Open Space Taxation Act

JULY 2011

The information and instructions in this publication are to be used when applying for assessment on the basis of current use under the "open space laws," chapter 84.34 RCW and chapter 458-30 WAC.

What is the Open Space Taxation Act?

The Open Space Taxation Act, enacted in 1970, allows property owners to have their open space, farm and agricultural, and timber lands valued at their current use rather than at their highest and best use. The Act states that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber, and forest crops and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.

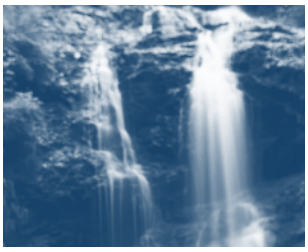
Lands qualifying for current use classification

The law provides three classifications:

Open space land

Farm and agricultural land

Timber land



Open space land is defined as any of the following:

1. Any land area zoned for open space by a comprehensive official land use plan adopted by any city or county.

2. Any land area in which the preservation in its present use would:
   - **a.** Conserve and enhance natural or scenic resources.
   - **b.** Protect streams or water supply.
   - **c.** Promote conservation of soils, wetlands, beaches or tidal marshes. (As a condition of granting open space classification, the legislative body may not require public access on land classified for the purpose of promoting conservation of wetlands.)
   - **d.** Enhance the value to the public of neighbouring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space.
   - **e.** Enhance recreation opportunities.
   - **f.** Preserve historic sites.
   - **g.** Preserve visual quality along highway, road, and street corridors or scenic vistas.
   - **h.** Retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative authority granting the open space classification.

3. Any land meeting the definition of "farm and agricultural conservation land," which means either:
   - **a.** Land previously classified under farm and agriculture classification that no longer meets the criteria and is reclassified under open space land; or
   - **b.** "Traditional farmland," not classified, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture.

This fact sheet provides general information regarding the Open Space Taxation Act. The information is current at the date of publication. Please note subsequent law changes may supersede or invalidate some of this information.

Farm and agricultural land is defined as any of the following:

1. Any parcel of land that is 20 or more acres, or multiple parcels of land that are contiguous and total 20 or more acres, and are:
   a. Devoted primarily to the production of livestock or agricultural commodities for commercial purposes.
   b. Enrolled in the federal conservation reserve program (CRP) or its successor administered by the United States Department of Agriculture.

2. Any parcel of land that is five acres or more but less than 20 acres, is devoted primarily to agricultural uses, and has produced a gross income equivalent to:
   a. Prior to January 1, 1993, $100 or more per acre per year for three of the five calendar years preceding the date of application for classification.
   b. On or after January 1, 1993, $200 or more per acre per year for three of the five calendar years preceding the date of application for classification.

3. Any parcel of land that is five acres or more but less than 20 acres, is devoted primarily to agricultural uses, and has standing crops with an expectation of harvest within:
   a. Seven years and a demonstrable investment in the production of those crops equivalent to $100 or more per acre in the current or previous calendar year.
   b. Fifteen years for short rotation hardwoods and a demonstrable investment in the production of those crops equivalent to $100 or more per acre in the current or previous calendar year.

4. For parcels of land five acres or more but less than 20 acres, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to nonprofit food banks or feeding programs.

5. Any parcel of land less than five acres devoted primarily to agricultural uses and has produced a gross income of:
   a. Prior to January 1, 1993, $1,000 or more per year for three of the five calendar years preceding the date of application for classification.
   b. On or after January 1, 1993, $1,500 or more per year for three of the five calendar years preceding the date of application for classification.

6. "Farm and agricultural land" also includes any of the following:
   a. Incidental uses compatible with agricultural purposes, including wetland preservation, provided such use does not exceed 20 percent of the classified land.
   b. Land on which appurtenances necessary for production, preparation, or sale of agricultural products exist in conjunction with the lands producing such products.
   c. Any non-contiguous parcel one to five acres, that is an integral part of the farming operations.
   d. Land on which housing for employees or the principal place of residence of the farm operator or owner is sited provided the use of the housing or residence is integral to the use of the classified land for agricultural purposes and provided that the classified parcel(s) is 20 or more acres.
   e. Land that is used primarily for equestrian-related activities including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed. Depending on the number of classified acres, the land may be subject to minimum income requirements.

Timber land is defined as the following:

Any parcel of land five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes. Timber land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than 10 percent of the land may be used for such incidental uses.

It also includes the land which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

Who may apply?

An owner or contract purchaser may apply for current use assessment under the open space law. However, all owners or contract purchasers must sign the application for classification, and any resulting agreement.

When may I apply?

Applications may be made for classification at any time during the year from January 1 through December 31. Current use valuation assessment begins on January 1 in the year following the year the application was filed.

Where do I get the application?

