

1 **BEFORE THE HEARING EXAMINER FOR JEFFERSON COUNTY**

2 Irv Berteig, Hearing Examiner

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4 **RE:** Application by Robert A Burns) **File No. CUA02-00002**
5 transfer and designate 10.08)
6 acres of a 10.08-acre parcel)
7 for current use tax assessment)
8 as timber open space under the) **FINDINGS, CONCLUSIONS,**
9 provisions of RCW 84.34) **AND DECISION**
10)
11)

12 **BACKGROUND INFORMATION**

13 The proposal site is located west of Hood Canal,
14 approximately 3 miles up the Duckabush River drainage. The
15 property is located on the Duckabush River Road, Mile Post 4,
16 which is adjacent to the property.

17 **PROCEDURAL INFORMATION**

18 **Notices: Mailed:** November 22, 2002
19 **Posted:** December 2, 2002
20 **Publication:** December 4, 2002 (Peninsula Daily News).

21 **Site Visit:** None made.

22 **Open Record Hearing Date:** December 17, 2002..

23 The hearing was opened at 1:00 p.m. in the Courthouse First Floor
24 Conference Room. After the procedures were explained, testimony was
25 accepted. A verbatim recording of the public hearing was made. The
26 tape is maintained in the Jefferson Permit Center file.

27 **Participants:**

28 Jerry Smith, Associate Planner
29 Robert A Burns, Applicant
30 No other parties were present to testify.

31 **The Hearing Examiner closed the public hearing at 1:15 pm.**

1 **TABLE OF EXHIBITS:**

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Log Items	Document	Date
17	Staff Report to Hearing Examiner	12/10/2002
1-16	Copy of file submitted with the Staff Report	Misc.
18	Affidavit of Publication	12/6/2002

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6 **FINDINGS OF FACT**

7 1. The request is to transfer and designate 10.08 acres of a 10.08-
8 acre parcel for current use tax assessment as timber open space under
9 the provisions of RCW 84.34.

10 2. Legal Description: Tax Parcel Number 502-071-003 within the
11 Northeast 1/4 of Section 7, Township 25 North, Range 2 West WM.,
12 Jefferson County, Washington.

13 3. Per the Unified Development Code, as amended, the subject site is
14 zoned as Rural Residential, One Dwelling Unit Per 5 Acres (RR 1-5).

15 4. The Jefferson County Comprehensive Plan Land Use Map adopted
16 August 28, 1998, designates the subject property, including the
17 adjoining properties as Rural Residential, One Dwelling Unit Per 5
18 acres (RR 1:5).

19 5. The total property area consists of approximately 10.08 acres.
20 The requested open space designation is 10.08 acres. There are no
21 improvements constructed on the property. The property is somewhat
22 "Triangular" in shape. Most of the site is characterized by gentle
23 slope. A considerable portion of the property is moderately forested
24 with Douglas fir, Western Red Cedar, Big Leaf Maple, and Red Alder.

25 6. The major tree species on the property consists of Douglas fir
26 interspersed with western red cedar, maple and alder. Portions of the
27 property contain undergrowth consisting of salal, evergreen and
28 deciduous huckleberry, sword fern, deer fern, blackberry, Oregon grape
29 including typical native under story plants.

1 7. The Timber Management Plan contains a detailed description of the
2 three (3) soil classifications: (Grove Series; Triton Series; and
3 Hoodsport Series).

4 8. Properties in the area range from 5 acres to 80 acres in size.
5 The area is sparsely settled and is used for seasonal recreational
6 activities.

7 9. Designated Critical/Sensitive Lands include the following:

- 8 o Slight landslide hazard on a portion of the subject property.
- 9 o Erosion Hazard area mapped on far north.
- 10 o Spotted Owl & Elk Habitat Area on entire property.
- 11 o Susceptible Aquifer Recharge Area is identified for the entire
12 subject property.

13 10. The subject proposal is categorically exempt from environmental
14 review pursuant to WAC 197-11-80(6)c.

