

**WHATCOM COUNTY COUNCIL AGENDA BILL**

AB2009-452  
NO. \_\_\_\_\_

| CLEARANCES                      | Initial | Date     | Date Received in Council Office                                  | Agenda Date | Assigned to:              |
|---------------------------------|---------|----------|--|-------------|---------------------------|
| Originator:<br>Erin Osborn      | EEO     | 11/6/09  | <p>RECEIVED</p> <p>NOV 17 2009</p> <p>WHATCOM COUNTY COUNCIL</p> | 11/24/2009  | Natural Resources Council |
| Dept. Head:<br>David Stalheim   | DS      | 11-6-09  |  |             |                           |
| Prosecutor:<br>Royce Buckingham | RBF     | 11/13/09 |  |             |                           |
| Purchasing/Budget:              |         |          |  |             |                           |
| Executive:<br>Peter Kremen      | PK      | 11/17/09 |  |             |                           |

**TITLE OF DOCUMENT:**  
*A Resolution Approving Recommendations on Applications for Open Space Current Use Assessment: Master File Number OS2009-1*

**ATTACHMENTS:** *Draft Resolution, Planning Commission Facts & Findings, Staff Memo to Planning Commissioners and Revised Staff Recommendations, Excerpts from Planning Commission October 22, 2009 Public Hearing Draft Minutes, Staff Report, Rating Sheets, Maps, Photos, and Supporting Documents*

|  |   |
|--|---|
| SEPA review required? ( ) Yes ( <input checked="" type="checkbox"/> ) No | Should Clerk schedule a hearing? ( ) Yes ( <input checked="" type="checkbox"/> ) No |
| SEPA review completed? ( ) Yes ( N/A ) No                                | Requested Date:   |

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

*Recommendations on a total of thirteen (13) applications for Open Space Current Use Assessment referenced under Master File Number OS2009-1 are forwarded to the Whatcom County Council for action pursuant to Chapter 84.34 RCW & WCC 3.28.020. A resolution is proposed to initiate Council action to approve recommendations on the applications referenced under Master File Number OS2009-1, and to grant assessment at current use for those applications receiving a recommendation of approval: Seven (7) applications for Open Space Land; One (1) application for Farm & Agricultural Conservation Land; and Five (5) applications for Timber Land.*

**\* Distribution Request: Assessors Dept – Jean Eastman**

**COMMITTEE ACTION:**  
 11/24/2009: Committee recommends the staff recommendations which includes one change

**COUNCIL ACTION:**  
 11/24/2009: Council Approved 7-0  
 Res. 2009-070

|                                   |                                       |  |
|-----------------------------------|---------------------------------------|--|
| <b>Related County Contract #:</b> | <b>Related File Numbers:</b> OS2009-1 | <b>Ordinance or Resolution Number:</b> Res. 2009-070 |
|-----------------------------------|---------------------------------------|--|

**Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).**

SPONSORED BY: CONSENT

PROPOSED BY: PDS

INTRODUCTION DATE: 11/24/2009

**RESOLUTION NO:** 2009-070

**APPROVING RECOMMENDATIONS ON APPLICATIONS FOR  
OPEN SPACE CURRENT USE ASSESSMENT**

**WHEREAS,** The Open Space Taxation Act codified as Chapter 84.34 RCW, gives counties legislative authority to grant applications for current use classification and re-classification as Farm and Agricultural Land, Open Space Land and its sub-classification Farm and Agricultural Conservation Land, and Timber Land; and

**WHEREAS,** Pursuant to Whatcom County Code, Section 3.28.020, applications for Open Space Land, Farm and Agricultural Conservation Land, and Timber Land are received and evaluated by Whatcom County Planning and Development Services Department staff, and the results of this evaluation are then presented to the Whatcom County Planning Commission at a public hearing for review and consideration in making recommendations to the County Council; and

**WHEREAS,** Pursuant to RCW 84.34.055 and WAC 458-30-330 Whatcom County has adopted a Public Benefit Rating System (PBRS) by Ordinance # 95-040, which is used by staff to rate applications for Open Space Land and Farm and Agricultural Conservation Land; and

