

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

Preliminary Report to the King County Hearing Examiner

April 28, 2010 – Public Hearing

APPLICANT: [REDACTED]

File No. E09CT046

A. GENERAL INFORMATION:

1. Owner: [REDACTED]
18059 East Lake Desire Drive SE
Renton, WA 98058-9555
2. Property location: same as above
3. Zoning: R1
4. STR: NE-36-23-05
5. PBRS categories requested by applicants and *suggested by staff*:

- Open space resources**
- Aquifer protection area
- Buffer to public land
- Rural stewardship land
- Shoreline: conservancy environment
- Significant wildlife or salmonid habitat
- Special animal site
- Surface water quality buffer
- Urban open space*
- Watershed protection area
- Bonus categories**
- Additional surface water quality buffer
- Conservation easement or historic easement*

6. Parcel:	362305-9018	362305-9112	400840-0520
Total acreage:	1.02	0.31	0.44
Requested PBRS:	1.02	0.31	not specified
Home site/excluded area:	0.00	0.31	0.44
Recommended PBRS:	1.02	0.00	0.00

NOTE: The portion recommended for enrollment in PBRS is only parcel -9018. **Due to the required protective buffer to Lake Desire and the existing yard and home, parcels -9112 and -0520 are not eligible to enroll.** The attached aerial photo (summer 2009) outlines in yellow the parcels. 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 R1, R4, R6, RA2.5, RA5 and RA10.
2. Development of the subject property and resource characteristics of open space area: The property contains a single family home, landscaping, dock, well and septic system. The open space portion of the property is primarily a coniferous and deciduous forest, with a native plant understory. There are several seeps (artesian springs) on the hillside of parcel -9018, which flow southwesterly toward the lake.
3. Site use: The property is used as a single family residence.
4. Access: The property is accessed from East Lake Desire Drive SE.
5. Appraised value for 2010 (Based on Assessor's information dated 04/12/10):

<u>Parcel #362305-9018</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$33,000	\$0	\$33,000
Tax applied	\$432.20	\$0	\$432.20
<u>Parcel #362305-9112</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$157,000	\$0	\$157,000
Tax applied	\$2,056.25	\$0	\$2,056.25
<u>Parcel #400840-0520</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$151,000	\$202,000	\$353,000
Tax applied	\$1,977.67	\$2,645.62	\$4,623.29

NOTE: Participation in the 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.

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. These resources are based on the adopted King County Open Space Plan referenced in K.C.C. 20.12.380. 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 A. and B. below.

- A. The following open space resources are each eligible for the points indicated:
1. Active or passive recreation area – five points.
 2. Aquifer protection area – five points.
 3. Buffer to public land – three points.
 4. Equestrian-pedestrian trail linkage – thirty-five points.
 5. Farm and agricultural conservation land – five points.
 6. Forest stewardship land – five points.
 7. Historic landmark or archaeological site: buffer to a designated site – three points.
 8. Historic landmark or archaeological site: designated site – five points.
 9. Historic landmark or archaeological site: eligible site – three points.
 10. Rural open space – five points.
 11. Rural stewardship land – five points.
 12. Scenic resource, viewpoint, or view corridor – five points.
 13. Shoreline: conservancy environment – five points.
 14. Shoreline: natural environment – three points
 15. Significant native plant site – five points.
 16. Significant wildlife or salmonid habitat – five points.
 17. Special animal site – three points.
 18. Surface water quality buffer – five points.

19. Urban open space – five points.
20. Watershed protection area – five points.

B. Property qualifying for an open space category in subsection A. 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. 2004 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 should be monitored to determine their effectiveness.

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

E-161 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.

