

**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)**

January 20, 2022 – Public Hearing

APPLICANTS: Steven Jensen and Mark Grace

File No. E21CT012

A. GENERAL INFORMATION:

1. Owners: Steven Jensen and Mark Grace
13222 SW Bates Road
Vashon, WA 98070
2. Property location: north and abutting 22744 Wax Orchard Road SW
Vashon, WA 98070
3. Zoning: A10
4. STR: NW-13-22-02
5. PBRs categories requested by the applicant and *suggested by program staff*:

NOTE: The property is currently participating in the farm and agricultural land program (RCW 84.34.020(2)). The purpose of this application is to reclassify the property and enroll it in PBRs.

Open space resources

- **Equestrian-pedestrian-bicycle trail linkage
- *Farm and agricultural conservation land
- Rural open space
- Scenic resource, viewpoint or view corridor

Bonus categories

- Contiguous parcels under separate ownership
- **Conservation easement or historic easement*
- *Unlimited public access

NOTE: *Staff recommends credit be awarded for these PBRs categories. **Award of this category is also possible but will be dependent upon specific category

EXHIBIT 1

Exhibit no.	1
Case name	Steven Jensen and Mark Grace
Case number	E21CT012
Date received	1/20/2022
KING COUNTY HEARING EXAMINER	

requirements being met (see resource category discussion under Section E beginning on page 5).

6. Parcel:	132202-9084
Total acreage:	14.41
Requested PBRs:	13.50
Home site/excluded area:	1.00
Recommended PBRs:	13.41*

NOTE: The portion recommended for enrollment in PBRs is the entire property less the excluded areas as measured. The attached 2019 aerial photo outlines the parcel in yellow and the areas proposed to be excluded from PBRs in blue. In the event the Assessor’s official parcel size is revised, PBRs acreage should be administratively adjusted to reflect that change.

***Recommended PBRs acreage is dependent upon the property’s qualification for the farm and agricultural conservation land category, which requires the participating acreage be farmed according to an approved farm management plan. Without award of this category, the property is not eligible to participate in PBRs.**

B. FACTS:

1. Zoning in the vicinity: Properties in the vicinity are zoned RA5, RA10 and A10.
2. Development of the subject property and resource characteristics of open space area: The property is currently undeveloped (except for an existing access road and portion of decommissioned airstrip) but the owner plans to build a single-family residence in the future. The open space portion of the property consists of pastureland and a small portion of horse/pedestrian trail along the west property line.
3. Site use: The property will be used as a single-family residence and farm.
4. Access: The property is accessed from Wax Orchard Road SW.
5. Appraised value for 2021 (based on Assessor’s information dated 1/5/2022):

<u>Parcel #132202-9084</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Appraised value	\$360,000.00*	\$0.00	\$360,000.00
Tax applied	\$4,464.78	\$0.00	\$4,464.78

NOTE: *This value is 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 \$99,277.00 (tax applied \$1,231.24). 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. 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 RECOMMENDATIONS:

Open space resources

- Equestrian-pedestrian-bicycle trail linkage
The property contains a portion of horse/pedestrian trail along the west property line that is used by the public and provides a trail linkage to established trails along Fischer Creek on property to the east. The landowner and neighbors to the north (McShane) are interested in pursuing an easement with the Department of Natural Resource Parks that would provide public access to these trails in perpetuity. If an approved trail easement is **recorded with the King County Recorder's Office by December 31, 2022**, then credit for this category should be awarded administratively.
- Farm and agricultural conservation land
The property is presently participating in the farm and agricultural program (RCW 84.34). In order for the property to qualify for this category and enroll in PBRS, an approved farm management plan must be implemented. The owner must work with the King Conservation District to develop a farm management plan. Credit for this category is recommended dependent upon this plan being **received by the department on or before October 31, 2022**. Award of this category also requires an annual progress report from the landowner (see below, Section B. 11.), which should be sent to PBRS staff by either email or other agreed to method.
- Rural open space
In order to be eligible for this category, a property must be located in the rural area and be enrolling at least ten acres of native vegetation. Although the property is located in the rural area, the enrolling property is less than ten acres in size and is pastureland. Credit for this category cannot be recommended.
- Scenic resource, viewpoint or view corridor
In order to be eligible for this category, a property must meet at least one of the following criteria - a) contain ten or more acres of scenic natural or cultural resource features significant to the character of the county, b) provide a significant public viewpoint, identified by permanent signage, of a scenic natural or recognized cultural resource accessible from the property or c) contribute to a recognized county view corridor. Although the property is larger than ten acres in size, it does not consist of a significant natural or cultural resource significant to the aesthetic character of the county. A view of Mount Rainer can be obtained from the portion of trail on the west property line, but the same view can be seen from Wax Orchard Road. Also, this view could be compromised in the future once the property is developed. Since the general public does not access the property to view a noteworthy natural resource, it would not be considered a viewpoint. Finally, the property is not part of a recognized view corridor. Program staff does not feel award of this category is appropriate. Credit for this category is not recommended.

Bonus categories

- Contiguous parcels under separate ownership
Award of this category requires a PBRS application contain multiple parcels and owners applying and enrolling together. This property contains a single parcel and is not enrolling with other parcel owners. Credit for this category cannot be recommended.

- Conservation easement and historic easement
Although credit for this category was not requested, the property is participating in the farmland preservation program and is protected in perpetuity by a conservation easement, which is held by King County. Credit for this category is recommended. **Credit for this category is recommended but is dependent on the award of the farm and agricultural conservation land category.**
- Unlimited public access
The owner provides unlimited public access to a portion of horse/pedestrian trail along the west property line that is used by the public without pre-arrangement. 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

Equestrian-pedestrian-bicycle trail linkage	***
Farm and agricultural conservation land	5*
Rural open space	0
Scenic resource, viewpoint or view corridor	0

Bonus categories

Contiguous parcels under separate ownership	0
Conservation easement or historic easement	15**
Unlimited public access	5**

TOTAL 25 points

NOTE: *Without award of this category, the property would not be eligible to participate in PBRs. **Award of these categories are dependent upon the award of the farm and agricultural land conservation land category since qualification of at least

one open space resource (five points or more) is required to award credit for any bonus category.

***Additionally, if this category is awarded, then the point total would increase to 60 and the reduction in land assessed value for the portion enrolled would increase to 90%.

PUBLIC BENEFIT RATING

For the purpose of taxation, 25 points result in 20% of market value and 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 25 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 King County Department of Assessments (DoA) and the Water and Land Resources Division, Director's Office, Agriculture, Forestry and Incentives Unit (AFI) 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 DoA and the AFI Unit 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 AFI Unit or its successor and the DoA 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 and 9 and below, no alteration of the open space land or resources shall occur without prior approval by the AFI Unit 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 AFI Unit 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 AFI Unit 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 the purpose of farm and agriculture and in areas of the Property being used as farm and agricultural conservation land.
9. 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 shall be permitted as long as those activities do not cause a significant adverse impact to the resource values of other awarded categories.
10. Public access shall be permitted upon any area of the open space Property that is designated for public access.
11. 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.
12. 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
Steven Jensen and Mark Grace, applicants
Debra Clark, King County Department of Assessments
Carrie King, King Conservation District

2019 Aerial Photo

1.00 acres

WAX ORCHARD RD SW

1322029084