

**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)**

March 3, 2022 – Public Hearing

APPLICANTS: Douglas Kushner and Dan Han

File No. E21CT021

A. GENERAL INFORMATION:

1. Owners: Douglas Kushner and Dan Han
33340 203rd Court SE
Auburn, WA 98092
2. Property location: same as above
3. Zoning: RA5
4. STR: SW-17-21-06
5. PBRs categories requested by applicants and *suggested by program staff*:

Open space resources

- *Aquifer protection area
- *Buffer to public or current use classified land
- Forest stewardship land
- *Significant wildlife or salmonid habitat
- **Watershed protection area*

Bonus category

- ***Resource restoration*

NOTE: *Staff recommends credit be awarded for these PBRs categories. **Award of this category is also possible and is dependent upon specific category requirements being met (see resource category discussion under Section E beginning on page 6).

6. Parcel: 639002-0130
 - Total acreage 3.88
 - Requested PBRs: 3.00
 - Home site/excluded area: 1.22
 - Recommended PBRs: 2.66***

Exhibit no.	1
Case name	Douglas Kushner and Dan Han
Case number	E21CT021
Date received	3/3/2022
KING COUNTY HEARING EXAMINER	

NOTE: The portion recommended for enrollment in PBRS is the entire property less the excluded areas as measured. The attached 2019 aerial photo outlines the parcel in yellow and the areas proposed to be excluded from PBRS in blue. 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 and RA10.
2. Development of the subject property and resource characteristics of open space area: The property contains a single-family residence, lawn, landscaping, driveway, septic and drain field and shed. The open space portion of the property consists of a mix of coniferous and deciduous trees and mostly native shrubs and plants.
3. Site use: The property is used as a single-family residence.
4. Access: The property is accessed from 203rd Court SE.
5. Appraised value for 2022 (based on Assessor’s information dated 02/17/2022):

<u>Parcel #639002-0130</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Appraised value	\$370,000.00*	\$2,416,000.00	\$2,786,000.00
Tax applied	\$4,557.16	\$29,757.05	\$34,314.21

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
The entire property is located in an area designated as a critical aquifer recharge area (CARA 2). The natively forested area is greater than one acre in size and meets the minimum required acreage for this category. Credit for this category is recommended.
- Buffer to public or current use classified land
The property is abutting land enrolled in the Designated Forestland program to the south (parcel 202106-9005). This parcel was recently harvested but will be replanted. 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.
- Forest stewardship land

In order to be eligible for this category, the property must contain at least four acres of contiguous forestland. Although the property is natively vegetated it is not enrolling 4.00 or more acres. Credit for this category is not recommended.

- Significant wildlife and salmonid habitat

The property contains habitat for numerous wildlife species, including foraging and nesting habitat for the pileated woodpecker, which is listed as a state candidate species of concern by the Washington Department of Fish and Wildlife. During a site visit to the property PBRs staff saw evidence of pileated woodpecker activity on 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

Although the category was not requested, the enrolling open space contains 2.66 acres of native forest cover which is more than 65% of the total property acreage, or 2.52 acres, and is more forest cover than required by county regulation for this property. Credit for this category is recommended.

Bonus category

- Resource restoration

Although credit for this category was not requested, the property could benefit from restoration activities to improve the overall health of the forest. Restoration of these areas however is not required for its participation in PBRs. At this time, credit for this category cannot be recommended because a plan has not been provided. However, if a resource restoration plan is provided by November 1, 2021, and approved by the department on or before December 1, 2021, then credit for this category should be awarded to parcel -9082 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.

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	5
Buffer to public or current use classified land	3
Forest stewardship land	0
Significant wildlife and salmonid habitat	5
Watershed protection area	5
Bonus category	
Resource restoration	*

TOTAL 13 points

NOTE: *If credit is awarded for this category, the point total would increase to 18 and the reduction in land assessed value for the portion enrolled would increase to 70%.

PUBLIC BENEFIT RATING

For the purpose of taxation, 13 points result in 40% of assessed value and an 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 13 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
Douglas Kushner and Dan Han, applicants
Debra Clark, King County Department of Assessments

2019 aerial photo

1.24 acres

6390020130