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"Building Partnerships – Building Communities"

OC-13-00001 RESORT CREEK OPEN SPACE CURRENT USE APPLICATION STAFF REPORT

TO: Kittitas County Board of County Commissioners
FROM: Jeff Watson, Staff Planner
DATE: April 1, 2014
SUBJECT: Resort Creek Open Space Current Use Application (OC-13-00001)

I. GENERAL INFORMATION

Proposal: On July 18, 2013 Darcy Whitney, Authorized Agent for Forterra, submitted an application for classification or reclassification as open space land or timber land for current use assessment under Chapter 84.34 RCW. The application has been reviewed by Assessor staff for ownership, parcel numbers, and legal descriptions, and Community Development Services staff for land use and critical areas assessment.

Location: The subject property is located approximately 6 miles south by southwest of Snoqualmie Pass off Forest Service Road 4832.

II. SITE INFORMATION

Site Characteristics: Utilizing Aerial Photography, analysis indicates the site is predominately wooded with deciduous undergrowth and coniferous forest. There are no improvements on any of the three parcels. The topography is generally steep at 36% for a total elevation gain of approximately 48 meters (158 feet). A Critical areas review indicates that the parcels contains two streams; Resort Creek a type 2 fish bearing stream, and an un-named type 4 non-fish bearing stream. Resort Creek is not currently a shoreline of the state nor is it proposed as such in the Shoreline Master Program update. There is a R3USC (Riverine) wetland that abuts the south border of the subject property; some buffer requirements may apply. The parcel is zoned Commercial Forest and was apparently created via segregation in 1983 though confirmation documentation and surveys were not found. The parcel is burdened with a conservation easement which prevents development of any kind. The Assessor's office indicates that the resulting tax shift if open space current use status is granted to this parcel would be approximately \$1100 annually.

III. CRITERIA ANALYSIS

The application as submitted is requesting classification as open space for current use. Justification for this proposed designation by the applicant is based on the following criteria listed in RCW 84.34.020.

(i) conserve or enhance natural, cultural, or scenic resources

Kittitas County resolution 1994-025 stipulates that "Applications for Open Space classification based on conservation or enhancement of natural resources must meet at least one of the following:

- (1) Geologically significant rock formations that may be appropriate for educational study.*
- (2) Archeological sites that are registered with the state of Washington and protected.*
- (3) Game preserves and nesting grounds as agreed by the state of Washington Department of wildlife. (Public access may be controlled. Hunting and fishing may be denied.)*

In their narrative the applicant asserts that:

“Forterra's Resort Creek properties are integral to the wildlife connectivity corridors along I-90, and are supported by the WA Department of Transportation through the I-90 Wildlife Corridor project. The property was acquired with Section 6 funding from the U.S. Fish and Wildlife Service to secure threatened and endangered fish and wildlife habitat and to protect critical wildlife corridors surrounding I-90. Forterra is managing the land to be preserved in its natural open space character and is actively stewarding the property to enhance fish and wildlife habitat and improve ecological function.”

If in fact the property was acquired through U.S. Fish and Wildlife funding staff believes that the parcel would qualify by extension under condition 3 above “Game Preserves”.

(ii) protect streams or water supply,

Kittitas County resolution 1994-025 stipulates that applications “... for open space on protection of streams and meet at least one of the following:

- (1) Preservation or protection of major drainage ways (major drainage ways being defined as the areas where feeder streams intersect with major streams) flowing directly into streams of 20 C.F.S. or more.*
- (2) Tracts continuous to or straddling major streams flowing at a rate of 20 C. F.S. or more.*
- (3) Significant aquifer recharge areas and areas of significant springs identified as water resources.”*

In their narrative the applicant asserts that:

“Resort Creek enters the properties at the north boundary of the property and flows south to Keechelus Lake. Conservation of Resort Creek and the surrounding headwaters will prevent degradation of water quality downstream and in Lake Keechelus.”

The parcel is contiguous to Resort Creek; this stream does not currently fall under the provisions of the Shoreline Master Program, and is not slated for incorporation under the SMP. By definition Resort Creek is not a “...major stream flowing at a rate of 20 C. F.S. or more”. KCC 17A.08.010 Provisions that “No critical aquifer recharge locations have been identified in Kittitas County.” The applicant has provided no evidence to the contrary. While technically not at the point of intersection; and technically not with a stream of 20 c.f.s. or more; Resort Creek does drain into Keechulus Lake (a Shoreline of the State) 330 feet south of the subject properties. The planning Commission may wish to consider the legislative intent of “preservation or protection of major drainage ways...”.

(iii) promote conservation of soils, wetlands, beaches or tidal marshes,

Kittitas County resolution 1994-025 stipulates that “...applications for Open Space classification based on promotion of the conservation of soil, control or erosion; wet lands or marshes will be restricted to at least one of the following:

- (1) Tracts with 25% or greater slope on at least 50% of the tracts or where there is physical evidence of erosion.
 - (a) Applications for this category shall be accompanied with a conservation plan prepared by the Soil Conservation Service including implementation program for the plan. (Failure to implement the plan in a timely manner will be cause for removal from the Open Space category and subject to penalties under RCW 84.34.)**
- (2) Tracts within the 100 year flood plain.*
- (3) Tracts where commercial development would destroy the natural cover and could result in erosion, loss of natural habitat and such action would result in damage to adjacent property.*

In their narrative the applicant asserts that:

“The Resort Creek property is densely forested and undeveloped. Resort Creek is mostly gradually to moderately sloped <30%) and situated on southwest and southeast aspects. The northwest corner of the property contains some areas up to 60% in slope. Elevations on the property range from 2,500 to 2,700 feet. The conserved status of the land prevents development, which would increase erosion and detract from the natural habitat. Additionally, recent use of Resort Creek by cutthroat and sculpin has been documented. This creek likely supports other resident fish species including three-spined stickleback, mountain whitefish, rainbow and brook trout, redbreasted shiner, long nose and speckled dace, Northern pike minnow, Western brook lamprey, and large scale sucker.”

