda Kelstrup to reclassify approximately 4.67 acres as Open Space Land. This land contains one acre that is currently assessed at true and fair value (market value) and 4.67 acres currently assessed as Open Space Farm and Agricultural Land. It is the understanding of PDS staff that the subject parcel no longer meets the requirements for Open Space Farm and Agriculture status and that the applicants are applying for reclassification to Open Space Land, consistent with RCW 84.34.020(1).

The Kelstrup application consists of one parcel and is subject to the zoning regulations located in Title 20, Chapter 20.36 – Rural (R10) District, with a density of one dwelling unit per 10 acres, and is designated Urban Growth Area Reserve in the Comprehensive Plan

The property is located on Vista Drive ~0.9 miles north of Ferndale city limits and ~0.75 miles south of the Vista Drive/Grandview intersection.

The submitted application indicates that classification will serve to: protect streams, stream corridors, wetlands, natural shorelines, or aquifers.

The subject property contains a waterway that may support salmonid species. Additionally, the property likely contains riparian wetlands, based on review of the National Wetland Inventory, neighboring parcel permit history and a staff site inspection.

In accordance with Whatcom County Open Space Policy and Criteria and Public Benefit Rating System (PBRs), 1995, as a condition of approval, owners of open space parcels must agree to provide a certain degree of public access. The applicants will not allow public access. This requirement may be waived by the Council when the purpose of the open space is for wetland conservation. As mentioned above, staff identified likely riparian wetlands on the subject parcel.

After evaluating this application with the Public Benefit Rating System, staff has assigned it a Public Benefit Rating (PBR) of 34.05 (for details, please see attached evaluation worksheet sheet OSP2018-00001). The hypothetical tax shift if approved is a net increase to the property owner of \$739.91. The other tax payers within the same taxing districts would have their cumulative taxes reduced by a comparable \$739.91.

Information about the tax shift is listed for consideration by the Planning Commission and County Council, so that they may consider the overall shift in taxes relative to the merits of the application as measured with the public benefit rating system.

A Public Benefit Rating of at least 45 points must be attained to receive a *staff recommendation of approval*. The application has received a PBR less than 45, and therefore staff cannot recommend approval of the Kelstrup application for Open Space Land classification

~~2. OSP2018-00002 – Randy & Vicki VerMulm~~

~~Application to reclassify property from Open Space Farm and Agriculture to Open Space Farm and Agricultural Conservation Land (8 +/- OSL Acres)
9606 Van Buren Road, Lynden~~

~~GEO ID: 400405025440: 8 Open Space Land application acres (-9.78 total parcel acres)~~

~~**Public Benefit Rating: 18.90**~~

~~Estimated change in taxes paid by the applicant if approved: +\$1,663.57~~

~~Discussion: On November 28, 2018, Planning & Development Services Department received an application from Randy and Vicki VerMulm to reclassify approximately 8 acres as Open Space Farm and Agricultural Conservation Land. This land contains one acre that is currently assessed at true and fair value (market value) and 8.78 acres currently assessed as Open Space Farm and Agricultural Land. It is the understanding of PDS staff that the subject parcel no longer meets the requirements for Open Space Farm~~

~~and Agriculture status and that the applicants are applying for reclassification to Open Space Farm and Agriculture Conservation, consistent with RCW 84.34.020(8).~~

~~The VerMulm application consists of one parcel and is subject to the zoning regulations located in Title 20, Chapter 20.40 – Agriculture District, with a density of one dwelling unit per 40 acres, and is designated Agriculture in the Comprehensive Plan~~

~~The property is located on Van Buren Road – 2 miles west of Sumas city limits, – 0.75 miles south of the Canadian Border, and – 4 miles North of Everson/Nooksack.~~

~~At this time, the property has an existing home and associated infrastructure that is not being considered under this application. The remaining – 8 acres is part of an active agricultural operation producing hay for personal use. With the exception of the driveway, existing home and lawn, the property is largely pastured with agricultural fencing and one large barn/shop supporting agriculture. The site is largely surrounded by agricultural operations.~~

