

**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)**

**May 11, 2023 – Public Hearing**

**APPLICANTS: Steve and Linda Nichols**

**File No. E22CT014**

**A. GENERAL INFORMATION:**

1. Owners: Steve and Linda Nichols  
17950 288th Avenue NE  
Duvall, WA 98019
2. Property location: 17950 288th Avenue NE  
Duvall, WA 98019
3. Zoning: RA5 and RA10
4. STR: NE-07--26-07, NE-06--26-07 and NW-08--26-07
5. PBRs categories requested by landowner and *recommended by program staff:*

**Open space resources**

- \*Aquifer protection area*
- \*Buffer to public or current use classified land*
- \*\*Forest stewardship land*
- \*Rural open space*
- \*Significant wildlife and salmonid habitat*
- \*Surface water quality buffer*
- \*Watershed protection area*

Exhibit no.	1
Case name	Steve and Linda Nichols
Case number	E22CT014
Date received	5/11/2023
KING COUNTY HEARING EXAMINER	

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

6. Parcel:	072607-9042	072607-9001	072607-9004
Total acreage:	41.10	21.60	26.71
Requested PBRs:	31.10	10.80	26.71
Home site/excluded area:	8.83	5.85	1.15
<b>Recommended PBRs:</b>	<b>32.27</b>	<b>15.75</b>	<b>25.56*</b>

Parcel:	082607-9104	062607-9032	062607-9034
Total acreage:	6.30	79.70	8.30
Requested PBRs:	3.80	79.70	8.30
Home site/excluded area:	2.47	0.00	4.18
<b>Recommended PBRs:</b>	<b>3.83</b>	<b>79.70</b>	<b>4.12*</b>

NOTE: The attached 2021 aerial photo outlines the parcels in yellow and the areas proposed to be excluded from PBRs in blue. The portion recommended for enrollment in PBRs (161.23 acres) is the entire property (183.71 acres) less the excluded areas as measured (22.48 acres). In the event the Assessor’s official parcel size is revised, PBRs acreage should be administratively adjusted to reflect that change.

There are forest roads throughout much of the property and their primary use is for forestry activities, therefore their footprints/acreage can participate in PBRs because they are instrumental for the forest management. However, if the primary use of these roads changes beyond their intended use to carry out forest management practices or they are not returned to native vegetation, then this acreage would be removed likely resulting in compensating taxes being due.

\*If an approved forest management plan is submitted that addresses the restoration needs of 3.98 acres on parcel -9034 and 1.15 acres on parcel -9004 (outlined in green on the attached map), then the enrolling acreage for parcel -9034 would increase to 8.10 acres and the enrolling acreage for parcel -9004 would increase to 26.71

**B. FACTS:**

1. Zoning in the vicinity: Properties in the vicinity are zoned RA2.5 and RA5, RA10 and F.
2. Development of the subject property and resource characteristics of open space area: Parcels -9004, 9034 and -9032 are undeveloped. Parcel -9042 consists of a single-family residence, gated entry, parking area, driveway, well, septic and drain field, landscaping and lawn. Parcel -9001 contains a carriage house, driveway, maintained pond and lawn. The open space is a mix of coniferous and deciduous forest with mostly native understory. There are a few areas (outlined in green on attached map) that are either impacted by Himalayan Blackberry or grass and will be addressed in the forest stewardship plan. Additionally, Cherry Creek and an associated wetland are located along the western property lines of parcels -9034, -9042 and -9001. A portion of Hanstead Creek, a tributary to Cherry Creek, bisects parcel -9032; a seasonal waterfall, McCauley Falls, is found along this portion of Hanstead Creek.
3. Site use: The property is used as three single-family residences.
4. Access: The property is accessed from 288th Avenue NE.

5. Appraised value for 2022 (Based on Assessor's information dated 04/25/2023):

<u>Parcel #072607-9042</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	<b>\$445,000*</b>	\$1,474,000	\$1,919,000
Tax applied	<b>\$3,834</b>	\$12,699	\$16,533
<u>Parcel #072607-9001</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	<b>\$311,000*</b>	\$180,000	\$491,000
Tax applied	<b>\$2,679</b>	\$1,551	\$4,230
<u>Parcel #072607-9004</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	<b>\$33,000*</b>	\$0	\$33,000
Tax applied	<b>\$284</b>	\$0	\$284
<u>Parcel #082607-9104</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	<b>\$254,000*</b>	\$1,934,000	\$2,188,000
Tax applied	<b>\$2,188</b>	\$16,663	\$18,851
<u>Parcel #062607-9032</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	<b>\$148,000*</b>	\$0	\$148,000
Tax applied	<b>\$1,275</b>	\$0	\$1,275
<u>Parcel #062607-9034</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	<b>\$67,000*</b>	\$0	\$67,000
Tax applied	<b>\$577</b>	\$0	\$577

