

**KING COUNTY  
DEPARTMENT OF NATURAL RESOURCES AND PARKS  
WATER AND LAND RESOURCES DIVISION**

**Report to the King County Hearing Examiner for Property  
Enrollment in the Public Benefit Rating System (PBRs)**

**April 22, 2021 – Public Hearing**

**APPLICANTS: Timothy O'Brien and Victoria Timko**

**File No. E20CT040**

**A. GENERAL INFORMATION:**

1. Owners: Timothy O'Brien and Victoria Timko  
29420 Se 352nd Street  
Enumclaw, WA 98022
2. Property location: same as above
3. Zoning: RA5
4. STR: NW-29-21-07
5. PBRs categories requested by applicants:

NOTE: The property is currently enrolled in the Public Benefit Rating System program (E06CT075). The owners of the property are reapplying to add credit for additional acreage and program categories.

**Open space resources**

- \*Public recreation area
- \*Buffer to public or current use classified land
- \*Significant wildlife or salmonid habitat
- \*\*Watershed protection area

**Bonus categories**

- \*\*Resource restoration
- \*Unlimited public access

NOTE: \*Staff recommends credit be awarded for these PBRs categories. \*\* Award of these categories is also possible but will be dependent upon specific category requirements being met (see resource category discussion under Section E beginning on page 5).

**Exhibit 1**

Exhibit no.	1
Case name	Timothy O'Brien and Victoria Timko
Case number	E20CT040
Date received	4/22/2021
KING COUNTY HEARING EXAMINER	

6. Parcel: 292107-9066  
 Total acreage 6.01  
 Requested PBRs: 4.00  
 Home site/excluded area: 2.47  
**Recommended PBRs: 3.54\***

NOTE: \*The attached map (2019 aerial photo) outlines in yellow the parcel boundaries, green outlines 0.40 acres that will be replanted with native vegetation in accordance to an approved forest restoration plan and in blue the 2.07 acres proposed to be excluded from PBRs. In the event the Assessor’s official parcel size is revised, PBRs acreage should be administratively adjusted to reflect that change.

**B. FACTS:**

1. Zoning in the vicinity: Properties in the vicinity are zoned RA5, RA10 and F.
2. Development of the subject property and resource characteristics of open space area: The property contains a residence, access driveway, septic and drain field, landscaping, garden, walking trails, lawn and small parking area. Additionally, the property contains a portion of SE 352nd Street located inside and along the south property line and a portion of an access easement located inside and along the west property line. The open space portion of the property consists of walking/hiking/bicycle/horseback riding trails through the mix of coniferous and deciduous trees and mostly native shrubs and plants as well as 0.40 acres that will be natively revegetated. There is a King County trail marker with a Quick Response (QR) code that when scanned with a phone it allows the trail user access to details and maps of the local trail system.
3. Site use: The property is used as single-family residence.
4. Access: The property is accessed from SE 352nd Street.
5. Appraised value for 2020 (based on Assessor’s information dated 04/02/2021):

<u>Parcel #292107-9066</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Appraised value	<b>\$220,000.00</b>	\$526,000.00	\$746,000.00
Tax applied	<b>\$2,546.54*</b>	\$6,088.53	\$8,635.07

NOTE: \*This value is presently impacted by the land’s participation in the PBRs program (RCW 84.34), which is reflected in the land’s current and lower taxable value of \$166,922 (tax applied \$1,932.15). Participation in PBRs reduces the appraised land value for the portion of the property enrolled resulting in a lower taxable value

## **C. REQUIREMENTS SPECIFIED BY KING COUNTY CODE (KCC):**

### **KCC 20.36.010 Purpose and intent.**

It is in the best interest of the county 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 county and its citizens.

It is the intent of this chapter to implement RCW Chapter 84.34, as amended, by establishing procedures, rules and fees for the consideration of applications for public benefit rating system assessed valuation on "open space land" and for current use assessment on "farm and agricultural land" and "timber land" as those lands are defined in RCW 84.34.020. The provisions of RCW chapter 84.34, and the regulations adopted thereunder shall govern the matters not expressly covered in this chapter.