~~In accordance with Whatcom County Open Space Policy and Criteria and Public Benefit Rating System (PBRs), 1995, as a condition of approval, owners of open space parcels must agree to provide a certain degree of public access. The applicants will not allow public access. This requirement may be waived by the Council when the purpose of the open space is for wetland conservation. Staff did not identify wetlands on the subject parcel.~~

~~After evaluating this application with the Public Benefit Rating System, staff has assigned it a Public Benefit Rating (PBR) of 18.90 (for details, please see attached evaluation worksheet sheet OSP2018-00002). The hypothetical tax shift if approved is a net increase to the property owner of \$1,663.57. The other tax payers within the same taxing districts would have their cumulative taxes reduced by a comparable \$1,663.57.~~

~~Information about the tax shift is listed for consideration by the Planning Commission and County Council, so that they may consider the overall shift in taxes relative to the merits of the application as measured with the public benefit rating system.~~

~~A Public Benefit Rating of at least 45 points must be attained to receive a *staff recommendation of approval*. The application has received a PBR less than 45, and therefore staff cannot recommend approval of the VerMulm application for Open Space Farm and Agricultural Conservation Land classification.~~

III. Background Information

The Open Space Taxation Act was passed by the Washington State legislature in 1970. In part, the law was created to provide a solution to and address a statewide concern that lands in the state were being irrevocably converted to uses inconsistent with commercial agriculture, commercial forestry, and the conservation or preservation of farmland, shorelines, wetlands, scenic vistas, historical sites of importance, and recreational opportunities.

The Open Space Taxation Act codified in Chapter 84.34 of the Revised Code of Washington (84.34 RCW) gives counties the authority to assess the value of property on the basis of its *current use* rather than what might be considered highest and best use i.e. fair market value. Lands classified under the open space current use program receive a significant reduction in assessed value (tax reduction); thereby providing a financial incentive to property owners to voluntarily conserve and preserve open space lands as defined in state law and further defined by county ordinance.

Classifications

There are three major classifications and one sub-classification authorized by the Open Space Taxation Act (Chapter 84.34 RCW):

1. Open Space Land [RCW 84.34.020(1)]

Applications for open Space Land are received and processed by Planning & Development Services.

Open Space Lands (OSL) are generally land which, if preserved in the present use, would:

- Conserve and enhance natural or scenic resources; or
- Protect streams and water supply; or
- Promote conservation of soils, wetlands, beaches or tidal marshes; or
- Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space; or
- Enhance recreation opportunities; or
- Preserve historic sites; or
- Preserve visual quality along highway, road, and street corridors or scenic vistas; or
- Retain in its natural state tracts of land not less than 1 acre within an urban growth area (UGA) and conditionally open to the public; or

A subset of OSL includes Farm and Agricultural Conservation (OSFAC) Land. OSFAC lands are :

- Land that was previously classified as farm and agricultural land and no longer meets the criteria for continued classification; or

- Land that is traditional farm land that has not been irrevocably devoted to a use inconsistent with commercial agriculture.

2. Farm and Agricultural Land [RCW 84.34.020(2)]

Applications for Farm and Agricultural Land are received and processed by the County Assessor's Office.

- Lands of a certain size that are used for commercial agricultural purposes. Applicants may be required to demonstrate revenue produced from commercial agriculture.

3. Timber Land [RCW 84.34.020(3)]

(Note: Whatcom County terminated its Timber Land program under Whatcom County Ordinance No. 2014-055. As a result of this action, all lands formerly classified as timber land became Designated Forest Land, a program administered by the County Assessor in accordance with RCW 84.33.)

Staff from PDS and the Assessor's Office work closely and function as a team in monitoring and maintaining existing agreements on approved applications, as well as processing new applications. Applications and fees for Open Space Land and Farm and Agricultural Conservation Land are received by Planning & Development Services Department.

IV. Application Processing - Roles of Staff, Planning Commission, County Council & Assessor's Office in Processing Applications for Open Space Current Use Taxation.