Application forms are available from the county assessor's office or by visiting the Department of Revenue's web site at **dor.wa.gov.**

Where do I file the application?

An application for open space classification is filed with the county legislative authority.

An application for farm and agricultural land classification is filed with the assessor of the county where the property is located.

An application for timber land classification is filed with the county legislative authority. Timber land applications require that a timber management plan also be filed.

Is there an application fee?

The city or county legislative authority may, at their discretion, establish a processing fee to accompany each application. This fee must be in an amount that reasonably covers the processing costs of the application.

What happens after I file my application for open space classification?

Applications for classification or reclassification as "open space land" are made to the appropriate agency or official called the "granting authority." If the land is located in the county's unincorporated area, the county legislative authority is the granting authority on the application. If the land is located within a city or town, the application is acted upon by a joint county/city legislative authority consisting of three members of the county legislative authority and three members of the city legislative authority.

If a comprehensive plan has been adopted by any city or county and zoned accordingly, an application for classification or reclassification is acted upon in the same manner in which an amendment to the comprehensive plan is processed. If there is no comprehensive land use plan, a public hearing on the application will be conducted, but a notice announcing the hearing must be published at least 10 days prior to the hearing.

The granting authority either approves or rejects the application in whole or in part within six months of receiving the application. In determining whether an application made for classification or reclassification should be approved or denied, the granting authority may consider the benefits to the general welfare of preserving the current use of the property.

They may require that certain conditions be met including but not limited to the granting of easements.

If the application is approved, in whole or in part, the granting authority will, within five days of the approval date, send an Open Space Taxation Agreement to the applicant for signature showing the land classification and conditions imposed. The applicant may accept or reject the agreement. If the applicant accepts, he or she must sign and return the agreement to the granting authority within 25 days after the mailing of the agreement.

The approval or denial of the application for classification or reclassification is a legislative determination and is reviewable only for arbitrary and capricious actions. Appeal can be made only to the superior court of the county where the application was filed.

Within 10 days of receiving notice of classification of the land from the granting authority, the assessor submits the notice to the county auditor for recording in the place and manner provided for the public recording of state tax liens on real property.

Current use valuation will begin on January 1 of the year following the year the application was filed. The criteria for classification continue to apply after classification has been granted.

How does a public benefit rating system work?

If the county legislative authority has established a public benefit rating system (PBRS) for the open space classification, the criteria contained within the rating system govern the eligibility of the lands described in each application filed for that classification and the current use valuation of that land.

When a county creates a PBRS, all classified open space land will be rated under the new system. A parcel that no longer qualifies for classification will not be removed from classification, but will be rated according to the PBRS. Within 30 days after receiving notification of the new value established by the PBRS, the owner may request removal of classification of the parcel without imposition of additional tax, interest, or penalty.

What happens after I file my application for farm and agricultural land classification?

The assessor will act on each application for classification or reclassification of farm and agricultural land with due regard to all relevant evidence, and may approve the application in whole or in part. Upon application for classification or reclassification, the assessor may require applicants to provide data regarding the use of such land, including the productivity of typical crops, sales receipts, federal income tax returns, other related income and expense data, and any other information relevant to the application.

The application will be considered approved unless the assessor notifies the applicant in writing prior to May 1 of the year following the year the application was made.

The assessor submits the notice of approval to the county auditor for recording in the place and manner provided for the public recording of state tax liens on real property.

What is an "advisory committee"?

The county legislative authority must appoint a five member committee representing the active farming community within the county. This committee will serve in an advisory capacity to the assessor in implementing assessment guidelines as established by the Department of Revenue for the assessment of open space, farm and agricultural lands, and timber lands.

How do I appeal a denial of my farm and agricultural land application?

The owner may appeal the assessor's denial to the board of equalization in the county where the property is located. The appeal must be filed with the board on or before July 1 of the year of the determination or within 30 days after the mailing of the notice of denial, or within a time limit of up to 60 days adopted by the county legislative authority, whichever is later.

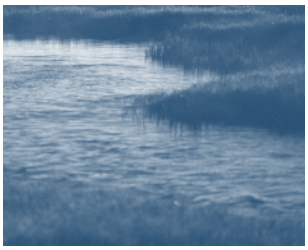
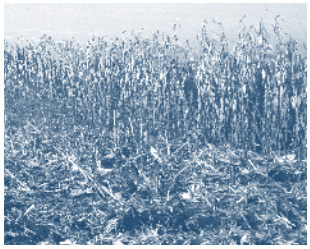
What happens after I file my application for timber land classification?

Applications for current use timber land classification or reclassification are made to the county legislative authority. A timber management plan is required at the time of application or when a sale or transfer of timber land occurs and a notice of continuance is signed.

