

Return to  
Hearing Exam

9404280067

SKAGIT COUNTY HEARING EXAMINER  
STATE OF WASHINGTON

In the matter of:  
Open Space Application  
of: TED LINDBERG & NORAH KEMBAR  
for inclusion of 9 acres in the  
Open Space Program (Guemes Island)

Findings of Fact  
Recommendation  
OSP 93 011

OSP 93 011.REC

94 APR 28 AM 11:16

JERRY MEHTURFF  
SKAGIT COUNTY CLERK

This matter having come regularly before the Skagit County Hearing Examiner for a Public Hearing under an application filed with the Skagit County Department of Planning and Community Development on behalf of the Applicant requesting an Open Space Classification as described and located in the attached Report and Findings of the Skagit County Department of Planning and Community Development;

And notice having been given to all property owners within 300 feet of said property, the property having been posted in accordance with Chapter 14.04 of the Skagit County Code, the public hearing advertised in accordance with Chapter 14.04 of the Skagit County Code, and all matters in the file having been considered together with the testimony, evidence, and exhibits in open hearing and made a part of the record in this matter, the Hearing Examiner makes the following findings of fact:

FINDINGS OF FACT

1. November 3, 1993 was fixed as the date of the public hearing and the Hearing Examiner held a public hearing on that date.
2. All persons present at the public hearing were given an opportunity to present evidence and testimony, and all correspondence received was read and made a part of the record.
3. The Hearing Examiner adopts the findings of the Department of Planning and Community Development as presented in the attached Report and Findings of that department.
4. The subject property is approximately 10 acres in size. Approximately 9 acres will be placed in Open Space.
5. The site is the location of a Bald Eagle nest which is extremely sensitive to disturbance.
6. The Washington State Department of Wildlife supports this application.
7. Chapter 8.34.020, Revised Code of Washington, provides the following information:
  1. (1) "Open Space Land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county 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, (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) retain in its natural state tracts of land not less than five acres 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.
8. The Hearing Examiner has reviewed this application with respect to the above definitions and other requirements of the Skagit County Code and the Revised Code of Washington.

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SKAGIT COUNTY HEARING EXAMINER DECISION AND RECOMMENDATION NO.  
OSP 93 011.REC - PAGE NO. 2

**CONCLUSIONS**

The Hearing Examiner, having duly considered the matter, including all the evidence presented and on file, comments from interested persons, information and comments from other county departments affected and from the Prosecuting Attorney; independent studies of the Planning Department, and the evidence presented at the public hearing, finds that the application has been reviewed in accordance with the definitions and requirements referenced above and has been found to be compatible with those criteria.

**RECOMMENDATION**

The Hearing Examiner recommends APPROVAL of the application for inclusion of the subject property into the (Open Space) Open Space program subject to the following conditions:

1. No public access to this site is required because of the sensitive nature of the area.

  
ROBERT C. SCHOFIELD  
SKAGIT COUNTY HEARING EXAMINER

Date of Recommendation: December 10, 1993  
Copies Transmitted to applicant: December 27, 1993  
Attachment: Staff Report  
cc: Applicant, file, Board of County Commissioners, Hearing Examiner

SKAGIT COUNTY PLANNING AND COMMUNITY DEVELOPMENT  
FINDINGS OF FACT

HEARING AUTHORITY: SKAGIT COUNTY HEARING EXAMINER  
HEARING DATE: NOVEMBER 3, 1993  
APPLICATION NUMBER: OPEN SPACE APPLICATION # OSP-93-011  
APPLICANT: TED LINDBERG  
NORAH KEMBAR  
ADDRESS: 497 SOUTH SHORE ROAD  
ANACORTES, WA 98221

PROJECT LOCATION: Located at 497 South Shore Road (Guemes Island), Anacortes; within a portion of the Southwest 1/4 of the Northeast 1/4 of the Northeast 1/4 of Section 7, Township 35 North, Range 2 East, W.M., Skagit County, Washington.

PROJECT DESCRIPTION: Open Space Application to allow the inclusion of approximately nine acres in the Open Space Program.

