

**SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER**

re: The application for a parcel of land to be classified as **Open Space** by **Howard and Judith Robbins**

#3-2024 (CUOS)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicants, Howard and Judith Robbins are seeking to classify two currently tax unclassified parcels in the Rural Reserve Zone as Open Space.

Decision: The requested application is recommended to the Board of County Commissioners for **APPROVAL** along with a proposed resolution.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at a properly noticed public hearing.

FINDINGS OF FACT

I.

Applicant: Howard and Judith Robbins

Site Address: Unit A – 9801 Bayview Edison Road, Bow, WA 98232
Unit B – 10683 Bayview Edison Road, Bow, WA 98232

Abrv. Legal Description: Sec. 19, Twp. 35N, R. 3E

Assessor’s Parcel No(s): Unit A – A portion of P34481, a portion of P34482, and all of P34484
Unit B – A portion of P34986 and all of P35045

Parcel(s) Size: Unit A – 3.6 acres
Unit B – 5.7 acres
Total: 9.3 acres

Zoning: Rural Reserve (RRv)

Application Date: December 20, 2024

Primary Authorizing Codes, Policies, Plans, and Programs:

- Revised Code of Washington (RCW)
 - RCW 84.34, Open Space, Agricultural, Timberlands—Current Use—Conservation Futures
- Skagit County Code (SCC)
 - SCC 14 – Unified Development Code
 - SCC 14.02 – General Provisions
 - SCC 14.02.070 – Office of the Hearing Examiner
 - SCC 14.06 – Permit Procedures
 - SCC 14.40 – Open Space Current Use Assessment Applications
- Skagit County Comprehensive Plan of 6/30/16, as amended by Skagit County Board of Commissioners through 12/19/23 (SCP or “Comprehensive Plan”)
- Skagit County Hearing Examiner’s Rules of Procedure (SCRE), as authorized by Skagit County Commissioners per Resolution #R20240280 on 12/16/24

Hearing Date: 1/24/25 at 9:00 AM

Testifying Parties of Record:

Kiffin Saben, Current Use Specialist
Skagit County Assessor’s Office
700 South 2nd Street, Room 204
Mount Vernon, WA 98273

Howard Robbins
9801 Bay View – Edison Road
Bow, WA 98232

Aubrey Robbins
9801 Edison Road

Hearing Examiner Exhibit List:

1. Application Materials, *filed 12/20/24*
2. Parcel Maps, *undated*
3. Aerial Photographs, with digital annotations, *undated*
4. Skagit County Assessor's Office Findings of Fact, *unknown date*

II.

The Applicants purchased the parcels of property in 1973 and 2024 respectively;¹ at all prior times the lots were and remain unclassified from a tax perspective and are located in the Rural Reserve. The lots happen to be property continuously held or previously held by several generations of the family, with the applicant's family having an 8th generation of people being raised in Skagit County. This is not a legal criterion or a basis for a decision under the law, but nonetheless interesting – and part of the testimony the family gave about their interest in preserving the views and environment.

The Assessor's Office provided information in the form of a "Skagit County Assessor's Finding of Fact" stating that the land being maintained as Open Space would meet the criteria of RCW 84.34.020(8)(a), which are the requirements to convert Agricultural Land to Open Space.² There is no evidence in the record, however, that this is agricultural land. Kiffin Saben from the Assessor's Office testified that this was in fact not the case.

The Applicant indicated in their application that this area would:

1. "Conserve or enhance natural, cultural, or scenic resources";
2. "Protect streams, stream corridors, wetlands, natural shorelines, or aquifers";
3. "Protect soil resources, unique or critical wildlife, or native plant habitat"; and
4. "Preserve visual quality along highway, road, street corridors, or scenic vistas."

There was, however, no evidence in the record to show that this would protect any of the criteria in #2 above, nor any soils or critical wildlife in prong #3. Howard Robbins provided testimony about the long-

¹ For a full legal description as determined by the Skagit County Assessor's Office see Ex. A to **Ex. 4**.

² Ex. 4

term existence of native plant species, and the general existence non-critical wildlife. Additional testimony was provided about the partially wooded nature of the lots and the view from the road and general scenic/view conditions. All evidence collected was testimonial in nature and was supported solely by the testimony of the applicants.

III.

There was no public comment.

IV.

The Skagit County Assessor’s Office Staff (the “Department”) have stated that the application would meet all the requirements of the Current Open Space program per State Law³ in a “Skagit County Assessor’s Office Findings of Fact,” undated and unsigned (“Staff Report” **Ex. 4**), with significant mis-conclusion of law regarding agricultural land as noted above.

The Applicant has indicated that they had not reviewed the Staff Report and was unable to testify or contest any facts presented therein.