The application is acted upon after a public hearing in a manner similar to open space land classification within six months of receiving the application.

Approval or denial of an application is a legislative determination and is reviewable only for arbitrary and capricious action. Appeal can be made only to the superior court of the county where the application was filed.

The application form requires information about forest management, restocking, fire protection, insect and disease control, weed control, and any other summary of experience and activity that supports the growth and harvest of timber for commercial purposes.

Are there additional requirements once the application for classification or reclassification has been approved?

The owner of classified land must continue to meet the criteria established for classification, or the assessor may remove the land from the current use classification.

After giving the owner written notice and an opportunity to be heard, the assessor may determine that all or a portion of the land no longer meets the criteria for classification.

How is the value of classified land determined?

The assessor is required to maintain two values for each parcel that is classified. The first is the value that would be placed on the land if it was not classified. This is commonly referred to as the "fair market value." The second is the current use land value based on its present use, not potential use, as classified by the granting authority.

Open space land located within a county that has adopted a public benefit rating system will be valued according to the criteria of the rating system.

In the absence of a rating system, the valuation will be no less than the lowest per acre value of farm and agricultural land in the county.

In determining the current use value of farm and agricultural land, the assessor considers the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years. This earning or productive capacity is the "net cash rental" and is capitalized by a "rate of interest" charged on long term loans secured by a mortgage on farm or agricultural land plus a component for property taxes.

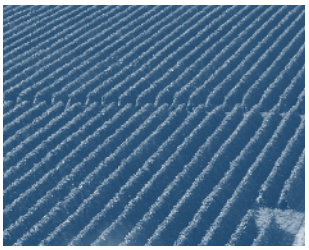
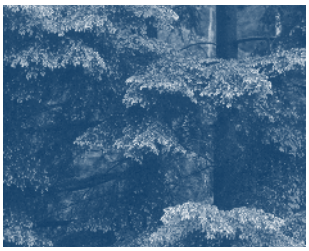
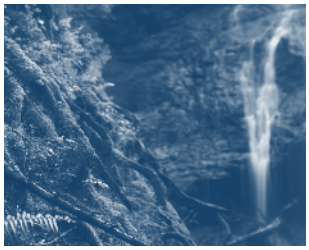
Timber land is valued according to a schedule prepared by the Department of Revenue for the Timber Tax law, chapter 84.33 RCW.

When are taxes due on classified lands?

Land which is classified as open space, farm and agricultural, or timber land is assessed at its current use value and placed on the assessment rolls in the year following the year of application. Taxes on classified land are due and payable in the year following the year the land was valued at its current use and placed on the assessment rolls.

How long does the classification last?

When land is classified as open space, farm and agricultural, or timber land, it must remain under such classification and not be applied to any other use for at least 10 years from the date of classification unless reclassified into another current use classification. The land continues in current use classification after the 10-year period until a request for withdrawal is made by the owner, the use of land no longer complies, or the ownership has changed and the new owner has not signed a Notice of Continuance. The notice of removal is recorded with the county auditor in the same manner as the recording of state tax liens on real property. Additional tax, interest, and penalties will apply if an early withdrawal from classification is requested by the owner. Additional tax, interest, and penalties will apply if the land is removed by the assessor for failure to meet continuing qualifications or the Notice of Continuance is not signed when land is sold or transferred.

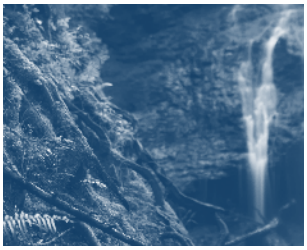




How do I withdraw from classification?

If intending to withdraw all or a portion of the land from classification after 10 years, the owner must give the county assessor two years prior notice. This notice can be filed after the eighth assessment year of the initial 10-year classification period. If a portion of a parcel is removed from classification, the remaining portion must meet the requirements of original classification unless the remaining parcel has different income criteria.

What happens after I file a request to withdraw?

Upon receipt of a request for withdrawal, the assessor notifies the granting authority that originally approved the classification, and, when two years have elapsed, the assessor withdraws the land from classification. The land withdrawn from classification is subject to an additional tax equal to the difference between the tax paid on the current use value and the tax that would have been paid on that land had it not been classified. The additional tax is payable for the last seven years, plus interest at the same rate as charged on delinquent property taxes.



What happens if the classified land is sold or transferred?

When classified land is sold or transferred, the seller or transferor becomes liable at the time of sale for the additional tax, interest, and penalty unless the new owner(s) signs the Notice of Continuance which is attached to or shown on the real estate excise tax affidavit. The county auditor cannot accept an instrument of conveyance on any classified land unless the Notice of Continuance has been signed or the additional tax, interest, and penalty has been paid. The assessor determines if the land qualifies for continued classification.

What if I want to change the use of my classified property?