### **KCC 20.36.100 Public benefit rating system for open space land – definitions and eligibility.**

- A. To be eligible for open space classification under the public benefit rating system, property must contain one or more qualifying open space resources and have at least five points as determined under this section. The department will review each application and recommend award of credit for current use of property that is the subject of the application. In making such recommendation, the department will utilize the point system described in section B. and C. below.
- B. The following open space resources are each eligible for the points indicated:
1. Public recreation area – five points
  2. Aquifer protection area – five points
  3. Buffer to public or current use classified land – three points
  4. Equestrian-pedestrian-bicycle trail linkage – thirty-five points
  5. Active trail linkage – fifteen or twenty-five points
  6. Farm and agricultural conservation land – five points
  7. Forest stewardship land – five points
  8. Historic landmark or archaeological site: buffer to a designated site – three points
  9. Historic landmark or archaeological site: designated site – five points
  10. Historic landmark or archaeological site: eligible site – three points
  11. Rural open space – five points
  12. Rural stewardship land – five points
  13. Scenic resource, viewpoint, or view corridor – five points
  14. Significant plant or ecological site – five points
  15. Significant wildlife or salmonid habitat – five points
  16. Special animal site – three points
  17. Surface water quality buffer – five points
  18. Urban open space – five points
  19. Watershed protection area – five points

C. Property qualifying for an open space category in subsection B. of this section may receive credit for additional points as follows:

1. Resource restoration - five points
2. Additional surface water quality buffer - three or five points
3. Contiguous parcels under separate ownership - two points
4. Conservation easement of historic easement – fifteen points
5. Public access - points dependent on level of access
  - a. Unlimited public access - five points
  - b. Limited public access - sensitive areas - five points
  - c. Environmental education access – three points
  - d. Seasonal limited public access - three points
  - e. None or members only – zero points
6. Easement and access – thirty-five points

**D. 2016 COMPREHENSIVE PLAN POLICIES AND TEXT:**

**E-101** In addition to its regulatory authority, King County should use incentives to protect and restore the natural environment whenever practicable. Incentives shall be monitored and periodically reviewed to determine their effectiveness in terms of protecting natural resources.

NOTE: Monitoring of participating lands is the responsibility of both department PBRS staff and the landowner. This issue is addressed in the Resource Information document (page 4) and detailed below in Recommendation #B11.

**E-112a** The protection of lands where development would pose hazards to health, property, important ecological functions or environmental quality shall be achieved through acquisition, enhancement, incentive programs and appropriate regulations. The following critical areas are particularly susceptible and shall be protected in King County:

- a. Floodways of 100-year floodplains;
- b. Slopes with a grade of 40% or more or landslide hazards that cannot be mitigated;
- c. Wetlands and their protective buffers;
- d. Aquatic areas, including streams, lakes, marine shorelines and their protective buffers;
- e. Channel migration hazard areas;
- f. Critical Aquifer Recharge Areas;
- g. Fish and Wildlife Habitat Conservation Areas; and
- h. Volcanic hazard areas.

**E-421** Terrestrial and aquatic habitats should be conserved and enhanced to protect and improve conditions for fish and wildlife.

NOTE: PBRS is an incentive program provided to encourage voluntary protection of open space resources and maintain high quality resource lands.

**E-429** King County should provide incentives for private landowners who are seeking to remove invasive plants and noxious weeds and replace them with native plants, such as providing technical assistance or access to appropriate native plants.

NOTE: Participation in PBRS requires landowners address invasive plant and noxious weed control and removal within enrolled portions of a property. Replacement with native vegetation is also encouraged via the implementation of approved forest stewardship, rural stewardship or resource restoration plans.

**E-443** King County should promote voluntary wildlife habitat enhancement projects by private individuals and businesses through educational, active stewardship, and incentive programs.

**E-476** King County should identify upland areas of native vegetation that connect wetlands to upland habitats and that connect upland habitats to each other. The county should seek protection of these areas through acquisition, stewardship plans, and incentive programs such as the Public Benefit Rating System and the Transfer of Development Rights Program.

**E-504** King County should protect native plant communities by encouraging management and control of nonnative invasive plants, including aquatic plants. Environmentally sound methods of vegetation control should be used to control noxious weeds.

NOTE: Lands participating in PBRS provide valuable resource protection and promote the preservation or enhancement of native vegetation. Addressing nonnative vegetation (invasive plant species), through control and eradication is a PBRS requirement.

**E-449** King County shall promote retention of forest cover and significant trees using a mix of regulations, incentives, and technical assistance.

**R-605** Forestry and agriculture best management practices are encouraged because of their multiple benefits, including natural resource preservation and protection.

NOTE: The implementation of an approved forest stewardship, farm management or rural stewardship plan benefits natural resources, such as wildlife habitat, stream buffers and groundwater protection, as well as fosters the preservation of sustainable resources.