**WHEREAS,** Applications for Open Space Land and Farm and Agricultural Conservation Land are evaluated with the Public Benefit Rating System and assigned a Public Benefit Rating (PBR) that corresponds with a recommendation of approval or denial, and must receive a score of 45 or above for a recommendation of approval; and

**WHEREAS,** In accordance with the Whatcom County Public Benefit Rating System, public access is a condition of approval for Open Space Land and Farm and Agricultural Conservation Land applications, except that this requirement may be waived by the granting authority when the purpose of the classification is for the conservation of wetlands; or when there is a documented occurrence of: State or Federal Threatened Endangered Species, Federal Proposed Endangered or Threatened Species, State Sensitive or Monitor Species; or when there is a known or potentially significant archaeological site; and

**WHEREAS,** Applications for Timber Land are evaluated according to the criteria provided in the Open Space Timber Management Plan Format and Content as revised by Whatcom County Ord. 95-040 in conformance with RCW 84.34.041; and

**WHEREAS,** Applications for Timber Land are assigned a score that corresponds with a recommendation of approval or denial and must receive a score of 7 or above for a recommendation of approval; and

**WHEREAS,** On October 22, 2009, the Whatcom County Planning Commission held a public hearing and considered all testimony on applications referenced in Master File Number OS2009-1; and

**WHEREAS,** On November 24, 2009, the Whatcom County Council reviewed Planning Commission recommendations, and considered all testimony submitted in reference to applications in Master File Number OS2009-1; and

**WHEREAS,** Pursuant to WAC 197-11-800(6)(c), matters relating to Open Space Current Use Assessment are determined not to be major actions and thus exempt from environmental review under the State Environmental Policy Act (SEPA); and

**WHEREAS,** Pursuant to RCW 36.70.390, the statutory requirements regarding legal notice have been met; and

**WHEREAS,** The County Council has adopted the following Findings of Fact and Reasons for Action:

**FINDINGS OF FACT AND REASONS FOR ACTION**

1. Whatcom County Planning and Development Services received a total of thirteen (13) applications for open space current use assessment: seven (7) applications for Open Space Land, five (5) applications for Timber Land, and one (1) application for Farm and Agricultural Conservation Land (a sub-classification of Open Space Land); these applications were given individual file numbers and were grouped together and are referenced under Master File Number OS2009-1.
2. Planning and Development Services staff evaluated individual applications referenced under Master File Number OS2009-1 using appropriate evaluation criteria and prepared a staff report with recommendations consistent with the results of each evaluation, and submitted this staff report to all members of the Planning Commission. Copies of this report were also sent to individual applicants, notifying them of staff recommendations.

3. Notice of the public hearing for Master File Number OS2009-1 Open Space Current Use Assessment applications was published in the Bellingham Herald on October 11, 2009.
4. Information about the public hearing, and a digital copy of the staff report and recommendations for Master File Number OS2009-1 was posted on the County's website on October 16, 2009.
5. On Thursday, October 22, 2009, the Planning Commission held a public hearing on applications referenced in Master File Number OS2009-1 and considered staff recommendations and revised recommendations from staff, and considered all testimony.
6. At the October 22, 2009 Planning Commission public hearing, staff submitted a memo addressed to Whatcom County Planning Commissioners which briefly discussed proposed revisions to recommendations previously submitted on two (2) applications being considered that evening:
  - 1) Staff requested that planning commissioners consider a revised Public Benefit Rating (PBR) on the Maier application (OSP2009-00006) due to new information submitted by the applicant which warranted an increase in the PBR; it was recommended by staff that the original PBR of 49.98 be increased to 73.48; and
  - 2) Staff requested that planning commissioners consider a proposed revision to the staff recommendation previously submitted on the Prestlien application (OSP2009-00005); staff recommended that the original recommendation of approval be revised to a recommendation of denial on the basis of new information received that suggested that a 150% Safety Buffer of one and a half tree lengths surrounding residential structures is not compatible with commercial forestry. Staff researched 84.34.020 (3) RCW and found that it defines Timber Land as a parcel of land or multiple parcels that are contiguous and total a minimum of 5 acres which is primarily devoted to the growth and harvest of timber for commercial purposes, and also spoke with Washington State Department of Natural Resources - Forest Practices staff, and Washington State Department of Revenue - Forester, who indicated that the 150% Safety Buffer may not be compatible with commercial forestry.