ASSESSOR'S ACCOUNT NUMBER: 350207-1-003-0005

STAFF FINDINGS:

1. The subject property is zoned Rural and the Island District Comprehensive Plan designates the area as Rural Open Space.
2. The public hearing has been advertised in accordance with the requirements of Chapter 14.04 of the Skagit County Code.
3. The application has been reviewed in accordance with the State Environmental Act Guidelines and has been found to be exempt.
4. The subject property is located out of any designated flood hazard areas.
5. The subject property is approximately ten acres in size and the applicant has his residence located on the property.
6. The applicant is requesting inclusion in the Open Space Open Space Program of approximately nine acres.
7. Revised Code of Washington 84.34.020 Definitions defines Open Space Land as an area that is open to the public, enhances natural resources, protects stream, and promotes conservation.
8. The applicant is requesting that the site not be open to the public and has offered the following in justification of the request:

" . . . it is the site of Guemes Channel bald eagle nest territory Occ. # 235, as designated by the State of Washington Department of Wildlife, and extremely sensitive to casual disturbance. . . . "

9. In reviewing the application and upon inspection, it appears that the application complies with the intent of RCW 84.34.020.
10. Attached for reference is a copy of a letter from the Department of Wildlife supporting the applicant's request.

RECOMMENDATIONS:

Based on the above findings, the Skagit County Planning Department would recommend approval of the request to include approximately nine acres in the Open Space Open Space Program. The Department would also recommend that the property not be open to the public.

Prepared by: G.R.  
Approved by: *OFH*

+ 30.00

**APPLICATION FOR CLASSIFICATION AS OPEN SPACE LAND OR TIMBER LAND  
FOR CURRENT USE ASSESSMENT UNDER CH. 84.34 RCW**

**FILE WITH THE COUNTY LEGISLATIVE AUTHORITY**

Name of Applicant NORAH E. KEMBAR - TED LINDBERG Phone 293-9855

Address 497 SOUTH SHORE ROAD, GUEMES ISL., ANACORTES WA 98221

Property Location SAME

1. Interest in property: ☐ Fee Owner ☐ Contract Purchaser ☒ Other (Describe) OWNER-RESIDENTS
2. Assessor's parcel or account number 350207-1-003-0005  
Legal description of land to be classified TEN ACRES SW 1/4 NE 1/4 NE 1/4 (minus one acre on which house is built)
3. Land classification that is being sought? ☒ Open Space ☐ Timber Land  
**NOTE:** A single application may be made for both open space and timber land, but a separate legal description must be furnished for each area that classification is being sought.
4. Total acres in application TEN
5. **OPEN SPACE CLASSIFICATION** Number of acres NINE
6. Indicate what category of open space this land will qualify for: (See reverse side for definitions)  
☒ Open space zoning  
☒ Conserve and enhance natural or scenic resources  
☐ Protect streams or water supply  
☒ Promote conservation of soils, wetlands, beaches or tidal marshes  
☐ Enhance public recreation opportunities  
☐ Enhance value to public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space  
☐ Preserve historic sites  
☒ Retain in natural state tracts of five (5) or more acres in urban areas and open to public use as reasonably required by granting authority (See attached letter from WA State Wildlife Department)
7. **TIMBER LAND CLASSIFICATION** Number of acres \_\_\_\_\_
8. Do you have a timber management plan for this property? ☐ Yes ☐ No If yes, submit a copy of that plan with this application.
9. If you have no timber management plan, specifically detail the use of this property to show that it "is devoted primarily to the growth and harvest of forest crops".  
\_\_\_\_\_  
\_\_\_\_\_
10. Describe the present current use of each parcel of land listed in this application.  
Ten wooded acres, on which residence is built near So. Shore Road.
11. Describe the present improvements on this property (buildings, etc.) one residence (1200 SQ. FT.) with out-buildings
12. Attach a map of the property to show an outline of current uses of the property and indicate location of all buildings. ✓
13. Is this land subject to a lease or agreement which permits any other use than its present use? ☐ Yes ☒ No  
If yes, attach a copy of the lease or agreement.

**NOTICE:** The assessor may require owners to submit pertinent data regarding the use of classified land.



**OPEN SPACE LAND MEANS:**

- (a) Any land area so designated by an official comprehensible 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, (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) retain in its natural state tracts of land not less than five acres 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.

**TIMBER LAND MEANS:**

Land in one ownership consisting of five or more acres in contiguous parcels devoted primarily to the growth and harvest of forest crops and which is not classified or designated as forest land under Chapter 84.33 RCW. Timber land means the land only.

