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Staff Report: Open Space Applications April 2025

Introduction

This report summarizes findings and recommendations on ONE application 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.

Summary of staff recommendations: PDS received one application in the past six months that is now needing review (OSP2024-0006 – Lewis). PDS staff conducted a site visit and evaluated the subject property according to the Public Benefit Rating System, which yielded a score of 48.18. PDS policy dictates that scores over 45 receive a staff recommendation for approval, and therefore, PDS recommends approval of this Open Space application.

Summary of Request: The Planning Commission is requested to make a recommendation as to whether this application should be approved in whole or in part, or denied. The Planning Commission's recommendation will be forwarded to the Whatcom County Council who acting as granting authority will make a final decision.

This report is composed of five parts:

- I. Background;
- II. Application Procedure;
- III. Public Benefit Rating System (PBRs);
- IV. Application Review and Staff Findings;
- V. Findings of Fact and Recommendations.

I. Background

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 preservation of shorelines, wetlands, scenic vistas, historical sites, and recreational opportunities.

The Open Space Taxation Act (RCW 84.34) 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

Whatcom County has three major classifications and one sub-classification, originally authorized by the Open Space Taxation Act (RCW 84.34) – see the attached chart:

1. Open Space Land (OSL) – RCW 84.34.020(1)

Applications for OSL are received and processed by Planning & Development Services (PDS). PDS and the Assessor's Office work closely and function as a team in monitoring and maintaining existing agreements on approved OSL and OSFAC applications, as well as processing new applications.

Generally, Open Space Lands include lands that preserve, protect, conserve or enhance farmland, streams, shorelines and associated buffers, critical areas, groundwater protection areas, threatened or endangered wildlife and wildlife habitat, opportunities for public recreation, scenic views and vistas, historic property, cultural resources, and others.

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

- Lands that were previously classified as farm and agricultural lands but no longer meet the criteria for continued classification; or
- Traditional farmlands that have not been irrevocably devoted to a use inconsistent with commercial agriculture.

2. Open Space Farm and Agricultural Land (OSAG) – 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. Designated Forestland (DFL) – RCW 84.34.020(3)

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 (DLF), a program administered by the County Assessor in accordance with RCW 84.33.

II. Application Procedure: Roles of Staff, Planning Commission, County Council & Assessor's Office

When candidate parcels are located in an unincorporated area, PDS staff evaluate each application according to the Public Benefit Rating System criteria, and based on application scores, staff make recommendations to the Planning Commission on whether to approve or deny the applications. The Planning Commission must hold a public hearing and make 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. After the Planning Commission hearing, each application is brought before the County Council Planning and Development Committee, which makes recommendations to the entire council. Then during general session, County Council holds a public hearing and votes on a resolution to approve or deny Open Space applications.

When candidate parcels are located within an incorporated area, applications follow the same procedure; however, the application must also be approved by the appropriate City Council. To approve an application, 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, the Assessor's Office is notified, who then adjusts on the basis of the approved current use value of the parcel, and notifies the owner of the new 'official value'.

III. Public Benefit Rating System (PBRs)

Open Space Land (OSL) and its sub-classification Open Space Farm & Agricultural Conservation (OSFAC) 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). The current Open Space Policy and PBRs can be found [here](#).

County policy authorizes the Planning Commission to make recommendations to County Council on OSL applications 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 preserved. Because the taxing districts are primarily budget-based, the taxing districts do not gain/lose money. Rather, when one taxpayer pays less in taxes as a result of their assessment, other taxpayers in the tax district pay more so that the taxing district collects the same amount in

revenue. Conversely, when one taxpayer pays more in taxes, the tax burden of other taxpayers in the same tax district goes down.

The PBRs is a tool to evaluate the value of public benefit resources associated with a particular property. The higher a property scores according to the PBRs, the greater the tax reduction it will receive if approved by County Council. Generally, resources of importance identified in the PBRs include lands that:

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

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. County Council has the discretion to waive this public access requirement based on the information presented by staff. 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.

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.