The Findings of Fact in the Staff Report, a copy of which is attached hereto and incorporated herein, are supported by the record as a whole and are hereby adopted and incorporated herein by this reference, except where explicitly contradicted by the findings herein.

V.

SCHE §14 grants parties the right to object to evidence and to cross-examine. In the case at hand, with full knowledge of the evidence being admitted, no objection by the applicant or the Department was made to any of the exhibits that were admitted into the record.

VI.

Any Conclusion of Law below which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

³ RCW 84.34.020

CONCLUSIONS OF LAW

I.

Authority for Open Space Reclassification

Applications for Open Space current uses under the SCC are ultimately approved or denied by the Board of Skagit County Commissioners within six months of application submission.⁴ This conforms with State Law which provides those applications “for classification or reclassification [as open space land] shall be made to the county legislative authority.”⁵

The law dictates that such applications are processed by “Planning and Development Services” (PDS),⁶ though in practice it appears the Assessor’s Office is processing these and routing them directly to the Hearing Examiner. While the Hearing Examiner is not outlined as part of the procedure in SCC 14.40.040, it is specifically noted on the next section that at some undetermined point the Hearing Examiner is to approve applications.⁷

Upon approval of an application, the Hearing Examiner is to “prepare a contract” and send that to the Board of County Commissioners.⁸ Historically, it appears the Office of the Hearing Examiner has achieved that through preparing a proposed Resolution.

II.

Open Space

In Skagit County Open Space is:

[A]ny land area, the preservation of which in its present use would conserve and enhance natural or scenic resources; or protect streams or water supplies; 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, sanctuaries or other open space; or enhance recreation opportunities; or preserve historic sites. Public open space is publicly owned land that has been or will be set aside for open space and recreational use. Private open space is privately owned land that has been or will be set aside by operation of the Critical Areas Ordinance, by voluntary conservation, or by land reserve easements. Current use open space taxation program includes properties utilized for agriculture, timber, and open space uses as provided in Chapter 84.24 RCW.⁹

⁴ SCC 14.40.040(4)

⁵ RCW 84.34.037(1)

⁶ SCC 14.40.040(1)

⁷ SCC 4.40.050

⁸ *Id.*

⁹ SCC 14.04.020 at “Open Space”

RCW 84.24 does not exist. It was repealed by the State Legislature in 1994.¹⁰

Under RCW 84.34, however, though it does not appear to have been created in conjunction with the repeal of RCW 84.24, the State Legislature has defined Open Space specifically in the context of property taxes, which appears to be the intent and seating of this application overseen by the Assessor's Office.

In order for a lot to meet the definition of "Open space land," it must meet a number of possible criteria:

- a)** Any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly; or
- b)** Any land area, the preservation of which in its present use would:
 - i.** Conserve and enhance natural or scenic resources;
 - ii.** Protect streams or water supply;
 - iii.** Promote conservation of soils, wetlands, beaches or tidal marshes;
 - iv.** Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space;
 - v.** Enhance recreation opportunities;
 - vi.** Preserve historic sites;
 - vii.** Preserve visual quality along highway, road, and street corridors or scenic vistas; or
 - viii.** 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 body granting the open space classification; or
- c)** Any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section.¹¹

In this case, after reviewing the files and testimony, and having made the findings above, the Hearing Examiner finds that the application would be compliant with the criteria under §§ (b)(i and vii), and could be classified as Open Space.

Board Decision Criteria

¹⁰ 1994 c 124 § 42

¹¹ RCW 84.34.020(1)

The Board of County Commissioners is directed by State Law, in making their determination to classify or reclassify land as Open Space, to consider “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
- c)** Whether granting the application for land applying under RCW 84.34.020(1)(c) will (i) either preserve land previously classified under RCW 84.34.020(2) or preserve land that is traditional farmland and not classified under chapter 84.33 or 84.34 RCW, (ii) preserve land with a potential for returning to commercial agriculture, and (iii) affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of property.¹²

In this case, after reviewing the files and testimony, and having made the findings above, the Hearing Examiner finds that the application would:

1. Not result in substantive revenue loss or tax shift given its limited value;
2. Would allow for the property to be maintained in a way that conserves or enhances natural and scenic resources, as well as preserves visual quality along highway, road, and street corridors or scenic vistas; and

¹² RCW 84.34.037(2)

3. That this application is not related to farm land and was not previously classified as Open Space.

Consequently, the application should be approved given that it meets the criteria.

III.

Any Conclusion of Law deemed to be a Conclusion of Fact is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

The Hearing Examiner recommends to the Board of County Commissioners that the application for the described Unit A – 3.6 acres and Unit B – 5.7 acres be approved. Attached to this decision is a Resolution and two Washington State Department of Revenue approved Open Space Taxation Agreements (one for each Unit), which will serve as the statutory requirement for the Hearing Examiner to present a “contract” to the Board.