Applications that are the subject of this report are located within the jurisdiction of *unincorporated* Whatcom County. Please note that the County also receives and processes applications on lands within incorporated areas (cities), but in processing applications on lands within the cities, the granting authority is composed of members from both legislative bodies (both the county and the city).

When land that is the subject of application is located within an *unincorporated* area, Whatcom County planning staff evaluates each application in accordance with the appropriate evaluation criteria, and based on application scores, makes recommendations to the Whatcom County Planning Commission on whether to approve or deny the applications. The Planning Commission in turn makes recommendations to the County Council as to whether individual applications should be approved in whole or in part or denied. Whatcom County Council is the granting authority, and pursuant to state law is charged with approving in whole or in part or denying each application.

When land that is the subject of application is located within an *incorporated* area, Whatcom County planning staff evaluates each application in accordance with the appropriate evaluation criteria, and based on application scores, makes recommendations to the Whatcom County Planning Commission on whether to approve or deny the applications, who in turn make recommendations to the County Council as to whether individual applications should be approved in whole or in part or denied. The granting authority on applications in an incorporated area is composed of the legislative authorities of the city and county in which the application is located, the granting authority may meet together as one body, or by taking separate action. To approve an application when meeting separately, actions taken by each jurisdiction must be identical.

Upon approval or denial, and upon successful execution of an open space taxation agreement between the county and the applicant/owner, the county assessor is notified, who then makes adjustments on the basis of the approved current use value of the parcel, and notifies the owner of the new 'official value'.

As discussed earlier in this report, the two subject applications are to reclassify land that is currently assessed as Farm and Agricultural value to Open Space Land or Open Space Farm and Agricultural Conservation Land. Applications for Open Space Land are evaluated with the Whatcom County Space Policy and Criteria and Public Benefit Rating System, 1995 (PBRs). A copy of the PBRs is attached at the end of this report for reference. The PBRs authorizes the Planning Commission to make recommendations to the County Council on applications for Open Space Land *after considering the potential loss/gain of revenue or shift in taxes that would occur as a result of approval relative to the public benefit of the resource being conserved or preserved as measured with the Public Benefit Rating System*. Because the taxing districts are primarily budget-based, the taxing districts do not really gain/lose money. Rather, when one tax payer pays less in taxes as a result of their assessment, the other tax payers in the taxing district pay more so that the taxing district collects the same amount in revenue. Conversely, when a tax payer pays more in taxes as a result of their assessment, the other tax payers in the taxing district pay less so that the taxing district collects the same amount in revenue. This important distinction helps define the role of the Planning Commission in making recommendations to the County Council on whether to approve or deny applications for Open Space Land, and in understanding how the Public Benefit Rating System is applied.

Public Hearing

Prior to issuing a decision on an application for open space land, the granting authority is required to hold a public hearing.

V. Evaluation Systems

Open Space Land and its sub-classification Farm and Agricultural Conservation Land are evaluated with the Whatcom County Public Benefit Rating System (PBRs). The PBRs was originally approved by Council in 1987 by resolution, then amended in 1989 by resolution, and adopted by ordinance in 1995 (WC Ord. 1995-040).

Whatcom County Open Space Policy & Public Benefit Rating System

The Public Benefit Rating System is an evaluation tool consisting of natural resource, recreation, historical site, and agricultural land priority resource categories that correspond to a range of potential points that may be assigned relative to the amount of benefit that may be provided to the public as a result of approving each application, as measured with the Public Benefit Rating System. Generally, resources of importance identified in the PBRs include lands that preserve, protect, conserve or enhance farmland, streams, shorelines and associated buffers, critical areas, ground water protection areas, threatened or endangered wildlife and wildlife habitat, opportunities for public recreation, scenic views and vistas, historic property, cultural resources, and others.

Applications for Open Space Land are also evaluated on the quality of the applicant's proposed public access. It is part of the Whatcom County Public Benefit Rating System Public Access Policy to require public access **unless** there is known habitat for an endangered species of wildlife, or where there is a known archeological site, or when the purpose of the open space is for wetland conservation.