**STATEMENT OF ADDITIONAL TAX, INTEREST, AND  
PENALTY DUE UPON REMOVAL OF CLASSIFICATION**

1. Upon removal of classification, an additional tax shall be imposed which shall be due and payable to the county treasurer 30 days after removal or upon sale or transfer, unless the new owner has signed the Notice of Continuance. The additional tax shall be the sum of the following:
- (a) The difference between the property tax paid as "Open Space Land" or "Timber Land" and the amount of property tax otherwise due and payable for the last seven years had the land not been so classified; plus
- (b) Interest upon the amounts of the difference (a), paid at the same statutory rate charged on delinquent property taxes.
- (c) A penalty of 20% shall be applied to the additional tax if the classified land is applied to some other use, except through compliance with the property owner's request for withdrawal process, or except as a result of those conditions listed in (2) below.
2. The additional tax, interest, and penalty specified in (1) above shall not be imposed if removal resulted solely from:
- (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 of eminent domain in anticipation of the exercise of such power.
- (c) Sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in such land.
- (d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of such property.
- (e) 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.
- (f) Transfer to a church when such land would qualify for property tax exemption pursuant to RCW 84.36.020.
- (g) Acquisition of property interests by State agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 (See RCW 84.34.108(5)(g)).

**AFFIRMATION**

As owner(s) of the land described in this application, I hereby indicate by my signature that I am aware of the potential tax liability involved when the land ceases to be classified under provisions of CH. 84.34 RCW. I also declare under the penalties for false swearing that this application and any accompanying documents have been examined by me and to the best of my knowledge it is a true, correct, and complete statement.

Signatures of all Owner(s) or Contract Purchaser(s)

Nuan Kamsat (title holder)

E. Theodore Lindberg (husband)

All owners and purchasers must sign.

**FOR LEGISLATIVE AUTHORITY USE ONLY**

Date application received \_\_\_\_\_ By \_\_\_\_\_

Amount of processing fee collected \$ \_\_\_\_\_ Transmitted to \_\_\_\_\_ Date \_\_\_\_\_

**FOR GRANTING AUTHORITY USE ONLY**

Date received \_\_\_\_\_ By \_\_\_\_\_

Application approved \_\_\_\_\_ Approved in part \_\_\_\_\_ Denied \_\_\_\_\_ Owner notified of denial on \_\_\_\_\_

Agreement executed on \_\_\_\_\_ Mailed \_\_\_\_\_

OPEN SPACE TAXATION AGREEMENT  
CH. 84.34 RCW  
(TO BE USED FOR "OPEN SPACE" OR "TIMBER LAND" CLASSIFICATION ONLY)

This Agreement between TED LINDBERG and LORAH KEMBAR

hereinafter called the "Owner", and SKagit COUNTY

hereinafter called the "Granting Authority".

Whereas the owner of the following described real property having made application for classification of that property under the provisions of CH. 84.34 RCW.

Assessor's Parcel or Account Numbers: 350207-1-003-0005

Legal Description of Classified Land: see Attachment "A"

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, esthetic, 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:

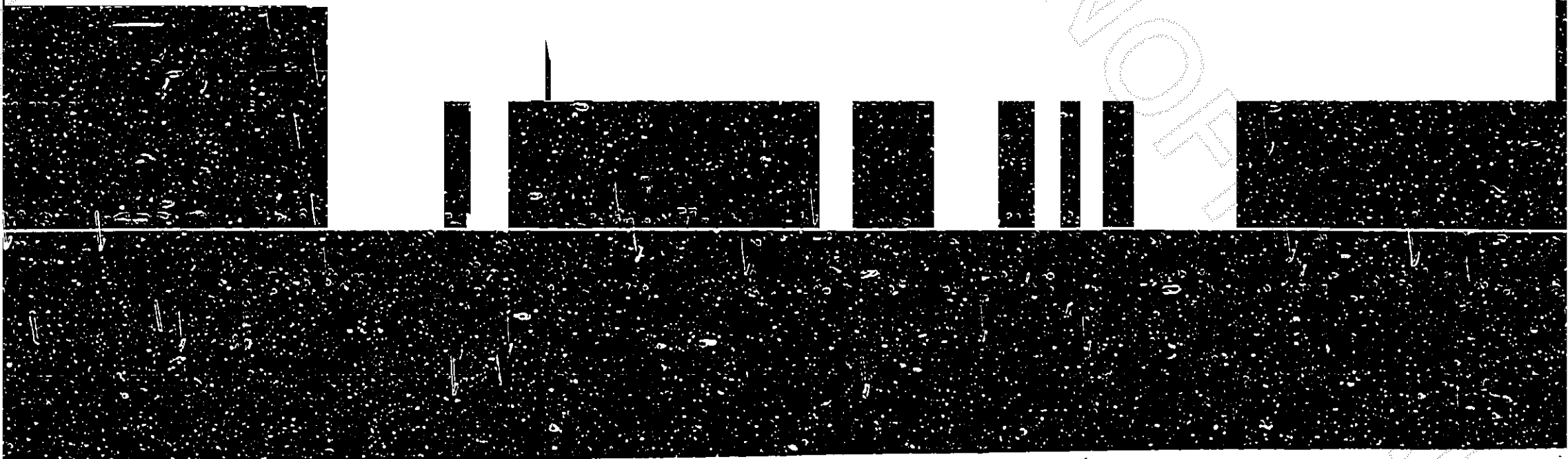
☒ OPEN SPACE LAND ☐ TIMBER LAND

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 the preservation of its classified use.
2. No structures shall be erected 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 for a period of at least ten (10) years.
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. **Withdrawal:** The land owner may withdraw from this Agreement if, after a period of eight years, he or she files an irrevocable request to withdraw classification with the assessor. Two years from the date of that request the assessor shall withdraw classification from the land, and the applicable taxes and interest shall be imposed as provided in RCW 84.34.070 and 84.34.108.
6. **Breach:** After the effective date of this Agreement, any change in use of the land, except through compliance with items (5) or (7) shall be considered a breach of this Agreement, and shall be subject to removal of classification and liable for applicable taxes, penalties, and interest as provided in RCW 84.34.080 and 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:
  - (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 such power in anticipation of the exercise of such power.
  - (c) Sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in such land.
  - (d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of such property.
  - (e) 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.
  - (f) Transfer to a church when such land would qualify for property tax exemption pursuant to RCW 84.36.020.
  - (g) Acquisition of property interests by State agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 (See RCW 84.34.108 (5)(g)).
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.

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This Agreement shall be subject to the following conditions:

No public access to this site required because of the sensitive nature of the area.

It is declared that this Agreement specifies the classification and conditions as provided for in CH. 84.34 RCW and the conditions imposed by this Granting Authority.

Dated 1-16-94

Granting Authority:

Harvey Wolden RR 674  
City or County

Chairman, Board of Commissioners  
Title

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

Dated 30 December 1993

Nora Elizabeth Kembar  
Owner(s)

E. Theodore Lindberg  
(Must be signed by all owners)

Date signed Agreement received by Legislative Authority \_\_\_\_\_

Prepare in triplicate with one completed copy to each of the following:

Owner(s)  
Legislative Authority  
County Assessor



Sec. 7, Twp. 35 N., Rge 26 W.,  
except portion  
Pt. SW 1/4 NE 1/4 NE 1/4 described as follows;

Beq. at the NE corner said subdiv.  
thence South 217' to point of beginning.  
th cont. S 208.6', th W 208.6' th  
N 208.6' th E 208.6' to Point of  
beginning.

Kelly Briggs

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RESOLUTION NO. \_\_\_\_\_

A RESOLUTION CONCERNING AN OPEN SPACE APPLICATION  
OF TED LINDBERG AND NORAH KEMBAR

WHEREAS, the Hearing Examiner held a public hearing on November 3, 1994 to review the Open Space application of applicants Ted Lindberg and Norah Kembar, and adopted Findings of Fact, incorporating by reference the Staff Report of the Department of Planning and Community Development, and a Recommendation approving the application; and

WHEREAS, in open session, The Skagit County Board of Commissioners reviewed the application and Staff Report, Findings and Recommendation of the Hearing Examiner;

NOW THEREFORE, BE IT RESOLVED, that The Skagit County Board of Commissioners hereby adopts the Findings and Recommendation of the Hearing Examiner which are attached hereto and incorporated by reference and approves the Open Space application of Ted Lindberg and Norah Kembar subject to the conditions recommended by the Hearing Examiner.

WITNESS our hands and official seal this 14<sup>TH</sup> day of MARCH, 1994.

BOARD OF COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON

Harvey Wolden  
HARVEY WOLDEN, Chairman

Robby Robinson  
ROBBY ROBINSON, Commissioner

Robert Hart  
ROBERT HART, Commissioner

ATTEST:

Patti J. Owen  
Patti J. Owen, Clerk  
Skagit County Board of Commissioners

Approved as to form  
John Ruffner

9404280067

cc: PLANNING, MOFFAT, LINDBERG/KEMBAR

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