DATED this January 25, 2025



Rajeev D. Majumdar
Skagit County Hearing Examiner

RESOLUTION NO. _____

A RESOLUTION CONCERNING AN APPLICATION TO TRANSFER 9.3 ACRES TO CURRENT USE OPEN SPACE LAND FROM A CURRENTLY UNCLASSIFIED STATUS:

**HOWARD AND JUDITH ROBBINS
CUOS #3-2024**

Whereas, the Skagit County Hearing Examiner held a public hearing on December 13, 2024 to review the application to transfer the described Unit A – 3.6 acres and Unit B – 5.7 acres from unclassified to current use open space land by Howard and Judith Robbins as described in the Findings of Fact and Recommendation of the Hearing Examiner to approve which were submitted to the board of Skagit County Commissioners; and

Whereas, in open session, the Skagit County Board of Commissioners has reviewed the application and Findings and Recommendation of the Hearing Examiner;

Now, Therefore Be it Resolved, that the Board of Skagit County Commissioners hereby adopts the attached Findings and Recommendation of the Hearing Examiner and approves the application to transfer 9.3 acres to current use open space land from a currently unclassified status, subject to any conditions listed in the Hearing Examiner Recommendation, and authorizes signatures to execute the Open Space Taxation Agreement(s) attached to the Hearing Examiner’s Recommendation.

PASSED this _____ day of _____, 2025.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

LISA JANICKI, Chair

RON WESEN, Commissioner

PETER BROWNING, Commissioner

ATTEST:

Clerk of the Board

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to Content:

Skagit County Assessor



Open Space Taxation Agreement

Chapter 84.34 RCW

(To be used for "Open Space" and "Timber Land" Classification or Reclassification Only)

When recorded, return to:

Property owner:

Owner mailing address:

Property address:

Legal description:

Assessor's property tax parcel or account number:

Reference numbers of documents assigned or released:

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Open Space Taxation Agreement

This agreement between:

hereinafter called the “Owner”, and:

hereinafter called the “Granting Authority”.

Whereas, the owner of the above described real property having made application for classification of that property under the provisions of Chapter 84.34 RCW. And whereas, both the owner and granting authority agree to limit the use of said property, recognizing that such land has substantial public value as open space and that the preservation of such land constitutes an important physical, social, aesthetic, and economic asset to the public, and both parties agree that the classification of the property during the life of this agreement shall be for:

Open Space Land – RCW 84.34.020(1)(a) or (b).

Farm and Agricultural Conservation Land (a sub classification of open space land) - RCW 84.34.020(1)(c).

Timber Land – RCW 84.34.020(3).

Now, therefore, the parties, in consideration of the mutual covenants and conditions set forth herein, do agree as follows:

1. During the term of this agreement, the land shall be used only in accordance with its classified use.
2. No structures shall be built upon such land except those directly related to, and compatible with, the classified use of the land.
3. This agreement shall be effective commencing on the date the legislative body receives the signed agreement from the property owner and shall remain in effect until the property is withdrawn or removed from classification.
4. This agreement shall apply to the parcels of land described herein and shall be binding upon the heirs, successors and assignees of the parties hereto.
5. A request may be filed with the assessor to withdraw from the program after the land has been classified for 10 or more years. No 20% penalty will be imposed. The applicable taxes and interest shall be imposed as provided in RCW 84.34.070.
6. After the effective date of this agreement, any change in use of the land, except through compliance with items (5), (7), (9), or (10), shall be considered a breach of this agreement, and shall be subject to removal of classification and liable for additional tax, interest, and penalty as provided in RCW 84.34.080 and RCW 84.34.108.
7. A breach of agreement shall not have occurred and the additional tax shall not be imposed if removal of classification resulted solely from one of the following:

- a. Transfer to a governmental entity in exchange for other land located within the State of Washington.
 - b. A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power in anticipation of the exercise of such power and having manifested its intent in writing or by other official action.
 - c. A natural disaster such as a flood, windstorm, earthquake, wildfire or other such calamity rather than by virtue of the act of the landowner changing the use of such property.
 - d. Official action by an agency of the State of Washington or by the county or city where the land is located disallowing the present use of such land.
 - e. Transfer of land to a church when such land would qualify for exemption pursuant to RCW 84.36.020.
 - f. Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections (see RCW 84.34.108(6)(f)).
 - g. Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(f).
 - h. 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.
 - i. The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120.
 - j. The creation, sale, or transfer of a fee interest or 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.
 - k. The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as forest land under chapter 84.33 RCW, or under chapter 84.34 RCW continuously since 1993. The date of death shown on the death certificate is the date used.
 - l. The discovery that the land was classified in error through no fault of the owner.
8. The county assessor may require an owner to submit data relevant to continuing the eligibility of any parcel of land described in this agreement.
 9. The owner may apply for reclassification of the land if reclassification is permissible under RCW 84.34.070.