## E. PBRs CATEGORIES REQUESTED and DEPARTMENT RECOMMENDATIONS:

### Open space resources

- Public recreation area

The property contains a portion of a trail that allows users to take a short-cut off both the access easement on the west side of the property and SE 352nd Street on the southeast side of the property. There is a trail system to northwest of the property, including the Green River Gorge where users can pass through the property and continue onto Hyde Lake Park trails a few parcels to the east (see Exhibit 6). Credit for this category is recommended.

- Buffer to public or current use classified land

The property is abutting land enrolled in the Timberland program to the north (parcel 292107-9040). The enrolling open space area is providing a buffer of native vegetation of more than 50 feet to this adjacent land, which exceeds the category's requirement. Credit for this category is recommended.

- Significant wildlife or salmonid habitat

The property contains habitat for numerous wildlife species, including foraging and nesting habitat for the pileated woodpecker, which is listed as a candidate species of concern by the Washington Department of Fish and Wildlife. Upon conducting a site visit, program staff observed evidence of pileated woodpecker activity and determined areas of the forest on the property is of sufficient age and diversity to support the species regular use of the property. Award of this category is consistent with habitat as defined by KCC 20.36.100, section B.15.a (1). Credit for this category is recommended.

- Watershed protection area

The enrolling open space contains 3.54 acres of native forest cover which is less than 65% of the total property acreage. The landowner intends on replanting 0.40 acres (outlined in green on the attached map) according to a forest restoration plan which would increase the enrolling acreage to 3.94 acres which is more than 65% of the total property acreage. At this time, credit for this category cannot be recommended because the plan has not yet been approved by county forestry staff. However, **if this plan is approved by the department on or before July 30, 2021**, then credit for this category should be awarded administratively.

### Bonus categories

- Resource restoration

The owners are restoring a portion of the property that is currently being maintained as lawn (see 0.40 acres outlined in green on the attached map). The owners have provided a forest stewardship plan to a county forester, but it has yet to be approved. At this time, credit for this category cannot be recommended because a plan has not been approved. However, **if a resource restoration plan is submitted by June 30, 2021, and approved by the department on or before July 30, 2021**, then credit for this category should be awarded administratively. Award of this category may allow forestry activities to occur in the participating open space area. It is the landowner's responsibility to apply for and receive the necessary approvals from the applicable state and local governmental

agencies for forestry activities that require a permit or approval, such as clearing and grading. It should be noted that this planting activity must be completed within a three-year period.

- Unlimited public access

The property contains a portion of a trail that allows users to take a short-cut off both the access easement on the west side of the property and SE 352nd Street on the southeast side of the property. There is a trail system to northwest of the property, including the Green River Gorge where users can pass through the property and continue onto Hyde Lake Park trails a few parcels to the east (See Exhibit 6). And in the coming years, there are plans to improve the connection between Nolte State Park and the Green River Gorge that will likely increase public traffic through the area. Award of this category is appropriate. Credit is recommended.

NOTE: It is important to note that enrollment in the PBRs program requires the control and removal of invasive plant species. This issue is addressed in the Resource Information document (page 3) and below in Recommendation #B7.

## CONCLUSIONS AND RECOMMENDATIONS

### A. CONCLUSIONS:

1. Approval of the subject request would be consistent with the specific purpose and intent of KCC 20.36.010.
2. Approval of the subject request would be consistent with policy E-101 of the King County Comprehensive Plan.
3. Of the points recommended, the subject request meets the mandatory criteria of KCC 20.36.100 as indicated:

**Open space resources**

Public recreation area	5
Buffer to public or current use classified lands	3
Significant wildlife or salmonid habitat	5
Watershed protection area	*

**Bonus categories**

Resource restoration	*
Unlimited public access	5

**TOTAL 18 points**

NOTE: \*If a forest restoration plan is approved by July 30 and it addresses the 0.40 acre replanting (area in green on the attached map) then credit can be awarded for both the resource restoration category and the watershed protection area category. The enrolling

PBRS acreage would increase from 3.54 acres to 3.94 acres and the point total would also increase to 28 and the reduction in land assessed value for the portion enrolled would increase to 80%.

**PUBLIC BENEFIT RATING**

For the purpose of taxation, 18 points result in 30% of appraised value and an 70% reduction in taxable value for the portion of land enrolled.