The formation of the PBRs was guided by public process and Planning Commission involvement during the 1980s. The PBRs was adopted by Council resolution in 1987, 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 meaningfully changed since 1987.

The formula used in the PBRs produces a score for each property. A PBRs score of at least 45 points must be attained to receive a PDS recommendation of approval. The Public Benefit Rating (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 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.

IV. Application Review & Staff Findings

PDS findings for 2024 Open Space applications are listed in summary below. Attached for reference at the end of this report are site evaluation worksheets, maps, and other supporting documents. A PowerPoint slide show of each property along with PDS comments and recommendations will be presented to the Planning Commission and Council.

Applications as of April 2025:

1. OSP2024-0006 – Geri Lewis

Summary:

- Application to reclassify property from OSAG to OSL.
- Parcel numbers:
 - 4104341743160000
 - 4104341383160000
 - 4104342353230000
- Acres: 5.11
- Zoning: City of Sumas
- Public Benefit Rating: **48.18**
- PDS staff recommend approval

On June 28, 2024, PDS staff received an application from Ms. Lewis to reclassify from Open Space Farm and Agriculture (OSAG) to Open Space Land (OSL) designation. The Assessor's Office observed that the property was not being commercially farmed and subsequently notified the landowner that the property would be disenrolled from OSAG.

The property is located within Sumas City Limits within a sprawling wetland complex that feeds into Johnson Creek, a tributary to the Sumas River. The north portions of the property are forested, and the eastern parcel is located on a very steep slope just below a housing development at the top of the ridge.

PDS staff conducted a site visit on March 24, 2025. Most of the property is very wet, with the exception of the southwest corner where a mobile home and shop are located. The non-forested parts of the property are characterized by vegetation that indicate a wetland, including cattails, skunk cabbage, willows, and more. Additionally, while there the PDS staffer observed a great blue heron, beaver sign, mallard ducks, and Red-winged blackbirds (all of these animal species

prefer wetland habitats). The property to the south is a sprawling wetland complex protected as a “Native Growth Protection Area,” likely associated with mitigation for a large industrial area within Sumas City Limits.

In accordance with Whatcom County Open Space Policy and Criteria and Public Benefit Rating System (PBRs), and as a condition of approval, owners of open space parcels must agree to provide a certain degree of public access. The owner understands this requirement and agrees to allow public access. If approved, the landowner will post a sign stating that public access is allowed and the landowner will develop and post Public Access Rules that outline how the property may be used by members of the public.

The hypothetical tax shift if approved is a **net increase of ~\$566.20** to the property owner, since the property would be reclassified from OSAG to OSL (generally the tax break for OSAG properties is greater than OSL properties). Therefore, if approved, the other taxpayers within the same tax districts would have their cumulative taxes **decreased by a small amount (~\$0.13/year for a \$300,000 property)**, and if denied taxpayers within the same tax districts would have their cumulative taxes decreased by a larger amount. Information about the tax shift is attached 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.

V. Findings of Fact and Recommendations

PDS staff received this application, conducted the site visit, evaluated the property according to the Public Benefit Rating System (PBRs), and produced this report for evaluation by the Planning Commission and Whatcom County Council. PDS published an advertisement in the Bellingham Herald on March 23, 2025, sent an email to all subscribers to the PDS listserv on March 25, 2025, and plans to send a press release to local newspapers by April 4, 2025 alerting the general public that a Public Hearing will take place on this issue at the Planning Commission meeting on April 10, 2025.

Based on the RCW, WAC, and County Code that guides PDS in this process, PDS staff make the following recommendations:

1. OSP2024-0006 – Geri Lewis

After evaluating this application with the Public Benefit Rating System (PBRs), PDS has assigned it a score of **48.18** (for details, please see attached evaluation worksheet sheet OSP2024-0006). A PBRs score of at least 45 points must be attained to receive a *PDS recommendation of approval*. The application received a PBRs score that was over 45, and therefore PDS recommend approval of the Lewis application.

ATTACHMENTS

- Individual Application Evaluation Forms and Maps;
- Assessor's estimate of tax shift if approved;
- 2017 Department of Revenue Open Space Taxation Act Publication.

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