

**BEFORE THE HEARING EXAMINER  
FOR SKAGIT COUNTY**

In the Matter of the Application of	)	No. APP 4-2023
	)	
<b>Skagit Land Trust</b>	)	Skagit Land Trust Proposal
	)	
For Approval of a Current Use Open Space	)	FINDINGS, CONCLUSIONS,
<u>Classification/Reclassification Application</u>	)	AND RECOMMENDATION

**SUMMARY OF DECISION**

The Hearing Examiner recommends that the Skagit County Board of Commissioners (Board) **APPROVE** the request to classify/reclassify 9.4 acres of a property located south of Swan Road and north of Barney Lake from the “Current Use Farm and Agriculture” classification to the “Current Use Open Space” classification, to allow the property to be included in the County’s Current Use Open Space Land Program, adopted under Revised Code of Washington (RCW) 84.34.037.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on October 11, 2023.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Kiffin Saben, Skagit County Assessor’s Office  
Regina Wandler, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. County Assessor’s Office Findings of Fact, with attached Legal Description, undated
2. Parcel Map, undated
3. Aerial Photograph, undated
4. DOR Open Space Classification/Reclassification Application, dated August 23, 2023

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

*Findings, Conclusions, and Recommendation  
Skagit County Hearing Examiner  
Skagit Land Trust Current Use Open Space Application  
No. APP 4-2023*

## FINDINGS

### Application and Notice

1. Elizabeth McDonnell requests that 9 acres of a property under her ownership, located at 20599 State Route 534 Road, be classified/reclassified to the “Current Use Open Space” classification. The request would allow the land to be included in the County’s Current Use Open Space Land Program, adopted under RCW 84.34.037. *Exhibits 1 through 4.*
  
2. The property is described by the County Assessor with the following legal description:

THAT PORTION OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SUBDIVISION 495 WEST OF THE SOUTHEAST CORNER THEREOF; THENCE NORTH 0-10-00 WEST PARALLEL TO THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 919.33 FEET; THENCE SOUTH 81-20-42 WEST A DISTANCE OF 304.98 FEET TO A POINT 537 FEET EAST OF THE WEST LINE OF SAID SUBDIVISION; THENCE SOUTH 0-03-56 WEST PARALLEL TO THE WEST LINE OF SAID SUBDIVISIONS A DISTANCE OF 867.61 FEET TO A POINT ON THE SOUTH LINE AND 537 FEET WEST OF THE SOUTHWEST CORNER THEREOF; THENCE ALONG SAID SOUTH LINE SOUTH 88-54-25 EAST A DISTANCE OF 305.22 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH

THAT PORTION OF THE EAST 165 FEET OF THE WEST 537 FEET OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:  
BEGINNING AT THE SOUTHEAST CORNER OF THE PORTION OF SAID SUBDIVISION; THENCE NORTH 0-03-56 EAST, A DISTANCE OF 867.61 FEET; THENCE SOUTH 71-48-35 WEST, A DISTANCE OF 173.74 FEET TO THE WEST LINE THEREOF; THENCE SOUTH 0-03-56 WEST, A DISTANCE OF 810.23 FEET TO THE SOUTH LINE THEREOF; THENCE SOUTH 88-54-25 EAST, ALONG THE SOUTH LINE, A DISTANCE OF 165.03 FEET TO THE POINT OF BEGINNING.

*Exhibit 1.*

3. Notice of the hearing on this proposal was provided, as required by Skagit County Code (SCC) 14.40.040. *Exhibit 1.*

#### Current Classification/Reclassification Request

4. The property is currently in the farming agricultural classification. The reclassification would allow for the property to be maintained in a way that conserves natural, cultural, or scenic resources and protects streams, stream corridors, wetlands, natural shorelines or aquifers, critical wildlife, and native plant habitat. *Exhibit 1; Exhibit 4.*
5. The Applicant explained the proposal in the following terms:

The parcels are currently managed as part of the Barney Lake Conservation Area. Previously, they were lower portions of parcels with single family homes on higher ground. Our vision for that conservation area is: Barney Lake Conservation Area protects wetlands, salmon-bearing streams, riparian and upland forest, and well managed agricultural lands for the benefit of future generations. The wetland complex provides a wide range of vital ecosystem services benefiting people, as well as habitat and landscape connectivity for a wide array of native wildlife species. Restoration complements natural processes, contributing to increased habitat complexity and improved ecosystem process functioning over time. Trees mature before dying and turning into snags, and native tree seedlings and shrubs readily fill in gaps in the forest created by disturbance. This protected mosaic of conservation land provides critical habitat and ecosystem services, scenic views, and provides opportunities for low impact recreation and education public access amidst an increasingly urbanizing landscape.

These parcels have been added to a larger conservation area which is currently open to low impact public access, which is and will continue to be utilized for educational and outreach events for youth and adults, and which provides a scenic backdrop for the residents of Skagit County. The Trust is in the process of planning for development of some infrastructure (parking, trails, signage, and wildlife viewing areas) on other portions of the property which will provide greater opportunities for public access.

