



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

June 29, 2004

Ordinance 14955

Proposed No. 2004-0189.2

Sponsors Phillips

1 AN ORDINANCE concurring with the recommendation of
2 the hearing examiner to approve, subject to conditions, the
3 application for public benefit rating system assessed
4 valuation for open space submitted by Palmer Coking Coal
5 Company for property located at 26410, 26416, 26422 and
6 26428 Southeast Kent-Kangley Road, Ravensdale, WA
7 98051, designated department of natural resources and
8 parks, water and land resources division file no.
9 E03CT017.

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11
12 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

13 SECTION 1. This ordinance does hereby adopt and incorporate herein as its
14 findings and conclusions the findings and conclusions contained in the report and
15 recommendation of the hearing examiner dated June 8, 2004, to approve subject to
16 conditions, the application for public benefit rating system assessed valuation for open
17 space submitted by Palmer Coking Coal Company for property located at 26410, 26416,


Ordinance 14955

18 26422 and 26428 Southeast Kent-Kangley Road, Ravensdale, WA 98051, designated
19 department of natural resources and parks, water and land resources division file no.
20 E03CT017, and the council does hereby adopt as its action the recommendation or
21 recommendations contained in the report.
22

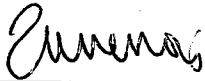
Ordinance 14955 was introduced on 4/12/2004 and passed by the Metropolitan King
County Council on 6/28/2004, by the following vote:

Yes: 12 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.
Pelz, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague, Mr. Irons, Ms.
Patterson and Mr. Constantine
No: 0
Excused: 1 - Mr. McKenna

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Phillips, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments A. Hearing Examiner Report dated June 8, 2004

June 8, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Natural Resources & Parks, Water and Land Resources Division File No.
E03CT017
Proposed Ordinance No. **2004-0189**

Open Space Taxation (Public Benefit Rating System)
Application of **Palmer Coking Coal Company**
P.O. Box 10
Black Diamond, WA 98010

Location of Property: 26416, 26410, 26422 and 26428 Kent-Kangley Road Southeast
Ravensdale, Washington

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve 14.65 acres for 20% of market value
Department's Final:	Approve 14.65 acres for 20% of market value
Examiner:	Approve 14.65 acres for 20% of market value and 2.00 acres for 50% of market value

PRELIMINARY REPORT:

The Department of Natural Resources & Parks, Water and Land Resources Division, report on item no. E03CT017 was received by the Examiner on May 19, 2004.

PUBLIC HEARING:

After reviewing the Department of Natural Resources & Parks, Water and Land Resources Division, report and examining available information on file with the application, the Examiner conducted a public hearing on the subject as follows:

The hearing on item no. E03CT017 was opened by the Hearing Examiner at 1:53 p.m., May 26, 2004, in the Hearing Examiner's Conference Room, 400 Yesler Way, Room 404, Seattle, Washington, and closed at 2:53 p.m.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner: See "SUBJECT" above

Location: See "SUBJECT" above

PBRS Resources Requested: **High Priority Resources**
 Aquifer protection area
 Open space close to urban or growth area
 Significant plant, wildlife or salmonid habitat area
Medium Priority Resource
 Special animal site
Bonus Resource
 Contiguous Parcels Under Separate Ownership
Public Access
 Limited access (seasonal and/or upon special arrangements)

Zoning: RA-5

STR: NE-SW-25-22-06

	Lot A	Lot B	Lot C	Lot D
Parcel	#252206-9009	#252206-9047	#252206-9060	#252206-9142
Total acreage:	6.19	5.73	6.19	6.05
Participating PBRS:	3.88	2.78	2.39	2.59
Additional requested PBRS:	1.10	1.10	1.60	2.35
Recommended PBRS:	3.84	3.19	3.19	4.43

Please note: Total property size is 24.16 acres. Total previously participating PBRS area is 11.64 acres. Total additional area requested is 6.15 acres for a total requested enrollment of 17.79 acres. WLRD staff recommends a total PBRS area of 14.65 acres, an addition of 3.01 acres to the existing PBRS enrolled acreage.

2. Except as modified herein, the facts set forth in the King County Department of Natural Resources & Parks, Water and Land Resources Division, Preliminary Report to the King County Hearing Examiner for the May 26, 2004, public hearing are found to be correct and are incorporated herein by this reference. Copies of the said report will be attached to the copies of this report submitted to the King County Council.

