

August 17, 2020

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

**REPORT AND RECOMMENDATION TO THE
METROPOLITAN KING COUNTY COUNCIL**

SUBJECT: Department of Natural Resources and Parks file no. **E19CT034**
Proposed ordinance no. **2020-0218**
Parcel nos. **0622079095 and 0622079046**

STEVE AND SARAH SUTCLIFFE

Open Space Taxation Application (Public Benefit Rating System)

Location: 28616 SE 204th Street, Maple Valley

Applicants: **Steve and Sarah Sutcliffe**
P.O. Box 121
Hobart, WA 98025
Telephone: (253) 203-4955
Email: Sarahsutcliffe@gmail.com

King County: Department of Natural Resources and Parks
represented by **Megan Kim**
201 S Jackson Street Suite 600
Seattle, WA 98104
Telephone: (206) 477-4788
Email: megan.kim@kingcounty.gov

SUMMARY OF RECOMMENDATIONS:

Department's Recommendation:	Approve 5.29 acres for 30% of assessed value
Examiner's Recommendation:	Approve 5.29 acres for 30% of assessed value

PRELIMINARY REPORT:

On July 22, 2020, the Department of Natural Resources and Parks (DNRP) submitted its report on file no. E19CT034 to the Examiner.

PUBLIC HEARING:

After reviewing the preliminary report and examining available information on file with the application, the Examiner conducted a public hearing on the application on July 30, 2020.

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 Hearing Examiner's Office.

FINDINGS AND CONCLUSIONS:

1. General Information:

Owners:	Steve and Sarah Sutcliffe P.O. Box 121 Hobart, WA 98025
Location:	28616 SE 204th Street, Maple Valley
STR:	SE 6-22-7
Zoning:	RA5
Parcel nos.:	0622079095, 0622079046
Total acreage:	6.73 acres (two parcels)

- The Applicant timely filed an application to King County for the Public Benefit Rating System (PBRS) program current use valuation of the property to begin in 2020. As required by law, notification of the application occurred.
- A summary of relevant PBRS categories follows below. (Plain text represents a category an applicant requested an award for and that DNRP agrees is warranted. Any ~~strikethrough~~ represents a category an applicant requested an award for but that DNRP disagrees is warranted. Any *italics* represents a category an applicant did not request an award for, but that DNRP nonetheless concludes is warranted. And any *asterisk* represents a category where DNRP finds an award is warranted, but only if certain contingencies or conditions are met.)

PBRS categories:	<u>Open Space Resources</u>	
	Aquifer protection area	5
	<i>Buffer to public or current use classified land</i>	3
	Farm and agricultural conservation land	5
	Significant wildlife and salmonid habitat	5
	Surface water quality buffer	0
	<u>Bonus Categories</u>	
	Additional surface water quality buffer	0
	Contiguous parcels under separate ownership	0
		18

The DNRP-recommended score of 18 points results in a current use valuation of 30% of assessed value for the enrolled portion of the property.

4. As to the land area recommended for PBRS enrollment, the Applicant did not request in acreage, and DNRP recommends 5.29 acres. (Enrollment acreage is the entire parcel less the excluded area, as calculated by DNRP. In the event the County Assessor’s official parcel size is revised, the PBRS acreage shall be administratively adjusted to reflect that change.)
5. Except as modified herein, the facts set forth in DNRP’s preliminary report and testimony at the July 30, 2020, public hearing are correct and incorporated herein by reference. Copies of this report and DNRP’s report will be provided to the Metropolitan King County Council for final approval.
6. At hearing we raised the surface water quality categories, categories requested by the Applicant that DNRP recommended against. There is no aquatic feature on the subject property, but the Applicant testified that water flows from her property towards a stream she estimated to be 50 feet from her property. DNRP’s staff report stated that those categories could not be recommended because the Sutcliffe property itself does not contain aquatic features. Ex. 1 at 6. KCC 20.36.100.B.17 states:

Surface water quality buffer - five points.... means an undisturbed area that has a plant community in which native plants are dominant adjacent to a lake, pond, stream, shoreline, wetland or marine waters, that provides buffers beyond that required by any applicable regulation. To be eligible as surface water quality buffer, the buffer must be at least fifty percent wider than the buffer required by any applicable regulation and longer than twenty-five feet. The qualifying buffer area must be preserved from clearing and intrusion by domestic animals and protected from grazing or use by livestock.

7. And, for those properties qualifying under that category, KCC 20.36.100.C.2 states:

Additional surface water quality buffer - three or five points....means an undisturbed area of native vegetation adjacent to a lake, pond, stream, wetland or marine water providing a buffer width of at least twice that

required by regulation. To be eligible as additional surface water quality buffer, the property must qualify for the surface water quality buffer category in subsection B. of this section. Three points are awarded for additional buffers no less than two times the buffer width required by any applicable regulation. Five points are awarded for additional buffers no less than three times the buffer width required by any applicable regulation.

