

**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 30, 2016 – Public Hearing

APPLICANTS: Judy Fremouw and Robert Gorsuch

File No. E15CT033

A. GENERAL INFORMATION:

1. Owners: Judy Fremouw and Robert Gorsuch
18204 SE Green Valley Road
Auburn, WA 980392
2. Property location: same as above
3. Zoning: RA5
4. STR: NW-30-21-06
5. PBRs categories requested by applicant or *suggested by program staff*:

NOTE: The property is currently participating in the farm and agricultural land program (RCW 84.34.020(2)), but may not remain because it lacks the necessary qualifications to continue. The purpose of this application is to reclassify the property and enroll it in PBRs.

Open space resources

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

Bonus categories

- **Resource restoration
- *Conservation easement or historic easement

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:	302106-9035	192106-9055
Total acreage:	4.64	11.78
Requested PBRs:	-----not specified-----	
Home site/excluded area:	1.42	0.44
Recommended PBRs:	2.22*	11.34**

NOTE: The attached map (2013 aerial photo) outlines in yellow the parcel boundaries and in blue the areas proposed to be *excluded* from PBRs. The portion recommended for enrollment in PBRs (13.56 acres) is the entire property (16.42 acres) less the excluded areas as measured (1.86 acres). In the event the Assessor’s official parcel size is revised, PBRs acreage should be administratively adjusted to reflect that change.

***Although a farm management plan has been received, more detail must be added to address the 0.42 acres along the north property line that are impacted by Himalayan blackberry (outlined in green). If the owners update the farm management plan to address the Himalayan blackberry, then the acreage eligible to enroll in PBRs increases to 3.64 acres.**

****If the owners implement an approved restoration plan which addresses the 0.44 acres impacted by Himalayan blackberry (outlined in green) along the south parcel line, then the acreage eligible to participate in PBRs would increase to 11.78 acres.**

B. FACTS:

1. Zoning in the vicinity: Properties in the vicinity are zoned RA2.5, RA5, RA10 and A10.
2. Development of the subject property and resource characteristics of open space area: The property is used as single family residence, driveway, garage, shed, septic drain field, lawn and garden. The open space portion of parcel -9055 consists of deciduous and coniferous forest with native understory. The open space portion of parcel of -9035 is farm. There is a stream (likely a type F) that enters the property east of the northwest corner of parcel -9055. The stream flows southeasterly then southwesterly until flows through a wetland and then empties into Burns Creek on parcel -9035.
3. Site use: The property is currently used as a residence, forest and farm.

4. Access: The property is accessed from SE Green Valley Road.
5. Appraised value for 2015 (Based on Assessor's information dated 02/26/2016)

<u>Parcel #302106-9035</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$195,000.00*	\$110,000.00	\$305,000.00
Tax applied	\$2,892.12	\$1,631.45	\$4,523.56
<u>Parcel #192106-9055</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$136,000.00*	\$0.00	\$136,000.00
Tax applied	\$2,017.06	\$0.00	\$2,017.06

NOTE: *These values are presently impacted by the land's participation in the farm and agriculture program (RCW 84.34), which is reflected in the land's current and lower taxable value of \$110,188 (tax applied \$1,634.23). Similar to this farm program, 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. 2012 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 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 #B12.

E-106 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:

- a. Floodways of 100-year floodplains;
- b. Slopes with a grade of 40 percent 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.

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 The 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 The county shall promote retention of forest cover and significant trees using a mix of regulations, incentives, and technical assistance.

R-605 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 REQUESTED and DEPARTMENT RECOMMENDATIONS:

Open space resources

- Aquifer protection area

Although credit for this category was not requested, 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

Although credit for this category was not requested, the property is adjacent to land participating in the Farm and Agricultural land program to the east (parcel 302106-9034) and Public Benefit Rating System Program to the west (parcels 242105-9016 and 242105-9138). The enrolling open space area is providing a buffer of native vegetation of more than 50 feet to the adjacent land, which exceeds the category's requirement. Credit for this category is recommended.