10. Changes to the conditions of this agreement could result in the re-rating of the parcel by the granting authority, subject to a public hearing, and may result in a change in assessed value. If the granting authority approves the changes in conditions, a revised agreement may be required.

The parcel(s) of land described in this agreement is subject to the following conditions:

The parcel(s) of land described in this agreement may be used in the following manner:

The parcel(s) of land described in this agreement may be removed if the land is used in the following manner:

It is declared that this agreement specifies the classification and conditions as provided for in Chapter 84.34 RCW and the conditions imposed by this Granting Authority. This agreement to tax according to the use of the property is not a contract and can be annulled or canceled at any time by the Legislature (RCW 84.34.070).

Dated: Signature(s) of County and/or City Legislative Authority:

Title:

Open Space Taxation Agreement



Dated: Signature(s) of County and/or City Legislative Authority:

Title:

Dated: Signature(s) of County and/or City Legislative Authority:

Title:

As owner(s) of the herein-described land I/we indicated by my/our signature(s) that I am/we are aware of the potential tax liability and hereby accept the classification and conditions of this agreement.

Dated: Owner(s):

(Must be signed by all owners)

Date signed agreement received by Legislative Authority:

Make three copies with one copy to each of the following: Owner, Granting Authority, and County Assessor



Open Space Taxation Agreement

Chapter 84.34 RCW

(To be used for "Open Space" and "Timber Land" Classification or Reclassification Only)

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Now, therefore, the parties, in consideration of the mutual covenants and conditions set forth herein, do agree as follows:

1. During the term of this agreement, the land shall be used only in accordance with its classified use.
2. No structures shall be built upon such land except those directly related to, and compatible with, the classified use of the land.
3. This agreement shall be effective commencing on the date the legislative body receives the signed agreement from the property owner and shall remain in effect until the property is withdrawn or removed from classification.
4. This agreement shall apply to the parcels of land described herein and shall be binding upon the heirs, successors and assignees of the parties hereto.
5. A request may be filed with the assessor to withdraw from the program after the land has been classified for 10 or more years. No 20% penalty will be imposed. The applicable taxes and interest shall be imposed as provided in RCW 84.34.070.
6. After the effective date of this agreement, any change in use of the land, except through compliance with items (5), (7), (9), or (10), shall be considered a breach of this agreement, and shall be subject to removal of classification and liable for additional tax, interest, and penalty as provided in RCW 84.34.080 and RCW 84.34.108.
7. A breach of agreement shall not have occurred and the additional tax shall not be imposed if removal of classification resulted solely from one of the following:

- a. Transfer to a governmental entity in exchange for other land located within the State of Washington.
 - b. A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power in anticipation of the exercise of such power and having manifested its intent in writing or by other official action.
 - c. A natural disaster such as a flood, windstorm, earthquake, wildfire or other such calamity rather than by virtue of the act of the landowner changing the use of such property.
 - d. Official action by an agency of the State of Washington or by the county or city where the land is located disallowing the present use of such land.
 - e. Transfer of land to a church when such land would qualify for exemption pursuant to RCW 84.36.020.
 - f. Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections (see RCW 84.34.108(6)(f)).
 - g. Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(f).
 - h. 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.
 - i. The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120.
 - j. The creation, sale, or transfer of a fee interest or 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.
 - k. The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as forest land under chapter 84.33 RCW, or under chapter 84.34 RCW continuously since 1993. The date of death shown on the death certificate is the date used.
 - l. The discovery that the land was classified in error through no fault of the owner.
8. The county assessor may require an owner to submit data relevant to continuing the eligibility of any parcel of land described in this agreement.
 9. The owner may apply for reclassification of the land if reclassification is permissible under RCW 84.34.070.

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The parcel(s) of land described in this agreement is subject to the following conditions:

The parcel(s) of land described in this agreement may be used in the following manner:

The parcel(s) of land described in this agreement may be removed if the land is used in the following manner:

It is declared that this agreement specifies the classification and conditions as provided for in Chapter 84.34 RCW and the conditions imposed by this Granting Authority. This agreement to tax according to the use of the property is not a contract and can be annulled or canceled at any time by the Legislature (RCW 84.34.070).

Dated: Signature(s) of County and/or City Legislative Authority:

Title:

Open Space Taxation Agreement



Dated: Signature(s) of County and/or City Legislative Authority:

Title:

Dated: Signature(s) of County and/or City Legislative Authority:

Title:

As owner(s) of the herein-described land I/we indicated by my/our signature(s) that I am/we are aware of the potential tax liability and hereby accept the classification and conditions of this agreement.

Dated: Owner(s):

(Must be signed by all owners)

Date signed agreement received by Legislative Authority:

Make three copies with one copy to each of the following: Owner, Granting Authority, and County Assessor