8. We held the record open after the hearing. DNRP emailed that:

It is the Department's interpretation that all resources being evaluated need to be located within the enrolling parcel boundaries, unless otherwise defined. In the case of the surface water quality buffer, the stream is the resource and the additional buffer provided within the parcel boundaries is what is required for award of category credit. Not only is the stream not within or immediately abutting the parcel, but the landowners independently are not providing category qualifying additional buffer (minimum 247.5 feet) within their parcel.

Ex. 7.

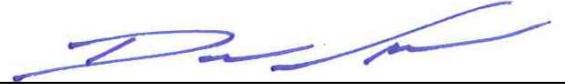
9. There are two components of that. DNRP is essentially saying that the Applicant is not providing at least 1.5 times the default regulatory buffer (i.e. an undisturbed area where native plants are dominant, preserved from clearing and intrusion by domestic animals and protected from grazing). Studying the record, including the map, DNRP appears to be correct as a matter of *fact* particular to this case.
10. Whether, as a broader matter of *law*, DNRP's interpretation that aquatic features must always be on a property to earn buffer credit is a little more involved. On one hand, buffers, and the benefits from those buffers, do not necessarily follow legal property lines. On the other hand, pegging a category to offsite features would greatly complicate program administration and management, both in assessing a property initially and in terms of continuing qualification being dependent something off the property lines that neither DNRP nor the applicant can control. It could also lead to an absurd result.¹ After mulling the matter over, we think DNRP's approach is *probably* correct, but we offer no definite assessment for a future case.
11. Approval of 18 points and a current use valuation of 30% of assessed value for 5.29 acres are consistent with KCC Chapter 20.36 and 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.

¹ Suppose the regulatory buffer from a fairly distant off-site wetland extended one foot onto the applicant's property. If the applicant provided three feet of buffer, the applicant would be providing three times the buffer width required by the applicable regulation, meaning the County would be foregoing property taxes for essentially no environmental benefit.

RECOMMENDATION:

APPROVE a current use valuation of 30% of assessed value for the 5.29 -acre enrolled portion of the property.

DATED August 17, 2020.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

A person appeals an Examiner recommendation by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a \$250 appeal fee (check payable to the King County FBOD). Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal. KCC 20.22.230 also requires that the appellant provide copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner's recommendation.

Prior to the close of business (4:30 p.m.) on *September 10, 2020*, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

Unless both a timely and sufficient appeal statement and filing fee are filed by *September 10, 2020*, the Clerk of the Council shall place on the agenda of the next available Council meeting a proposed ordinance implementing the Examiner's recommended action. At that meeting the Council may adopt the Examiner's recommendation, defer action, refer the matter to a Council committee, or remand to the Examiner for further hearing or further consideration.

If a timely and sufficient appeal statement and filing fee are filed by *September 10, 2020*, the Examiner will notify all parties and interested persons and provide information about "next steps."

**MINUTES OF THE JULY 30, 2020, HEARING ON THE APPLICATION OF
STEVE AND SARAH SUTCLIFFE, FILE NO. E19CT034**

David Spohr was the Hearing Examiner in this matter. Bill Bernstein, Megan Kim, and Sarah Sutcliffe participated in the hearing.

The following exhibits were offered and entered into the hearing record on July 30, 2020:

Exhibit no. 1	DNRP report to the Hearing Examiner
Exhibit no. 2	<i>Reserved for future submission of the affidavit of bearing publication</i>
Exhibit no. 3	Legal notice and introductory ordinance to the King County Council
Exhibit no. 4	Arcview/orthophotograph and aerial map
Exhibit no. 5	Application signed and notarized
Exhibit no. 6	Farm Conservation Plan

The following exhibits were offered and entered into the hearing record on August 5, 2020:

Exhibit no. 7	Email from Megan Kim, dated August 4, 2020
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DS/jf

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CERTIFICATE OF SERVICE

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STEVE AND SARAH SUTCLIFFE

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I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL** to those listed on the attached page as follows:

EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED August 17, 2020.



Jessica Oscoy
Office Manager

Akada, Irene

Department of Assessments

Bernstein, Bill

Department of Natural Resources and Parks

Clark, Debra

Department of Assessments

Kim, Megan

Department of Natural Resources and Parks

Ngo, Jenny

Metropolitan King County Council

Pedroza, Melani

Metropolitan King County Council

Sutcliffe, Steve and Sarah

Hardcopy