3. The Palmer Coking Coal property is currently enrolled in the PBRs program. The Applicant seeks to increase the total enrolled area from 11.64 acres to 17.79 acres through inclusion of additional areas within a BPA easement across parcels 9047, 9009 and 9060 and a grassed section lying between a stream complex and the homesites on parcels 9009 and 9060. The Division staff has recommended that approximately 2 acres requested within the BPA easement and another 1.14 acres adjacent to the homesites be excluded from PBRs.
4. The BPA easement areas were conditionally approved for inclusion into PBRs in 2003 contingent upon approval by the Division of a forest management plan which included an invasive species control element. Staff declined to approve the Applicant's plan based on heavy reliance on herbicides for invasives control, conflicts between forestry objectives and BPA maintenance requirements, and a resultant lack of public benefit attributable to the compromised proposal. The Applicant argues that limits on herbicide use are not specified in the PBRs ordinance, and that for certain benefit categories the presence or absence of invasive species is irrelevant.
5. With respect to the grassy areas near the homesites, staff's concern is that unless fencing is provided there will be no assurance that the proposed open space area can be secured against domestic encroachment. Similarly, without planting woody native vegetation, staff believes that invasive plants will soon reclaim the meadow area.
6. Staff's determination that the Applicant's property does not qualify for public access credit for provision of an entry route to an offsite miner's memorial is supported by the record. The memorial is not a designated County landmark and therefore does not meet the ordinance requirements for a recognized resource destination.

CONCLUSIONS:

1. The controversy between Division staff and the Applicant highlights some of the fundamental problems with the PBRs ordinance as it currently exists. The 1997 Requirements and Resources appendix to ordinance 12969 states that for "each priority resource, the County will determine the appropriate land area that receives credit for a particular priority resource and accompanying tax reduction." Strictly applied, this provision would require a separate acreage computation for each resource category. As applied to a property having four or five qualifying resource categories, this provision would result in a complex and administratively unwieldy division of each parcel into multiple distinct taxation zones. Rather than engage in such a burdensome process, staff has usually opted to qualify the entire property for each resource category. Thus, for example, while the Palmer property contains a portion of a wildlife network on parcels 9047 and 9009, the resultant PBRs credit has been allocated to parcels 9060 and 9142 as well.
2. In order to prevent this largesse from producing entirely indefensible results, staff has concomitantly introduced a requirement that there should be an irreducible substratum of open space characteristics inhering in qualifying properties so that at least some public benefit from PBRs enrollment can be assured. These basic characteristics frequently include environmentally benign measures such as invasives removal, buffer restoration plans, limitations on herbicide use and the like. The problem is that this substratum of essential requirements often finds little support in the regulatory framework. For example, as argued by Palmer Coking Coal, for a

resource category such as Open Space Close to Urban or Growth Area, low quality open space such as a BPA easement functions just as well as a high quality wetland or forest.

3. One answer to the dilemma (at least until the ordinance is revised) is to confer upon low quality open space PBRS credit strictly limited to the specific categories for which it qualifies. Thus the 2.00 acres of BPA easement should only qualify for 5 points credit based on its urban proximity. This approach is consistent with the legislatively adopted language cited above in conclusion no. 1.
4. The issue with respect to the grassed areas next to the homesites is not a question of resource quality so much as one of credibility. Open space next to a house and yard is not a viable resource unless some factor of separation assures its integrity. Without a fence or other effective barrier, the line between a “meadow” and a lawn cannot be guaranteed, and staff’s decision as to what constitutes a realistic open space boundary is entitled to deference.
5. Approval of current use valuation for 16.65 acres of the subject property, pursuant to the Public Benefit Rating System adopted by King County Ordinance No. 10511, as amended, would be consistent with the purposes and intent of King County to maintain, preserve, conserve and otherwise continue in existence adequate open space lands and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of King County and its citizens.
6. Timely application has been made to King County for the current use valuation of the subject property to begin in 2005. Notice of said application was given in the manner required by law.
7. The subject property contains priority open space resources pursuant to the King County Public Benefit Rating System on 14.65 acres which justify a total award of 23 points. The resulting current use value is 20% of market value for this 14.65 acre portion of the enrolled property. The property also contains another 2.00 acres within the BPA easement which is entitled to an award of 5 points and a current sue valuation of 50% of market value.
8. Credit for the Forest Stewardship Land category is contingent upon implementation of the Applicant’s approved forest stewardship plan. Failure to meet this requirement will result in a reduced point total of 18 and resulting current use valuation of 30% of market value on 14.65 acres of the subject property.
9. The property is currently enrolled in the PBRS program (file no. E02CT002). Any agreement signed as a result of approval of this application to increase the enrolled acreage shall supersede any PBRS participation agreement previously signed for the subject parcels.