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. Active trail linkage – fifteen or twenty-five points
  2. Aquifer protection area – five points
  3. Buffer to public or current use classified land – three points
  4. Ecological enhancement land – eighteen points
  5. Equestrian-pedestrian-bicycle trail linkage – thirty-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. Public recreation area – five points
  12. Rural open space – five points
  13. Rural stewardship land – five points
  14. Scenic resource, viewpoint, or view corridor – five points
  15. Significant plant or ecological site – five points
  16. Significant wildlife or salmonid habitat – five, eight or ten total 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
- C. Property qualifying for an open space category in subsection B. of this section may receive credit for additional points as follows:
1. Conservation easement of historic easement – eighteen points
  2. Contiguous parcels under separate ownership - two points
  3. Easement and access – thirty-five points
  4. Public access - points dependent on level of access
    - a. Unlimited public access - five points
    - b. Limited public access - sensitive areas - five points
    - c. Seasonal limited public access - three points
    - d. Environmental education access – three points
    - e. None or members only – zero points
  5. Resource restoration – 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 RECOMMENDATION:**

### **Open space resources.**

- Aquifer protection area  
Although credit for this category was not requested, the entire parcel -9034 and the west sides of -9042 and 9001 (total of 18.5 acres) are in an area designated as a critical aquifer recharge area (CARA 2). The natively forested area is significantly 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  
Although credit was not requested for this category, the property abuts another property to the east currently applying to the PBRS program (File E22CT016, parcel 082607-9005). If this abutting property participates in PBRS, then the Nichols enrolling open space area would be 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 contingent on parcel 082607-9104 enrolling.
- Forest stewardship land  
Although credit for this category was not requested, the property contains more than 161 of contiguous forest. The owner is interested in developing a forest stewardship plan to improve on the health and diversity of the property. 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 31, 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.

- Rural open space  
The property is in the rural area and contains more than 161 acres of natively vegetated contiguous open space, which is significantly more than the category's required ten acre minimum. Credit for this category is recommended.
- Significant wildlife and salmonid habitat  
Although credit for this category was not requested, the property contains a portion of Hanstead Creek (a portion below the falls is considered Type F waters) which provides habitat for salmonid species. As required by county code (KCC 21A24.358.C), the buffer width required on a Type F creek is typically 165 feet. The landowners are providing a buffer of native vegetation (1,693 ft) to the north of Hanstead Creek that is at least 15% greater than the 165 feet required by King County code for this stream classification. Award of this category is consistent with eligibility requirements defined by KCC 20.36.100, section B.15.b. Credit for this category is recommended
- Surface water quality buffer  
Although credit for this category was not requested, there are several surface water quality features, including a segment of Hanstead Creek (Type F) that bisects parcel - 9032. As required by county code (KCC 21A24.358.C), the buffer width required for Type F waters is 165 feet. To be awarded credit, a buffer must be at least 50% greater than required. In this case, the buffer provided is more than three times the required width, or 495 feet, which results in ten points for this category. The owner is providing a buffer of native vegetation to the north of this stream that averages 1,843 feet in width, more than eleven times the buffer required. Credit for this category is recommended at the ten-point award level.
- Watershed protection area  
Although credit for this category was not requested, the enrolling open space contains more than 161 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.

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 #B6

## 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                         | *   |
| • Rural open space                                | 5   |
| • Significant wildlife and salmonid habitat       | 5   |
| • Surface water quality buffer                    | 10  |
| • Watershed protection area                       | 5   |

#### **TOTAL 33 points**

NOTE \*If credit is awarded for this category, an approved forest stewardship plan provides flexibility to allow forestry activities to occur in the participating open space area.

\*\*If E22CT016 does not enroll in PBRS then credit for this category cannot be awarded.

#### **PUBLIC BENEFIT RATING**

For the purpose of taxation, 33 points result in 20% of market value and a 80% reduction in taxable value for the portion of land enrolled. If the contingent categories (\* and \*\*) are awarded, the property would qualify for a maximum of 38 points, which results in a 10% of market value and an 90% reduction.