**B. RECOMMENDATION:**

APPROVE the request for current use taxation "Open space" classification with a Public Benefit Rating of 18 points, subject to the following requirements:

**Requirements for Property Enrolled in the  
Public Benefit Rating System Current Use Taxation Program**

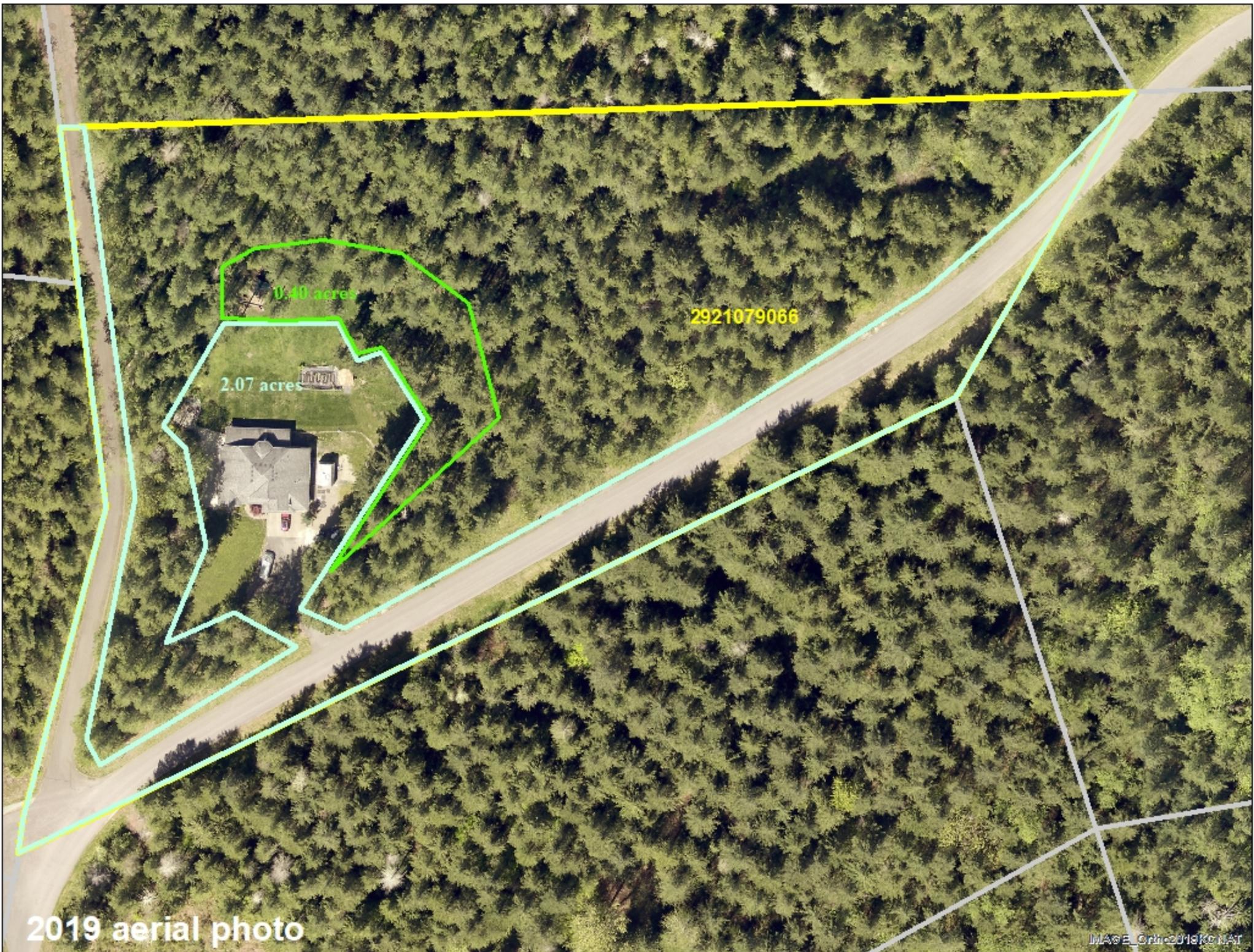
1. Compliance with these requirements is necessary to continue to receive the tax benefits from the King County Public Benefit Rating System (PBRS) current use taxation program for the property enrolled in the program (Property). Failure to abide by these requirements can result in removal of current use designation and subject the property owner (Owner) to the penalty, tax, and interest provisions of RCW 84.34 and assessment at true and fair value. The King County Department of Assessments (DoA) and the Water and Land Resources Division, Director's Office, Agriculture, Forestry and Incentives Unit (AFI) or its successor may re-evaluate the Property to determine whether removal of the open space designation is appropriate. Removal shall follow the process in RCW 84.34.108.
2. Revisions to these requirements may only occur upon mutual written approval of the Owner and granting authority. These conditions shall apply so long as the Property retains its open space designation. If a conservation easement acceptable to and approved by King County is granted by the Owner or the Owner's successors in interest to the Department of Natural Resources and Parks, King County or a grantee approved by King County, these requirements may be superseded by the terms of such easement, upon written approval by King County.
3. The open space classification for this Property will continue so long as it meets the open space purposes for which it was initially approved. Classification as open space will be removed upon a determination by King County that the Property no longer meets the open space purposes for which it was initially approved. A change in circumstances which diminishes the extent of public benefit from that approved by the King County Council in the open space taxation agreement will be cause for removal of the current use assessment classification. It is the Owner's responsibility to notify the DoA and the AFI Unit or its successor of a change in circumstance with regard to the Property.