An owner changing the use of land from a classified use must notify the county assessor within 60 days of this action. The assessor will remove the land from classified status and impose an additional tax equal to the difference between the tax paid on the current use value and the tax that would have been paid on that land had it not been classified. The additional tax is payable for the last seven years, plus interest at the same rate as charged on delinquent property taxes, plus a penalty of 20 percent of the total amount.

How are taxes assessed if my property is classified for only part of a year?

Assessed valuation before and after removal of classification will be listed and allocated according to that part of the year to which each assessed valuation applies.

If the assessor removes my land from classification, may I appeal?

Within 30 days after the land is removed from classification, the assessor must notify the owner in writing explaining the reasons for removal. The owner may file an appeal of the removal from classification to the county board of equalization on or before July 1 of the year of the determination, or within 30 days of the date the notice was mailed by the assessor, or within a time limit of up to 60 days adopted by the county legislative authority, whichever is later.

Upon removal from classification, what taxes are due?

At the time the land is removed from classification, it becomes subject to any additional tax, applicable interest, and penalty that are due and payable to the county treasurer within 30 days after the owner is notified.

What if the additional taxes are not paid?

Any additional tax, applicable interest, and penalty become a lien on the land at the time the land is removed from classification. This lien has priority over any other encumbrance on the land. Such a lien may be foreclosed upon expiration of the same period after delinquency in the same manner as delinquent real property taxes.

What is done with the additional tax, interest, and penalty I pay on classified land?

Upon collection, the additional tax is distributed by the county treasurer in the same manner in which current taxes applicable to the subject land are distributed. The applicable interest and penalties are distributed to the county's current expense fund.

Under what circumstances can my property be removed from classification without additional tax, interest, and penalty?

The additional tax, applicable interest, and penalty are not imposed if the removal from classification results solely from one of these actions:

1. Land is transferred to a government entity in exchange for other land located within the state of Washington.
2. Land is taken through the exercise of the power of eminent domain, or land is sold or transferred to an entity having the power of eminent domain after receiving notification in writing or by other official action that they anticipated such action.
3. Land use changes because of a natural disaster.
4. The present use of the land is disallowed because of an official action by an agency of the state, county, or city.
5. Land is transferred to a church that qualifies for an exemption under RCW 84.36.020.
6. Property interests are acquired by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for conservation purposes.
7. Removal of land classified as farm and agricultural land on which housing for employees and/or principal place of residence is sited.
8. Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification.
9. The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120.
10. The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040
11. The sale or transfer of land within two years after the death of an owner who held at least a 50 percent interest in the land if the land has been assessed and valued as designated forest land under chapter 84.33 RCW, or classified under chapter 84.34 RCW continuously since 1993.
12. Removal of land because it was classified in error, by the granting authority, through no fault of the owner.

How do I change the classification of my property?

Land may be reclassified, upon request by the owner, subject to all applicable qualifications for each classification, without additional tax, interest, and penalty for the following:

1. Land classified as farm and agricultural land may be reclassified to timber land; timber land may be reclassified to farm and agricultural land.
2. Land classified as either farm and agricultural land or timber land under chapter 84.34 RCW, or forest land under chapter 84.33 RCW may be reclassified to open space land.
3. Land classified as farm and agricultural land or timber land may be reclassified to forest land under chapter 84.33 RCW.
4. Land previously classified as farm and agricultural land may be reclassified to open space land as "farm and agricultural conservation land" and subsequently be reclassified back to farm and agricultural land.

Applications for reclassification are acted upon in the same manner as approvals for initial classification. The county assessor approves all applications for farm and agricultural classifications and reclassifications. The granting authority approves all land classifications or reclassifications for timber land and open space land. Land less than 20 acres being reclassified into farm and agricultural land classifications from open space "farm and agricultural conservation land," timber land, or forest land may have the income requirements deferred for a period of up to five years from the date of the reclassification.

Is supporting information required to change classifications?

The assessor may require the owner of classified land to submit data regarding the use of the land, productivity of typical crops, income and expense data, and similar information regarding continued eligibility.

Laws and Rules

It is helpful to read the complete laws, Revised Code of Washington, chapter 84.33 and 84.34 (RCW) and rules, Washington Administrative Code, chapter 458-30 (WAC) to understand requirements of the classifications and the tax liabilities incurred.

Need More Information?

Requirements and the manner for making the application for current use is available at the county assessor's office.

For general information contact:

- **Department of Revenue, Property Tax Division**
  P. O. Box 47471
  Olympia, Washington 98504-7471
  (360) 534-1400
- **Website dor.wa.gov**
- **Telephone Information Center**
  1-800-647-7706
- To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715.
- Teletype (TTY) users please call 1-800-451-7985.

Department of Revenue

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