### B. RECOMMENDATION:

APPROVE the request for current use taxation "Open space" classification with a Public Benefit Rating of 33 points, subject to the following requirements:



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

1. Compliance with these requirements is necessary for property participating (“Property”) in King County’s Public Benefit Rating System (“PBRs”), a current use assessment program for open space. Failure to abide by these requirements can result in removal of PBRs designation and subject Property owner (“Owner”) to penalty, tax, and interest provisions of RCW 84.34. King County Department of Assessments (“DoA”) and King County Water and Land Resources Division, Agriculture, Forestry, and Incentives Unit, PBRs Program or its successor (“PBRs Program”) may re-evaluate Property to determine whether removal of PBRs designation is appropriate. Removal shall follow the process in Chapter 84.34 RCW, Chapter 458.30 WAC and Chapter 20.36 KCC.
2. Revisions to any of these requirements may only occur upon mutual written approval of Owner and granting authority. These conditions shall apply so long as Property retains its PBRs designation. If a conservation easement acceptable to and approved by King County is granted by Owner in interest to 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 PBRs Program.
3. The PBRs designation for Property will continue so long as it meets the PBRs criteria for which it was approved. Classification as open space will be removed upon a determination by PBRs Program that Property no longer meets PBRs criteria for which it was approved. A change in circumstances, which diminishes the extent of public benefit from that approved by King County Council in the open space taxation agreement, will be cause for removal of the PBRs designation. It is Owner's responsibility to notify DoA and PBRs Program of a change in Property circumstance, which may impact PBRs participation.
4. When a portion of Property is withdrawn or removed from the program, the remaining Property shall be re-evaluated by PBRs Program and DoA to determine whether it still meets the criteria for PBRs categories as approved.
5. Notwithstanding the provisions of Section 13, tree(s) posing a hazard to a structure, road or property access may be removed from Property, provided that Owner shall first notify the PBRs Program prior to taking such action. Native vegetation must be introduced for any tree(s) removed and must be planted within a reasonable location of where the tree(s) previously existed. It is Owner’s responsibility to apply for and receive any necessary consent from applicable state and local governmental agencies for activities that may require a permit or approval.
6. If an area of Property becomes or has become infested with noxious weeds or non-native species, Owner may be required to submit a control and enhancement plan to PBRs Program in order to remove such vegetation and, if necessary, replace with native vegetation.

7. If it is determined by PBRs Program that Property vegetation near structures is prone to wildland fire and poses a fire hazard, management activities as allowed under KCC 16.82.051 may be implemented as long as those activities do not cause significant adverse impact to the resource values of awarded PBRs categories. Prior to undertaking any wildfire risk reduction activities on Property, a summary of any proposed work must first be submitted to and approved by PBRs Program.
8. There shall be no motorized vehicle driving or parking allowed on Property, except for medical, public safety or police emergencies, or for an approved management activity (such as forestry, farm, or restoration activities) detailed in an approved plan.
9. Grazing of livestock is prohibited unless Property is receiving credit for the farm and agricultural conservation land or resource restoration PBRs categories. In those cases, grazing may occur in areas being farmed as defined in the approved farm management plan or to be restored as defined in the approved resource restoration plan.
10. For Property receiving credit for ecological enhancement land, farm and agricultural conservation land, forest stewardship land, rural stewardship land, or resource restoration, activities that are defined in associated approved plan(s) shall be permitted as long as those activities do not cause significant adverse impact to the resource values of other awarded PBRs categories.
11. Owner of Property participating in PBRs may be required to submit a monitoring report on an annual or less frequent basis as requested by the PBRs Program. This report must include a brief description of how Property still qualifies for each awarded resource category. It must also include photographs from established points on Property and any observations by Owner. If requested, Owner must submit this report to the PBRs Program by email, through the PBRs monitoring form provided on the PBRs Program's website, or by other mutually agreed upon method annually by December 31 or as directed by the PBRs Program. An environmental consultant need not prepare this report.
12. Owner of Property receiving credit for farm and agricultural conservation land, ecological enhancement land, forest stewardship land, or rural stewardship land must provide an annual monitoring report that describes progress of implementing associated approved plan(s). The report must include a brief description of activities taken to implement the plan and photographs from established points on Property. Owner must submit this report to the PBRs Program by email or other mutually agreed upon method annually by December 31 or as directed by the PBRs Program. An environmental consultant need not prepare this report.
13. No alteration of Property or resources shall occur without prior written approval (such as an approved plan) by PBRs Program, except for selective cutting for personal firewood, maintaining areas for approved passive recreational uses (such as walking or horseback riding trails) or for removal of non-native species. **Any unapproved alteration may constitute a departure from an approved open space use and be deemed a change of**

