

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

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

March 23, 2023 – Public Hearing

APPLICANTS: Lorraine Swalley and Raymond Cunningham File No. E22CT022

A. GENERAL INFORMATION:

1. Owners: Lorraine Swalley and Raymond Cunningham
9905 174th Avenue SE
Renton, WA 98059
2. Property location: same as above
3. Zoning: RA5
4. STR: NE-01-23-05
5. PBRs categories requested by the applicant:

Open space resources

- Aquifer protection area
- *Buffer to public or current use classified land
- **Forest stewardship land
- Scenic resource, viewpoint or view corridor
- **Significant plant or ecological site
- **Significant wildlife or salmonid habitat
- *Special animal site
- **Surface water quality buffer
- *Watershed protection area

Bonus category

- **Additional surface water quality buffer

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 6).

EXHIBIT 1

Exhibit no.	6
Case name	Lorraine Swalley and Raymond Cunningham
Case number	E22CT022
Date received	3/23/2023
KING COUNTY HEARING EXAMINER	

6. Parcel:	012305-9065
Total acreage:	5.00
Requested PBRs:	4.51
Home site/excluded area:	<u>0.63</u> 0.81
Recommended PBRs:	<u>4.37</u> 4.19

NOTE: The attached map (2019 aerial photo) outlines in yellow the parcel boundaries and in blue the areas 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, RA10P and RA10.
2. Development of the subject property and resource characteristics of open space area: The property is used as a single-family residence. There is a 30-ft road easement on the east side of property, landscaping, driveway, and well. The open space is a mix of coniferous and deciduous forest with mostly native understory. It needs to be noted that a portion of the easement is enrolling in open space, if the trees be maintained in a way that is not supported by the forest plan, this area should be removed with appropriate compensating taxes.
3. Site use: The property is used as a single-family residence.
4. Access: The property is accessed from 174th Avenue SE.
5. Appraised value for 2022 (based on Assessor’s information dated 02/27/2023):

<u>Parcel #012305-9065</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Appraised value	\$388,000.00*	\$1,629,000.00	\$2,017,000.00
Tax applied	\$3,450.78	\$14,487.	\$17,938.73

NOTE: *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. 2020 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

- Aquifer protection area

To be eligible for this category, a property must have a minimum of one acre of which native plants are dominant that is located within a designated critical aquifer recharge area. This property is not located in an area that is designated as a critical aquifer recharge area therefore credit for this category cannot be recommended.

- Buffer to public or current use classified land
The property is west of Cougar Mountain Wildlife Park (parcel# 430971-0350) owned by King County Parks. 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. ~~Credit for this category is recommended.~~
- Forest stewardship land
The property contains more than four acres of contiguous forest. The owners are interested in improving the health and diversity of their forest. At this time, credit for this category cannot be recommended because a plan has not been provided. However, if a forest stewardship plan is **provided by October 29, 2023, and approved by the department on or before December 31, 2023**, 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.
- Scenic resource, viewpoint or view corridor
In order to be eligible for this category, a property must be either a) a scenic natural resource significant to the character of the county, b) provide a viewpoint accessible to the public or c) contribute to a recognized county view corridor. The property does not consist of greater than ten acres of native forest, and it does not contribute significantly to the character of the county. Since the general public does not access the property to view a noteworthy natural resource, it would not be considered a viewpoint. The property is not part of a recognized view corridor. Credit for this category cannot be recommended.
- Significant plant or ecological site
The property is natively vegetated. However, qualification for this category requires the existence of a rare plant species or ecosystem identified by the Washington Department of Natural Resources' Natural Heritage Program, existence of which must be confirmed by an expert. Credit for this category cannot be recommended. However, if the landowner provides sufficient documentation and written support by Department of Natural Resources expert by December 31, 2023 then credit for this category can be awarded administratively.
- Significant wildlife or salmonid habitat
Although the property contains habitat for numerous wildlife species and the landowner has provided a list of a few species on the property that are listed as endangered, threatened, sensitive or candidate species of concern by the Washington Department of Fish and Wildlife, however no documentation/photos have been provided of their use of the property. Credit for this category cannot be recommended. However, if the landowner provides sufficient documentation and written support by WDFW expert by December 31, 2023 then credit for this category can be awarded administratively.
- Special animal site
Award of credit for this category requires the property to include or be adjacent to a portion of the county's designated wildlife habitat network or be identified as an urban natural area by the State's priority habitat and species project. The county's recognized wildlife habitat network is not identified to be on the property. However, the State's

priority habitat coverage is located on the entire property and over four acres are natively vegetated (NOTE: the State urban natural areas designations are now known as biodiversity areas and corridors). Credit for this category is recommended.

- Surface water quality buffer
In order to be eligible for this category, the enrolling land must be providing a qualifying buffer of native vegetation to a lake, pond, stream, wetland or shoreline within the enrolling portion of a property. The property does not appear to contain any aquatic features. Credit for this category cannot be recommended. However, there is an area on the NW side of the property that contains plants typical of aquatic conditions which may be an indicator of wetland. If the landowner can submit an independent wetland delineation report or similar, on or before December 31, 2023 that confirms the presence of wetland (or similar), and is providing at least one-and-half times the buffer required, then credit can be awarded administratively.
- Watershed protection area
The enrolling open space contains more than 4 acres of native forest cover which is more than 65% of the total property acreage and is more forest cover than required by county regulation for this property. Credit for this category is recommended.

Bonus category

- Additional surface water quality buffer
In order to be eligible for this category, a formally designated or delineated wetland, creek, or pond, etc, must be on or adjacent to the enrolling land. In this case, the property is not adjacent to nor does it contain a portion of a surface water body. Credit for this category cannot be recommended. However, there is an area on the NW side of the property that contains plants that typically grow in aquatic conditions which may be an indicator of wetland. If the landowner can submit an independent wetland delineation report or similar, on or before December 31, 2023 that confirms the presence of wetland (or similar), and is providing two times (3 points) or three times (5 points) the buffer required then credit can be awarded administratively.

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

Aquifer protection area	0
Buffer to public or current use classified land	3
Forest stewardship land	*
Scenic resource, viewpoint or view corridor	0
Significant plant or ecological site	**
Significant wildlife or salmonid habitat	**
Special animal site	3
Surface water quality buffer	** 0
Watershed protection area	5

Bonus category

Additional surface water quality buffer	** 0
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TOTAL 11 points

NOTE: *If credit is awarded for this category, the point total would increase to 16 and the reduction in land assessed value for the portion enrolled would increase to 70%. An approved forest stewardship plan provides flexibility to allow forestry activities to occur in the participating open space area.

**Additionally, if credit is awarded for these categories, then the point total would increase to a maximum of 36 ~~26~~ and the reduction in land assessed value for the portion enrolled would increase to 90 ~~80~~%.

PUBLIC BENEFIT RATING

For the purpose of taxation, 11 ~~36~~ points result in 40% of market value and a 60% 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 11 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. For land designated as forest stewardship land, activities that are consistent with forestry uses and that are consistent with an approved Forest Stewardship Plan for the Property shall be permitted as long as those activities do not cause a significant adverse impact to the resource values of other awarded categories.
 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
Lorraine Swalley and Raymond Cunningham, applicants
Elenore Bonyeau, King County Department of Assessments
Wendy Sammarco, King County Forester

2021 aerial photo

0123069065

0.63 acres