R-504 Well-managed forestry and agriculture practices are encouraged because of their multiple benefits, including natural resource 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 and DEPARTMENT RECOMMENDATIONS:

Open space resources

- Aquifer protection area
Parcel -9018 is completely natively vegetated. However, to be eligible for this category the property must be within an area designated as a critical aquifer recharge area (CARA), and it is not. Credit for this category can not be recommended.
- Buffer to public land
A portion of Spring Lake/Lake Desire Park is adjacent to the southern boundary of the property. Parcel -9018 is natively vegetated and provides a qualifying buffer to this park. Credit for this category is recommended for parcel -9018.
- Rural stewardship land
In order to receive credit for this category, the owner must provide a rural stewardship plan. A plan is not forthcoming and category and credit can not be recommended.
- Shoreline: conservancy environment
The property is adjacent to Lake Desire, which is designated as an urban environment and not a conservancy environment. Credit for this category can not be recommended.
- Significant wildlife or salmonid habitat
The property contains habitat for wildlife species, including evidence of foraging by the pileated woodpecker, which is listed as a species of concern by the Washington Department of Fish and Wildlife. Award of this category is consistent with habitat as defined by KCC 20.36.100, section A.16.a(1). Credit for this category is recommended for parcel -9018.
- Special animal site
In order to receive credit for this category, an identified wildlife habitat network must be on or adjacent to the property. The property does not contain this type of wildlife corridor. Credit for this category can not be recommended.
- Surface water quality buffer
Parcel -9018 contains several seeps (artesian springs) that create small streams, considered Type O waters, that flow southwesterly toward Lake Desire. The buffers provided to these seeps are more than 25 feet required and on average are at least 50 feet in width or two times the buffer required. Credit for this category is recommended for parcel -9018.
- Urban open space
The property is located within the urban growth area. Parcel -9018 contains more than an acre of native vegetation. Credit for this category is recommended for parcel -9018.
- Watershed protection area
The Washington Supreme Court's decision not to hear King County's appeal of a Court of Appeals decision in 2009 has invalidated clearing limits in King County Code, Chapter 16.82.150. The decision of the Appeals court regarding clearing limits in King County creates ambiguity in how the watershed category should be applied. However, KCC 20.36.109 B.2 states "When more than one reasonable interpretation can be supported by the text of this chapter, the department is authorized to make a determination relating to the open space resource definitions and eligibility standards in accordance with the

overall purpose and intent of this chapter.” Staff’s interpretation reflects the purpose and intent of King County Code chapter 20.36, which establishes the elements of the PBRs program. When King County Council adopted the watershed category, it made a policy decision to award credit for properties retaining significant forest cover. The council recognized the value provided by forest cover of more than 50-65% of a parcel for watershed protection. For this property, qualification for the watershed category requires retention of 15% more forest cover than 65% of the property, which is 0.76 acres. Parcel -9018 contains 1.02 acres of forestland. Credit for this category is recommended for parcel -9018.

Bonus categories

- Additional surface water quality buffer
Parcel -9018 contains several seeps (artesian springs) that create small streams, considered Type O waters, that flow southwesterly toward Lake Desire. The buffers provided to these seeps are more than 25 feet required and on average are at least 50 feet in width or two times the buffer required. Credit for this category is recommended for parcel -9018.
- Conservation easement or historic easement
Although credit for this category was not requested, the applicant and staff discussed the option of placing a conservation easement on the property, and the potential of participating in the County’s Transfer Development Rights program (TDR). If an approved conservation easement is recorded on this property by December 31, 2010, then credit should be awarded for parcel -9018. At this time, credit for this category can not be 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

- Aquifer protection area 0
- Buffer to public land 3

- Rural stewardship land 0
- Shoreline: conservancy environment 0
- Significant wildlife or salmonid habitat 5
- Special animal site 0
- Surface water quality buffer 5
- Urban open space 5
- Watershed protection area 5

Bonus categories

- Additional surface water quality buffer 3
- Conservation easement or historic easement *

TOTAL 26 points

NOTE: *If credit is awarded for this additional category, which would add 15 points, then the percent reduction would increase to at 90%.

PUBLIC BENEFIT RATING

For the purpose of taxation, 26 points results in 20% of market value or an 80% 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 26 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 County Assessor and the King County Rural and Regional Services Section (PBRs Staff) 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 PBRs Staff and the Assessor 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, PBRs Staff and the Assessor 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 and 7 below, no alteration of the open space land or resources shall occur without prior written approval by PBRs Staff. **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 PBRs Staff 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 PBRs Staff 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.
9. Grazing of livestock is prohibited on the open space Property.
10. 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:

Peter Donahue, King County Hearing Examiner
[REDACTED], applicant
Wendy Morse, King County Assessors Office