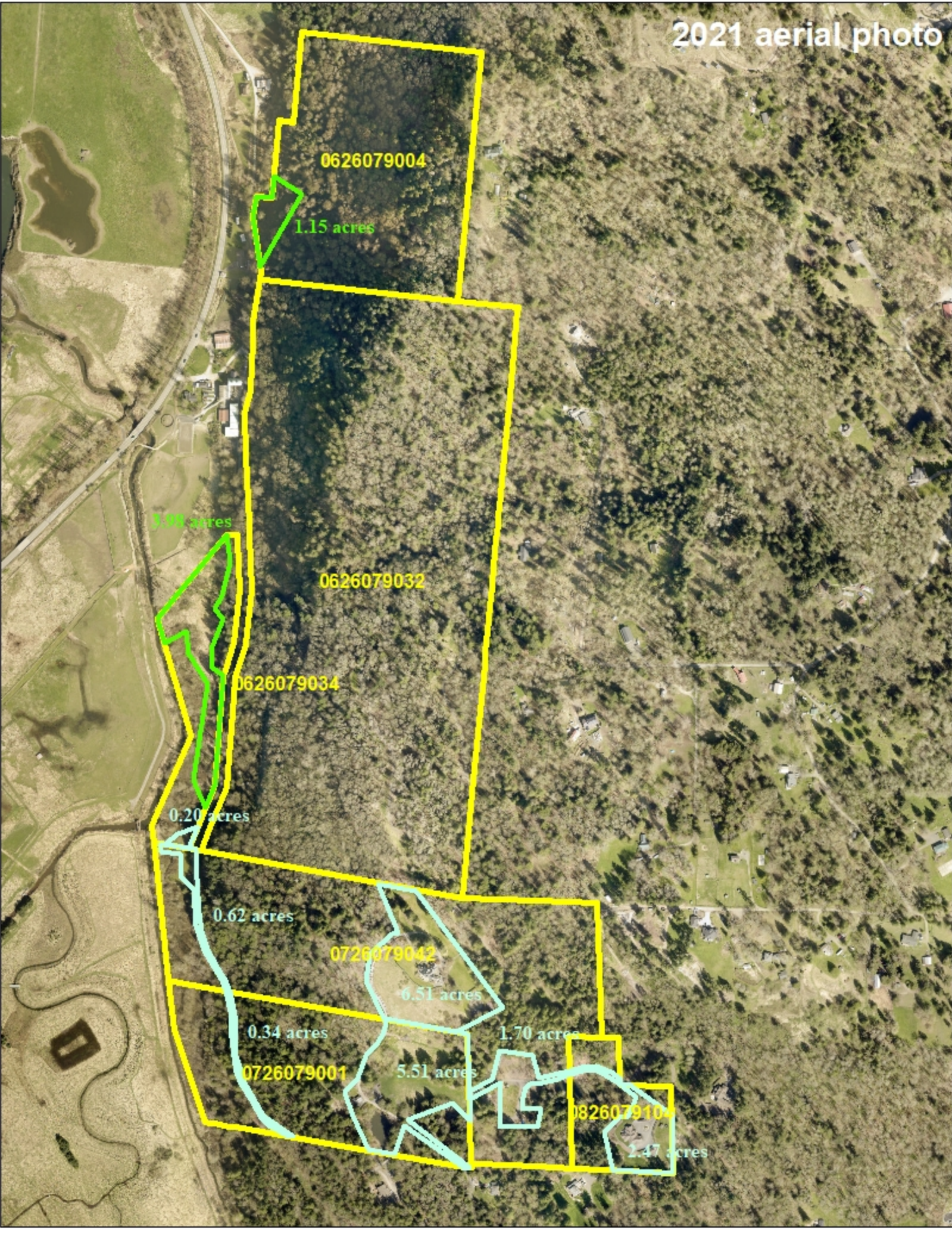
**use, and subject Owner to the additional tax, interest, and penalty provisions of RCW 84.34.080.** "Alteration" means any human-induced action that adversely impacts the existing condition of Property or resources including, but not limited to, the following:

- 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, mowing, or removing native vegetation;
- h. introducing non-native species (as defined in KCC 21A.06.790);
- i. applying herbicides or pesticides or any hazardous or toxic substance, without prior written approval;
- j. discharging pollutants except for stormwater;
- k. paving or application of gravel;
- l. storing or dumping equipment, construction materials, garbage, vehicles, household supplies, or compost;
- m. engaging in any other activity that adversely impacts existing native vegetation, hydrology, wildlife, wildlife habitat, or awarded program categories.

14. Participation in PBRS does not exempt Owner from obtaining any required permit or approval for activity or use on Property.

**TRANSMITTED** to the parties listed hereafter:

Office of the King County Hearing Examiner  
Steve and Linda Nichols, applicants  
Elenore Bonyeau, King County Department of Assessments  
Wendy Sammarco, King County Forester



0626079004

1.15 acres

3.98 acres

0626079032

0626079034

0.20 acres

0.62 acres

0726079042

6.51 acres

0.34 acres

0726079001

5.51 acres

1.70 acres

0826079104

2.47 acres