

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

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

SUBJECT: Department of Natural Resources and Parks file no. **E22CT002a**
Proposed ordinance no. **2022-0202**
Parcel nos. **1322029001, 1322029045, 1322029051, 1222029062, and 1322029094**

DEVELOPMENT SERVICES OF AMERICA, INC.

Open Space Taxation Application (Public Benefit Rating System)

Location: property located at 11828 SW 232nd Street and 11819 SW 220th Street, Vashon, WA 98070

Applicant: Development Services of America, Inc
represented by **Richard Wilson**
PO Box 25139
Scottsdale, AZ 85255
Telephone: (480) 927-4890
Email: richard_wilson@sgagroup.com

King County: Department of Natural Resources and Parks
represented by **Bill Bernstein**
201 S. Jackson Street Suite 5600
Seattle, WA 98104
Telephone: (206) 477-4643
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SUMMARY OF RECOMMENDATIONS:

Department's Recommendation:	Approve 84.73 acres for 50% of assessed value
Examiner's Recommendation:	Approve 84.73 acres for 50% of assessed value

PRELIMINARY REPORT:

On June 17, 2022, the Department of Natural Resources and Parks (DNRP) submitted its report on file no. E22CT002a to the Examiner.

PUBLIC HEARING:

After reviewing the preliminary report and examining available information on file with the application, the Examiner conducted a Zoom public hearing on the application on June 30, 2022.

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:

Owner:	Development Services of America, Inc PO Box 25139 Scottsdale, AZ 85255
Location:	property located at 11828 SW 232nd Street and 11819 SW 220th Street, Vashon, WA 98070
STR:	NE-13-22-02 and SE-12-22-02
Zoning:	RA5 and RA10
Parcel nos.:	1322029001, 1322029045, 1322029051, 1222029062, and 1322029094
Total acreage:	89.03 acres

- 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 2023. As required by law, notification of the application occurred.
- The property is currently enrolled in the farm and agricultural conservation land category. The purpose of this application is to reclassify the property and enroll it in PBRs. Any new open space taxation agreement must supersede the existing agreement.
- 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 ~~strike through~~ 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
	Buffer to public or current use classified land	0
	Farm and agricultural conservation land	5
	Rural open space	0
	Rural stewardship plan	0
	Scenic resource, viewpoint or view corridor	0
	Significant wildlife or salmonid habitat	0
	Special animal site	0
	Surface water quality buffer	0
	Urban open space	0
	Watershed protection area	0
	Total	10

The DNRP-recommended score of 5 points results in a current use valuation of 50% of assessed value for the enrolled portion of the property.

5. Most of the categories the Applicant initially requested credit for are inapplicable, and the Applicant did not press these. However, the Applicant asserts points should be awarded for two additional categories.
6. The first category is “watershed protection area,” defined as:

property contributing to the forest cover that provides run-off reduction and groundwater protection. To be eligible as watershed protection area, the property must consist of contiguous native forest or be in the process of reforestation. The enrolling forested area must consist of additional forest cover beyond that required by county or applicable local government regulation and must be at least one acre or sixty-five percent of the property acreage, whichever is greater. If reforestation or improvements to the forest health are necessary, the property owner shall provide and implement a forest stewardship, resource restoration or rural stewardship plan that addresses this need and is acceptable to the department.

KCC 20.36.100.B.19. Although there no estimate was offered for how large the property’s enrolling forested area is, it clearly exceeds one acre. But the category requires “at least one acre or sixty-five percent of the property acreage, whichever is greater.” The Applicant is likely correct that forest cover on their property provides run-off reduction and groundwater protection, but the enrolling forested area is not even close to 65%. The text is plain, and credit cannot be awarded.

7. The second category is “surface water quality buffer,” defined as:

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.

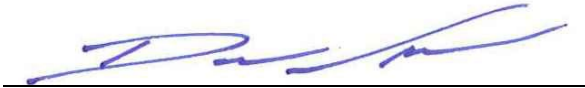
KCC 20.36.100.B.17. There is also an “additional surface water quality buffer” category. KCC 20.36.100.C.2. The upshot of those two sections is that providing buffers 1.5 times the required regulatory buffers would add five points, providing double the required regulatory buffers would add eight points, and providing triple required regulatory buffers would add 10 points.

8. The Applicant’s argument for qualification appears to be as follows. That Applicant has a pond that qualifies as an “aquatic area.” (“Aquatic areas” include “nonwetland water features” such as “ponds.” KCC 21A.06.072C.A.) The highest regulatory classification of the pond would be a type “N” aquatic area, with a maximum regulatory buffer of 65 feet. KCC 21A.24.358.C.2. The Applicant has a natively-forested area upland from their pond that exceeds 200 feet in depth (i.e. more than three times the regulatory buffer).
9. It is a solid argument. However, under the applicable regulations, the relevant definition of a “buffer” is “a designated area contiguous to and intended to protect and be an integral part of an aquatic area or wetland.” KCC 21A.06.122. In between the forested uplands and the pond is a landscaped area where native plants are not dominant, ringed with a graveled path the Applicant used to drive around the pond. Moreover, that swath of gravel path and landscaped area is actually carved out from the enrolling acreage, meaning that the area contiguous to the pond is not even coming into the PBRS program. We cannot recommend an award under this category.
10. As to the land area recommended for PBRS enrollment, the Applicant did not request a specific acreage and DNRP recommends 84.73 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.)
11. Except as modified herein, the facts set forth in DNRP’s preliminary report and testimony at the June 30, 2022, 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.
12. Approval of 10 points and a current use valuation of 50% of assessed value for 84.73 acres is 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.

RECOMMENDATION:

APPROVE a current use valuation of 50% of assessed value for the 84.73-acre enrolled portion of the property.

DATED July 15, 2022.



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 *August 8, 2022*, 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 *August 8, 2022*, 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 *August 8, 2022*, the Examiner will notify all parties and interested persons and provide information about “next steps.”

MINUTES OF THE JUNE 30, 2022, HEARING ON THE APPLICATION OF DEVELOPMENT SERVICES OF AMERICA, INC., FILE NO. E22CT002A

David Spohr was the Hearing Examiner in this matter. Bill Bernstein, David Carpman, and Richard Wilon participated in the hearing.

The following exhibits were offered and entered into the hearing record:

Exhibit no. 1	DNRP report to the Hearing Examiner
Exhibit no. 2	<i>Reserved for future submission of the affidavit of hearing 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