On the basis of this new information staff recommended that the safety buffer acreage be subtracted from the total acres considered in the application. In cooperation with Whatcom County Natural Resource Planning staff, it was calculated that an estimated 2.94 acres would comprise the safety buffer, and when subtracted from the total parcel acreage of 6.15 acres it fell below the minimum of

five acres required for approval as outlined in the Whatcom County Timber Management Plan Format and Content developed in accordance with RCW 84.34.041.

7. At the October 22, 2009 public hearing held by the Planning Commission, the following applicants were present and answered questions and spoke about the merits of their individual applications: Karen Sloss for Congregation Beth Israel (OSP2009-00001), Liz Jenkins (OSP2009-00012), Steve McMinn (OSP2009-00003), Doug Marsh (OSP2009-00011), Terry Prestlien (OSP2009-00005), Sherry Olson (OSP2009-00010), and Mark Lann (OSP2009-000013).
8. Mr. Prestlien urged the Planning Commission to approve his application for Timber Land, and follow staff's original recommendation of approval and not staff's revised recommendation of denial, on the basis of a Timber Management Plan that identifies 5.06 acres of land on his 6.15 acre parcel devoted to growing and harvesting a merchantable stand of timber for commercial forestry purposes. Mr. Prestlien's comments indicated that he disagreed with staff's revised recommendation, and also indicated that he had spoken with the State Department of Natural Resources who indicated that the safety buffer did not have anything to do with whether or not the land should be classified as Open Space Timber Land.
9. At the October 22, 2009 public hearing, planning commissioners made individual motions on recommendations for each application for Open Space Current Use Assessment referenced in Master File OS2009-1. Planning Commissioners voted to approve all recommendations and revised recommendations presented by staff including a recommendation of denial on the Prestlien application, and an increase in the Public Benefit Rating (PBR) on the Maier application, and also voted to approve a friendly amendment to reduce the acreage around residential structures considered for approval in the Hansen Timber Land application (OSP2009-00008) to 16 acres to be consistent with the safety buffer applied to the Prestlien application (OSP2009-00005).
10. On November 24, 2009, staff forwarded Whatcom County Planning Commission recommendations in a report on open space applications referenced under Master File OS2009-1, to the Whatcom County Council Natural Resources Committee for their consideration in whether to approve in whole or in part, or deny applications referenced under Master File OS2009-1.
11. On November 24, 2009, at the Whatcom County Council Natural Resources Committee meeting, staff forwarded recommendations from the Planning Commission, and staff explained that the previous staff recommendation of denial on the Prestlien application was based on information not yet adopted into Whatcom County Open Space Policies,

and could be considered a premature action, and unfair to the applicant, and therefore retracted a recommendation of denial on the application, and requested that the Council consider a recommendation of approval as originally submitted to the Planning Commission at the public hearing. Whatcom County Council Natural Resources Committee members voted to recommend approval on the Prestlien Timber Land application (OSP2009-00005) and Hansen Timber Land applications (OSP2009-00008) as originally recommended for approval by staff, and also voted to recommend approval on an increase in the Public Benefit Rating (PBR) on the Maier application (OSP2009-00006) as recommended by the Planning Commission, and to recommend approval on all open space applications referenced under Master File OS2009-1 to the full Council for final action on the same day.

**NOW, THEREFORE, BE IT RESOLVED BY THE WHATCOM COUNTY COUNCIL:**

1. Recommendations on applications for Open Space Current Use Assessment referenced in Master File Number OS2009-1 and listed below are hereby approved subject to conditions and applicable scores as noted herein:

OSP2009-00001 – Congregation Beth Israel;  
Transfer from Designated Forest Land to Open Space Land: 3.75 +/- Acres  
Parcel Numbers: 3803323840390000; 3803323610060000  
PBR= 99  
Recommendation – Approval subject to Public Access and Posted Sign