15 11. The Jefferson County Assessor's Office indicated that it is their
16 understanding that the applicant will not be withholding a one-acre
17 home site as is sometimes done in an application for enrollment in the
18 current use assessment program as timber open space. They stated "*We*
19 *have no objections to this parcel being approved for the "commercial*
20 *growth and harvest" of timber with the Open Space Timber program.*"¹

21 12. The Staff Report contains a detailed analysis of the
22 application's compliance with the provisions of the Jefferson County
23 Open Space Tax Program. The Examiner has reviewed those criteria and
24 Analysis at pages 2-4, and now adopts the staff comments as his own
25 Findings.

26 13. Robert A Burns testified that he was familiar with the Staff
27 Report and concurred with the Staff recommended conditions.

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29 ¹ Log Item 14: Assessor's Office memorandum dated December 3, 2002.

1 **REVIEW CRITERIA**

2 Current use timber open space applications are reviewed under the
3 provisions of the Jefferson County Open Space Program. The Staff
4 Report contains a concise summary of the following criteria:

- 5 (a) *Eligible Lands: Part III, Section I*
- 6 (b) *Application: Part III, Section II*
- 7 (c) *Criteria for Enrollment: Part III, Section IV, A.*
- 8 (d) *Timber Management Plan Requirements: Part III, Section IV A,1,2,3*
- 9 (e) *Site Suitability for Long term Timber Management:
Part III, Section IV,B*
- 10 (f) *"Primary Use" for Timber Crop:*
- 11 (g) *Periodic Evaluation.*

12 **CONCLUSIONS OF LAW**

13 1. Processing of the subject proposal is in accordance with the
14 classification procedures of Part III Section IV, of the Jefferson
15 County Open Space Tax Program and RCW 84.34.037.

16 2. The subject property qualifies as *Lands Eligible for Current Use*
17 *Assessment as Timber Open Space* in Jefferson County by assisting in
18 implementing the Comprehensive Plan through retention of wildlife
19 habitat and maintaining open space area.

20 3. The Timber Management Plan is consistent with the requirements of
21 the Jefferson County Open Space Taxation Program.

22 **DECISION**

23 Based on the testimony presented at the Public Hearing, the documents
24 and exhibits admitted into the record, and the above Findings and
25 Conclusions, the application by Robert A. Burns to transfer and
26 designate 10.08 acres for current use tax assessment as Timber Open
27 Space, is recommended for **APPROVAL**, subject to the following
28 conditions:

- 29 1. Prior to Board of Commissioner's approval, the applicant shall
provide certification of no delinquent property tax issued by the
Jefferson County Treasurer. Approval will be denied if the
landowner has failed to satisfy any judgments the County has

1 obtained against the landowner, or if the landowner owes any fee
2 to the County, or has failed to pay traffic fines or penalties of
the Jefferson County District Court.

3 2. Throughout its term under Timberland Tax Classification, the
4 property shall be managed in accordance with the attached Timber
5 Management Plan dated October 2002. The landowner shall provide
6 periodic progress-to-date reports related to implementation of
7 the plan. The timing of said reports should be determined by the
County Assessor's Office.

8 3. Throughout its term under Timberland Tax Classification, the
9 property shall be managed in accordance with the following
administrative procedures:

10 **A. Length of Time in Classification**

11 *Once land has been classified as open space,*
12 *agricultural/farm-land, or timberland, it shall not be*
13 *applied to any other use for a period of not less than ten*
14 *(10) years, EXCEPT for a transfer between*
15 *agricultural/farmland and timberland classifications. The*
16 *land shall continue in classification after the ten (10)*
year period until a request for withdrawal is made by the
owner or until the use of the land has changed or it has
been sold and the new owner has not signed a Notice of
Continuance.

17 **B. Owner Request for Withdrawal**

18 *After eight (8) years of the initial ten (10) year period*
19 *have passed, the landowner may request that all or part of*
20 *his land be withdrawn from the classification. This request*
21 *is irrevocable. The request shall be made to the Assessor.*
If a portion of a parcel is removed from classification,
the remaining portion must meet the requirements for
original classification.

22 **C. Action on a Timely Request for Withdrawal**

23 *Upon receipt of a request for withdrawal, the Assessor*
24 *shall notify the Board of Commissioners, which originally*
25 *approved the classification, and when two (2) years have*
26 *elapsed, the Assessor shall withdraw the land from*
27 *classification. The land, which is removed, shall be*
28 *subject to a tax equal to the difference between the amount*
of tax paid under the open space classification and the tax
as true and fair value for seven (7) years last past, plus
the statutory interest rate charged on delinquent property
taxes. Property withdrawn without a timely request may be
subject to an additional twenty percent (20%).