GIS analysis does not indicate the existence of any Zone A (100 year) floodplain on the subject parcels. Staff analysis indicates that there is "...25% or greater slope on at least 50% of the tracts...", and there appears to be some evidence of erosion and sediment build up north of the freeway in the DOT right of way. No "conservation plan prepared by the Soil Conservation Service" was provided with this application. It is difficult 22 years later to establish the legislative intent of the term "commercial development" in the resolution; under the broadest of definitions the case could be made that "...commercial development would destroy the natural cover and could result in erosion, loss of natural habitat and such action would result in damage to adjacent property."

(iv) *promote conservation principles by example or by offering educational opportunities,*

In their narrative the applicant asserts that:

"Forterra promotes conservation principles on this property by reducing habitat fragmentation by minimizing barriers to wildlife movement and maintaining/restoring mature canopy cover; minimizing human disturbance and impacts to protect wildlife by allowing only limited public access for low-impact, non-motorized recreation, and preventing illegal activities on the property; restoring/maintaining Desired Future Conditions (DFC) for all vegetation types; reducing or eliminating noxious and invasive weeds with a goal of 100% eradication of noxious weeds and 80-100% eradication of other invasive weeds and prevention of new populations; managing bodies of water to protect water quality, improve fish habitat, reduce passage barriers, and reduce sediment delivery by removal or replacement of culverts that are fish passage barriers or provide ineffective drainage; maintaining and restoring stream habitats and vegetation influencing stream zones for maximum shade, litter inputs, and coarse woody debris recruitment; and by maintaining and protecting key soil properties by minimizing erosion, compaction and displacement from management and other human activities."

Criteria language has evolved some over the course of the last 22 years. Kittitas County resolution 1994-025 does not specifically address this criterion. Forterra has established itself as a reputable conservation organization; the justifications outlined above appear to apply to these parcels and this situation.

(v) *enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces,*

In their narrative the applicant asserts that:

"The Resort Creek Property is bordered by National Forest to the north and private non-industrial lands to the east and west. Resort Creek also abuts land conserved by the Washington Department of Transportation to enhance the effectiveness of this wildlife preservation area in the I-90 Wildlife Corridor."

Kittitas County resolution 1994-025 does not specifically address this criterion. The properties are bounded on the north by parcels contained in the Wenatchee National Forest. The parcel directly to the south is right of way for I-90, under the jurisdiction of the Washington State Department of Transportation.

IV. RECOMMENDATION

RCW 84.34.037 provides guidance to legislative authorities for the review of Open Space Current Use applications. The entire section of that RCW was included in the file; the relevant provisions to this application are outlined below:

(2) *In determining whether an application made for classification or reclassification under RCW [84.34.020\(1\)](#) (b) and (c) should be approved or disapproved, the granting authority may take cognizance of the benefits to the general welfare of preserving the current use of the property which is the subject of application, and shall consider*

(a) *The resulting revenue loss or tax shift;*

(b) *Whether granting the application for land applying under RCW [84.34.020\(1\)\(b\)](#) will*

(i) *conserve or enhance natural, cultural, or scenic resources,*

(ii) *protect streams, stream corridors, wetlands, natural shorelines and aquifers,*

(iii) *protect soil resources and unique or critical wildlife and native plant habitat,*

- (iv) promote conservation principles by example or by offering educational opportunities,*
- (v) enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces,*
- (vi) enhance recreation opportunities,*
- (vii) preserve historic and archaeological sites, (viii) preserve visual quality along highway, road, and street corridors or scenic vistas,*
- (ix) affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the property; and...*

(4) The granting authority may approve the application with respect to only part of the land which is the subject of the application. If any part of the application is denied, the applicant may withdraw the entire application. The granting authority in approving in part or whole an application for land classified or reclassified pursuant to RCW [84.34.020\(1\)](#) may also require that certain conditions be met, including but not limited to the granting of easements.

As a condition of granting open space classification, the legislative body may not require public access on land classified under RCW [84.34.020\(1\)\(b\)\(iii\)](#) for the purpose of promoting conservation of wetlands.

(5) The granting or denial of the application for current use classification or reclassification is a legislative determination and shall be reviewable only for arbitrary and capricious actions.

Based on the general criterion laid out in RCW 84.34 (“b” above), the parcels are eligible for consideration. There is a Conservation Easement in place on these parcels which precludes development of any kind. There is no potential for a change of use for this parcel in perpetuity; tax rates should reflect that. According to the Assessor’s office, the tax burden shift for this parcel would be approximately \$1100 per year. This burden would be carried in part by all property owners in Kittitas County. Staff recommends approval of OC-13-00002 Gold Creek.

V. PLANNING COMMISSION HEARING

On February 11, 2014 the Kittitas County Planning Commission held an open record public hearing to provide the BOCC with a recommendation regarding the Resort Creek Open Space application. After a presentation by staff and a brief statement from the applicant the Commission voted 6-1 to recommend approval of OC-13-00001.