- Farm and agricultural conservation land

The property is presently enrolled in the farm and agriculture program (RCW 84.34). To enroll the 3.64 acres that are eligible for this category, on parcel -9035, an updated approved farm management plan must be implemented. Although a farm management plan has been received, the plan must be updated to provide more detail in the control of the Himalayan blackberry on the 0.42 acres (area in green) along the northern portion of the parcel. It should be noted that this parcel is also participating in in Farmland Preservation Program and is protected by a deed and agreement. This deed and agreement preserves the farmland and limits the amount of acreage that can be returned to native vegetation. Therefore, the 0.42 acres along the northern property line of -9035 can only be cleared for farm acres and not for native vegetation. See restoration category for

restoration of 0.44 acres on parcel -9055. **Credit for this category is recommended for only 2.22 acres. If an updated farm management plan is received by October 31, 2016 then the acreage eligible for parcel -9035 to enroll in PBRs increases to 3.64 acres and will be awarded administratively.**

- Forest stewardship land

Although credit for this category was requested, after a phone call with the landowners they have decided not to pursue this category. Credit for this category is not recommended.

- Rural open space

Although credit for this category was not requested, the property is in the rural area and contains approximately eleven acres of contiguous native forest, which is more than the category's required ten acre minimum. Credit for this category is recommended.

- Significant wildlife or 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 (2). Credit for this category is recommended.

- Surface water quality buffer

Although credit for this category was not requested, there is a stream (Type F waters) that enters the property on north property line of parcel -9055 approximately 250 feet east of the northwest corner of the property. The creek flows southeasterly then southwesterly where it empties into an associated wetland on the north parcel line of -9035 and flows into Burns Creek on the south parcel line of -9035. As required by county code (KCC 21A.24.355.A), the buffer width required for Type F waters is 165 feet. In order to be eligible for this category, the participating land must provide a buffer greater than 1.5 times that required or 247.50 feet in this case. The owner is providing a buffer of native vegetation to the west side of this creek that is on average approximately 335 feet which is more than two times the buffer required. Credit for this category is recommended.

- Watershed protection area

Although credit for this category was not requested, the enrolling open space contains over eleven 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 categories

- Resource restoration

Although this category was not requested, 0.44 acres (area in green) of parcel -9055 is encumbered with Himalayan blackberry that must be addressed for this acreage to enroll into the program. In order to qualify for this category and enroll the property in PBRs, a resource restoration plan must be provided by the owners, approved by the department, and implemented. Credit for this category is recommended dependent upon this plan being **received by October 31, 2016**, and **approved by the department by December 31, 2016**. Award of this category may allow restoration 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 restoration activities that require a permit or approval, such as clearing and grading.

- Conservation easement and historic easement

The property is participating in the farmland preservation program and is protected in perpetuity by a conservation easement, which is held by King County (see Exhibit #15). 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 #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 lands	3
Farm and agricultural conservation land	5*
Forest stewardship land	0
Rural open space	5
Significant wildlife or salmonid habitat	5
Surface water quality buffer	5
Watershed protection area	5

Bonus categories

Resource restoration	**
Conservation easement or historic easement	15

TOTAL 48 points

NOTE:* **If an updated farm management plan is received that addresses the management and control of the Himalayan blackberry, then the 0.42 acres outlined in green would be eligible to participate in the PBRs program, increasing the area eligible for enrollment to 3.64 acres for parcel -9035.**

**** If credit is awarded for this category, the point total would further increase to 53 and the reduction in land assessed value for the portion enrolled would remain unchanged at 90%. However, the 0.44 acres outlined in green would be eligible to participate in the PBRs program, increasing the area eligible for enrollment to 11.78 acres for parcel -9055.**

PUBLIC BENEFIT RATING

For the purpose of taxation, 48 points result in 10% of market value and a 90% 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 48 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 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 Assessor and the

King County Rural and Regional Services Section 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 King County Rural and Regional Services Section or its successor 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, 7, 10 and 11 below, no alteration of the open space land or resources shall occur without prior approval by the King County Rural and Regional Services Section 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 King County Rural and Regional Services Section 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 King County Rural and Regional Services Section 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 areas of the Property being used as farm and agricultural conservation land.
9. Grazing of livestock is prohibited on the open space Property, except for areas of the Property being used as farm and agricultural conservation land.
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. For land designated as farm and agricultural conservation land, activities that are consistent with farm or agriculture uses and that are consistent with the approved farm management 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.
12. 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.
13. 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
Judy Fremouw and Robert Gorsuch, applicants
Wendy Morse, King County Department of Assessments
Jay Mirro, King Conservation District
Jacobus Saperstein, King Conservation District