29 **D. Owner to Notify Assessor of Change in Use**

If an owner changes the use of his classified land, he must

1 within sixty (60) days notify the County Assessor of the
2 change. The Assessor shall then impose an additional tax
3 equal to the difference between the tax paid on current use
4 value and the tax that would have been paid on that land
5 had it not been so classified, payable for the seven (7)
6 years last past, plus interest on this additional tax at
7 the same rate as charged on delinquent property taxes, plus
8 a penalty of twenty percent (20 %) of the total amount.

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11 **E. Sale of Classified Land**

12 When classified land is sold, the seller or transferor
13 becomes liable at the time of sale for the additional tax,
14 interest and penalty of all or a portion of classified
15 lands, unless the new owner signs the Notice of Continuance
16 which is attached to or shown on the excise tax affidavit.
17 The County Auditor shall not accept an instrument of
18 conveyance on any classified land unless the Notice of
19 Continuance has been signed or the additional tax has been
20 paid.

21 **F. Removal of Land Classification by County Assessor**

22 The Assessor may determine, after giving the owner written
23 notice and an opportunity to be heard, that all or a
24 portion of the land classified for current use assessment
25 is no longer primarily devoted to and used for the purposes
26 for which it was granted classification. Within thirty (30)
27 days after the Assessor has determined that all or a
28 portion of the land no longer qualifies for classification,
29 the Assessor shall notify the owner in writing and explain
why such action was taken. The owner may appeal the removal
of classification to the Board of Equalization pursuant to
RCW 84.34.108.

At the time the land is removed from classification, it
becomes subject to an additional tax, interest, and penalty
thereon.

21 **G. Removal of Lands which adversely Effect Water Quality**

22 The Assessor may determine, after receiving written
23 certification from the Jefferson County Water Quality
24 Program, the Jefferson County Health Department, or the
25 Jefferson County Conservation District, and after giving
26 the owner written notice and an opportunity to be heard,
27 that all or a portion of the land classified for current
28 use assessment severely degrades water quality in its
29 present use. Within thirty (30) days after the Assessor
has determined that the land in its current use severely
degrades water quality, the Assessor shall notify the owner
in writing that all or a portion of the land has been
removed from current use classification, and explain why
such action was taken. The Owner may appeal such removal
of classification to the Board of Equalization pursuant to
RCW 84.34.108.

1 At the time land is removed from classification, it becomes
2 subject to an additional tax, interest, and penalty
thereon.

3 **H. When Removal of Land is not Subject to Additional Tax**

- 4 1. Land is transferred to a government entity in exchange
for other land located in the State of Washington;
5 2. Land is taken by power of eminent domain or transferred
in anticipation of the exercise of such power;
6 3. Land is sold or transferred within two (2) years of the
7 death of the owner of at least fifty percent (50%) interest
in the land;
8 4. A natural disaster changes the use of such property;
9 5. Official action by State, County, or City disallows the
present use of such land; or
10 6. The land is transferred to a church such that the land
11 would qualify for a property tax exemption pursuant to RCW
84.36.210;
12 7. Acquisition of property interest by State agencies or
13 agencies or organizations qualified under RCW 84.34.210 and
64.04.130 (reference RCW 84.34.108(5) (g)).

- 14 5. All subsequent timber harvest activities shall be conducted in
15 accordance with the Washington State Forest Practices Act.
16 6. This enrollment approval does not exclude any portion of the
17 property for a home site, either present or future.
18 7. Prior to any subsequent timber harvest activity, the applicant
19 shall obtain the appropriate storm water management approval from
20 the Jefferson County Department of Community Development in
21 accordance with the requirement of Sections 6.6 and 6.7 of the
Jefferson County Unified Development Code. This approval may
22 involve any of the following: i) Best Management Practices; ii)
Small Parcel Sediment and Erosion Control Plan; iii) Storm water
23 Management Permit; iv); Large Parcel Erosion and Sediment Control
Plan; or v) Engineered Storm water Site Plan.

24 **DATED this 30th day of December 2002.**

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28 **Irv Berteig**
Jefferson County Hearing Examiner

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