*Exhibit 4.*

#### Testimony

6. Kiffin Saben, Current Use Specialist, Skagit County Assessor's Office, testified about her review of the proposal and the County's Current Use Open Space Land Program. She testified that the Assessor's Office recommends approval of the reclassification request because the proposal would conserve or enhance natural, cultural, or scenic resources

consistent with chapter 14.40 SCC and the requirements of chapter 84.34 RCW. She testified that the property was farmed in the 1970s as part of a bigger property that reached all the way to Barney Slough. Barney Slough is now part of a preservation effort on the part of the County. The subject property has wetlands that feed into the slope. The land does not meet income requirements for a farming/agricultural classification. There would be very little tax impact, if any. There are streams and wetlands and trees that would be conserved. *Testimony of Ms. Saben.*

7. Regina Wandler, Applicant Representative, testified that these two parcels comprising the subject property would be additions to the Skagit Land Trust's Barney Lake Conservation Area, a large wetland complex that the Trust has protected over many years. She testified that the Barney Lake wetlands complex often floods throughout much of the winter. The wetlands complex is connected to the Nookachamps Watershed, so preserving the wetland complex supports salmon habitat. In addition, Barney Lake is an important wintering habitat for migrating waterfowl, including swans, geese, and ducks. The subject property comprises part of the waterfowl habitat. Access to do any agriculture would be challenging on this site because it cannot easily be reached across the rest of the property, even during summer. The Trust has access rights across neighboring properties for conservation purposes, but does not have access rights for agriculture.

Ms. Wandler testified that the subject property was split from a larger parcel. The northern portion is still owned by the original landowners, and these original owners still may have some agricultural use on their remaining properties to the north. The subject property, to the south, may have been used for hay at one time but certainly has not been used for agriculture for a long time. *Testimony of Regina Wandler.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner has jurisdiction to hear requests for classification or reclassification of land proposed for inclusion in the County's Current Use Open Space Land Program, and make a recommendation to the Board of County Commissioners on such requests. *Chapter 14.40 SCC.*

### Criteria for Review

SCC 14.40.010 provides that the "County adopts the Washington State legislative declaration as follows":

The Washington State Legislature declares 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. The legislature further declares that assessment practices must be so designed as to permit the continued availability

of open space lands for these purposes, and it is the intent of this Chapter so to provide. The legislature further declares its intent that farm and agricultural lands shall be valued on the basis of their value for use as authorized by Section 11 of Article VII of the Constitution of the State of Washington.

Article VII of the Constitution of the State of Washington provides:

Nothing in this Article VII as amended shall prevent the legislature from providing, subject to such conditions as it may enact, that the true and fair value in money (a) of farms, agricultural lands, standing timber and timberlands, and (b) of other open space lands which are used for recreation or for enjoyment of their scenic or natural beauty shall be based on the use to which such property is currently applied, and such values shall be used in computing the assessed valuation of such property in the same manner as the assessed valuation is computed for all property.

Under RCW 84.34.020(1):

“Open space land” means (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, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (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. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b)(iii) of this subsection for the purpose of promoting conservation of wetlands.

RCW 84.34.037(1) provides that applications “for classification or reclassification” as open space land shall “be made to the county legislative authority.” RCW 84.34.037(2) provides that 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 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 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.

Finally, RCW 84.34.037(5) notes that 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.”

#### Conclusions Based on Findings

**The proposed classification/reclassification proposal would satisfy the requirements for including the property in the County’s Current Use Open Space Land Program, under chapter 14.40 SCC and chapter 84.34 RCW.** The 9.4-acre subject property is currently in farming/agricultural classification but is not being actively farmed. Classification of the property to the “Current Use Open Space” classification would allow for the property to be maintained in a way that that conserves or enhances its ecological contribution to the Barney Lake wetland complex and the larger Nookachamps Watershed. Reclassification would also support critical migratory waterfowl habitat. Reasonable notice of the hearing on the request was provided, consistent with chapter 14.40 SCC. No comments on the request were received, and all testimony associated with the request supported the proposal.

County staff reviewed the proposal and recommended it be approved. The Hearing Examiner concurs with this assessment. Classification of the 9.4-acre property to allow its inclusion in the County’s Current Use Open Space Land Program would be appropriate, consistent with chapter 14.40 SCC and chapter 84.34 RCW. *Findings 1 – 7.*

#### **RECOMMENDATION**

Based on the preceding findings and conclusions, the Hearing Examiner recommends that the Skagit County Board of Commissioners **APPROVE** the request to classify/reclassify a 9.4 acres of a property, located south of Swan Road and north of Barney Lake, to the “Current Use Open Space” classification, to allow the property to be included in the Current Use Open Space Land Program.

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**RECOMMENDED** this 20th day of October 2023.

A handwritten signature in black ink, appearing to read "Alex Sidles". The signature is written in a cursive style with a long horizontal flourish extending to the right.

ALEX SIDLES  
Hearing Examiner