OSP2009-00002 – Burnett; Tuttle Lane, Lummi Island  
Amended Application – Open Space Land: 52.54 Acres  
Parcel Numbers: 3701054404680000; 3701040344880000  
PBR= 71.20  
Recommendation – Approval subject to Public Access and Posted Sign

OSP2009-00003 – McMinn; West Shore Road, Lummi Island  
New Application – Open Space Land: 6.07 Acres  
Parcel Numbers: 3801322964290000  
PBR= 83.60  
Recommendation – Approval subject to Public Access and Posted Sign

OSP2009-00004 – Massey; East of Yew Street Road  
New Application – Timber Land: 10.00 Acres  
Parcel Numbers: 3803334020370000  
TMP Score: 13  
Recommendation: Approval

OSP2009-00005 – Prestlien; Edgewood Lane  
New Application – Timber Land: 5.06 Acres  
Parcel Numbers: 3803251154480000  
TMP Score: 12  
Recommendation: Approval

OSP2009-00006 - Maier; Old Samish Road  
New Application – Open Space Land: 5.00 Acres  
Parcel Numbers: 3703170522270000  
PBR= 73.48  
Recommendation – Approval subject to Public Access and Posted Sign

OSP2009-00007 - Chamberlin; Lake Whatcom Boulevard  
New Application – Open Space Land; 4.00 Acres  
Parcel Numbers:  
3804310661140000; 3804310320830000; 3804310610920000  
PBR= 70.84  
Recommendation – Approval subject to Public Access and Posted Sign

OSP2009-00008 – Hansen; Heady Road  
Transfer from Designated Forest Land to Timber Land: 18.70 Acres  
Parcel Numbers: 4005102000300000  
TMP Score: 14  
Recommendation: Approval

OSP2009-00009 – Heusinkveld; Hampton Road  
New Application – Timber Land: 10.50 Acres  
Parcel Numbers: 4003234574170000; 4003234584370000  
TMP Score: 14  
Recommendation: Approval

OSP2009-00010 – Olson; Aldergrove Road  
Transfer from Farm and Agricultural Land to Farm and Agricultural Conservation  
Land: 4.85 Acres  
Parcel Numbers: 3901112170380000  
PBR= 53.9  
Recommendation – Approval subject to Public Access and Posted Sign

OSP2009-00011 - Marsh; Aldrich Road  
Transfer from Farm and Agricultural Land to Open Space Land: 3.46 Acres  
Parcel Numbers: 3902143700550000  
PBR= 85.75  
Recommendation – Approval subject to Public Access and Posted Sign

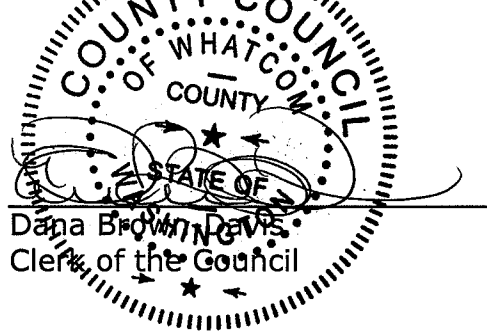
OSP2009-00012 - Jenkins; Sunrise Road  
Transfer from Farm and Agricultural Land to Open Space Land: 3.78 Acres  
Parcel Numbers: 4002064540830000  
PBR= 73.08  
Recommendation – Approval subject to Public Access and Posted Sign

OSP2009-00013 – Lann; Isaacson Road  
New Application – Timber Land: 19.43 Acres  
Parcel Numbers: 3803130662300000  
TMP Score: 14  
Recommendation: Approval

2. The Whatcom County Council directs the Assessor to place the parcels into the appropriate Open Space Current Use classification.
3. Adjudication of invalidity of any of the sections, clauses, or provisions of this resolution shall not affect or impair the validity of the resolution as a whole or any part thereof other than the part so declared to be invalid.

**APPROVED** this 24th day of November, 2009

WHATCOM COUNTY COUNCIL  
ATTEST



WHATCOM COUNTY,  
WASHINGTON

Seth Fleetwood  
Council Chair

APPROVED AS TO FORM:

Royce Buckingham  
Civil Deputy Prosecutor