In cases such as those listed above, when the County Council is acting as the granting authority, the requirement of public access may be waived at Council discretion. The Public Access Policy also contains a requirement that owners of property approved as Open Space Land post an Open Space sign that displays the rules of conduct for public access when public access is required.

Although the open space current use program is a State mandate and applies statewide, not all counties have adopted a Public Benefit Rating System. The purpose of the Public Benefit Rating System is to assist the granting authority in developing a measure of consistency in awarding reduction in assessed value according to a point system that corresponds to the relative importance of the resource being conserved. One reason a county may elect to adopt a PBRs is because decisions made by the granting authority (County Council), whether to approve or deny applications may only be appealed to Superior Court for *arbitrary and capricious* actions, and a PBRs may help to ensure uniformity and consistency when the PBRs is applied as a tool to determine reduction in market value.

Local priority resources that have been identified as providing public benefit if conserved, preserved, protected and enhanced, along with the corresponding range of potential points awarded for preserving or conserving those resources (i.e. the Public Benefit Rating System) were all adopted after consideration by the Planning Commission, and adopted by Council who heard from the public on this matter at a series of public hearings in the late 1980's. The PBRS was originally approved by Council in 1987 by resolution, amended in 1989 by resolution, and then later revised and adopted by ordinance in 1995 (WC Ord. 95-040). The last revision to the PBRS in 1995 added new criteria for evaluating applications in accordance with amendments to open space taxation act in 1993. The PBRS update in 1995 added a new sub-classification of open space land, *farm and agricultural conservation land* and removed timber land from the Public Benefit Rating System; otherwise the PBRS has not changed in the last 25 years or so.

Even though the PBRS has a point system, at its core the PBRS is a *qualitative* as opposed to a *quantitative* system. Many observers, Planning Commissioners, Council Members, and members of the public alike, have commented that the PBRS is a subjective tool.

Listed below is a brief summary of some of the resources that have been identified in the County's Public Benefit Rating System.

- Conserve or enhance natural, cultural or scenic resources; or
- Protect streams, stream corridors, wetlands, natural shorelines and aquifers; or
- Protect soil resources and unique or critical wildlife and native plant habitat; or
- Promote conservation principles by example or by offering educational opportunities; or
- Enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces; or
- Enhance recreational opportunities; or
- Preserve historic and archeology sites; or
- Affect any other factors relevant in weighing benefits to the general welfare of the public by preserving the current use of the property.

Once staff review has been completed and points are awarded, they are computed with a formula developed by the County Assessor resulting in a score that is called a Public Benefit Rating (PBR). A Public Benefit Rating of at least 45 points must be attained to receive a *staff recommendation of approval*. The PBR represents the degree of conformance with the county's adopted Basic Value and Public Benefit Value criteria that are part of the PBRS. The Public Benefit Rating (PBR) is used as a factor applied to another computed value to arrive at a new current use per acre value for the property, once approved. Attached to this report for reference is a document that gives a hypothetical example describing this formula, and also contains

a discussion of the shift or off-set in taxes resulting from approving an application for Open Space Land. In addition, staff has also included "estimated tax shift if approved" at the Public Benefit Rating assigned by staff in the discussion on each individual application for open space land or farm and agricultural conservation land. Because the taxing districts are primarily budget-based, the taxing districts do not really gain/lose money. Rather, when one tax payer pays less in taxes as a result of their assessment, the other tax payers in the taxing district pay more so that the taxing district collects the same amount in revenue. Conversely, when a tax payer pays more in taxes as a result of their assessment, the other tax payers in the taxing district pay less so that the taxing district collects the same amount in revenue.

Please find attached individual evaluation sheets that include a detailed description of the public benefit offered and assigned scores for each criterion; the Whatcom County Open Space Policy and Criteria and Public Benefit Rating System, 1995; and the June 2017 Department of Revenue Open Space Taxation Act publication.

ATTACHMENTS

- Hypothetical example of applied PBR and explanation of shift in taxes
- Individual Application Evaluation Forms and Maps(2);
- Whatcom County Open Space Policies and Criteria and Public Benefit Rating System (PBRs);
- 2017 Department of Revenue Open Space Taxation Act Publication;

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