RECOMMENDATION:

APPROVE the request for current use valuation of 20% of market value for 14.65 acres and 50% of market value on a further 2.00 acres of the property, subject to the conditions recommended in the Department of Natural Resources & Parks report for the May 26, 2004, public hearing and the following additional conditions of approval:

1. Award of points for the Forest Stewardship Land category is contingent upon implementation of the Applicant's forest stewardship plan.
2. Execution of an agreement pursuant to this recommendation shall invalidate any previous PBRS participation agreement for the subject property.

Current use valuation shall be subject to all terms and conditions of RCW 84.34 and King County Code Chapter 20.36, as the same may be amended from time to time, and all regulations and rules duly adopted to implement state law and county ordinances pertaining to current use valuation.

RECOMMENDED this 8th day of June, 2004.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 8th day of June, 2004, to the following parties and interested persons:

Palmer Coking Coal Co.
c/o Bill Kombol
P.O. Box 10
Black Diamond, WA 98010

Susan Monroe, Department of Assessments
Ted Sullivan, Dept. of Natural Resources & Parks
Charlie Sundberg, Office of Cultural Resources
Marilyn Cope, KCC – Committee Staff

NOTICE OF RIGHT TO APPEAL AND ADDITIONAL ACTION REQUIRED

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before June 22, 2004***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before June 29, 2004***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar

days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

Action of the Council is final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE MAY 26, 2004, PUBLIC HEARING ON DEPARTMENT OF NATURAL RESOURCES & PARKS FILE NO. E03CT017:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Ted Sullivan representing the Department and William Kombol representing the Applicant.

The following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 *Not Submitted*
- Exhibit No. 2 *Not Submitted*
- Exhibit No. 3 *Not Submitted*
- Exhibit No. 4 PBRs Staff Report
- Exhibit No. 5 Affidavit of Publication
- Exhibit No. 6 Notice of hearing from the Hearing Examiner's Office
- Exhibit No. 7 Notice of hearing from the PBRs program
- Exhibit No. 8 Legal notice and introductory ordinance to County Council
- Exhibit No. 9 Application signed/notarized
- Exhibit No. 10 Letter to Applicant re: received application and approval schedule
- Exhibit No. 11 Assessor's map
- Exhibit No. 12 King County Assessor's database printout
- Exhibit No. 13 Arcview/orthophoto map
- Exhibit No. 14 *Not submitted*
- Exhibit No. 15 *Not submitted*
- Exhibit No. 16 PBRs staff report for E02CT002
- Exhibit No. 17 Hearing Examiner's report for E02CT002
- Exhibit No. 18 Memo to Assessor acreage to enroll under E02CT002
- Exhibit No. 19 Email to Applicant re: E02CT002 options for enrollment (12/02/03)
- Exhibit No. 20 Email from Applicant re: decision to enroll and reapply (12/02/03)
- Exhibit No. 21 Email to E03CT017 Applicant re: need for original affirmation (12/15/03)
- Exhibit No. 22 Email to Applicant requesting application fee (5/09/04)
- Exhibit No. 23 Email to Applicant re: deposit of fee and receipt of report
- Exhibit No. 24 Forested Open Space and Native Growth Retention Area Covenant
- Exhibit No. 25 Sensitive Areas Notice
- Exhibit No. 26 Photographs (color copies, no. 1-12) of subject property

SLS:ms
E03CT017 2004-0189 RPT

Attachment

This document is provided for information only. DO NOT complete and return. A completed copy will be furnished to the Applicant(s) by the Office of the Hearing Examiner after an application has been approved by the Metropolitan King County Council.

OPEN SPACE TAXATION AGREEMENT

Chapter 84.34 RCW

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

Owner(s)
Granting Authority
Legal Description

Assessor's Property Tax Parcel or Account Number:

Department of Natural Resources & Parks File Number:

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, 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

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 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. The landowner may withdraw from this agreement if, after a period of eight years, he or she files a 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. After the effective date of this agreement, any change in use of the land, except through compliance with items (5), (7), or (9), 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 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:
 - 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, or other such calamity rather than by virtue of the act of the land owner 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 (See RCW 84.34.108(6)(f)).
 - g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(e).
 - 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 for the riparian open space program 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.
 - l) The sale or transfer of land 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 and the sale or transfer takes place within two years after July 22, 2001, and the death of the owner occurred after January 1, 1991.
 - m) The date of death shown on the death certificate is the date used.
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 as provided in Chapter 84.34 RCW.
 This agreement shall be subject to the following conditions: _____

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).

Granting Authority:

Dated _____

 City or County

 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 (must be signed by all owners).

 Print Name

 Owner(s)

Date signed agreement received by Legislative Authority _____

To inquire about the availability of this notice in an alternative format for the visually impaired or in a language other than English, please call (360)753-3217. Teletype (TTY) users may call (800)451-7985.

REV 64 0022-2 (7/23/02)