4. When a portion of the open space Property is withdrawn or removed from the program, the AFI Unit or its successor and the DoA shall re-evaluate the remaining Property to determine whether it may continue to qualify under the program. If the remaining portion meets the criteria for priority resources, it may continue under current use taxation.
5. Except as provided for in sections 6, 7 and 10 and below, no alteration of the open space land or resources shall occur without prior approval by the AFI Unit or its successor. **Any unapproved alteration may constitute a departure from an approved open space use and be deemed a change of use, and subject the Property to the additional tax, interest, and penalty provisions of RCW 84.34.080.** "Alteration" means any human-induced action that adversely impacts the existing condition of the open space Property or resources including but not limited to the following: *(Walking, horseback riding, passive recreation or actions taken in conjunction with a resource restoration plan, or other similar approved activities are permitted.)*
  - a. erecting structures;
  - b. grading;
  - c. filling;
  - d. dredging;
  - e. channelizing;
  - f. modifying land or hydrology for surface water management purposes;
  - g. cutting, pruning, limbing or topping, clearing, planting, introducing, relocating or removing vegetation, however, selective cutting may be permitted for firewood;
  - h. applying herbicides or pesticides or any hazardous or toxic substance;
  - i. discharging pollutants excepting stormwater;
  - j. paving, construction, application of gravel;
  - k. storing of equipment, household supplies, play equipment, or compost;
  - l. engaging in any other activity that adversely impacts the existing vegetation, hydrology, wildlife, wildlife habitat, or other open space resources.
6. Notwithstanding the provisions of Section 5 trees posing a hazard to structures or major roads may be removed. Any trees removed must be replaced.
7. If an area of the Property becomes or has become infested with noxious weeds, the Owner may be required to submit a control and enhancement plan to the AFI Unit or its successor in order to remove such weeds. If an area of the Property becomes or has become invaded by non-native species, the Owner may be required to submit, or may voluntarily submit, an enhancement plan to the AFI Unit or its successor, in order to replace such species with native species or other appropriate vegetation.
8. There shall be no motorized vehicle driving or parking allowed on the open space Property, except for the purpose of forestry and in areas of the Property being used as forest stewardship land.
9. Grazing of livestock is prohibited on the open space Property.

10. Resource restoration must be implemented in a timely manner in accordance with any Resource Restoration Plan that applies to the Property and that has been approved by the PBRS Staff. During plan implementation and for the first 5 years of enrollment, the Owner must submit a yearly monitoring report to PBRS Staff describing the progress and success of the restoration, including photographs. An environmental consultant need not prepare the report.
11. An owner of property receiving credit for farm and agricultural conservation land, forest stewardship land, or rural stewardship land, all of which require a stewardship or management plan, must annually provide a monitoring report that describes progress of implementing the plan. The owner must submit this report, which must include a brief description of activities taken to implement the plan and photographs from established points on the property, to the department by email or by other mutually agreed upon method. An environmental consultant need not prepare this report.
12. Enrollment in PBRS does not exempt the Owner from obtaining any required permit or approval for activity or use on the Property.

**TRANSMITTED** to the parties listed hereafter:

Office of the King County Hearing Examiner  
Timothy O'Brien and Victoria Timko, applicants  
Debra Clark, King County Department of Assessments  
Wendy Sammarco, King County forester



0.40 acres

2.07 acres

2921079066

2019 aerial photo

IMAGE\_Ortho2019KONAR