

**KING COUNTY
DEPARTMENT OF NATURAL RESOURCES AND PARKS
WATER AND LAND RESOURCES DIVISION**

Report to the King County Hearing Examiner

December 7, 2011 – Public Hearing

APPLICANT: Deena L. Fuller

File No. E11CT016

A. GENERAL INFORMATION:

1. Owner: Estate of Charles D. Fuller (Deena L. Fuller, Executor)
5222 - 26th Avenue South
Seattle, WA 98108
2. Property location: 46503 – 276th Avenue SE
Enumclaw, WA 98022
3. Zoning: A35
4. STR: NE-36-20-06
5. PBRs category requested or *suggested by staff*:

Open space resource

Aquifer protection area

Farm and agricultural conservation land

Rural open space

Urban open space

6. Parcel: 362006-9021
 - Total acreage: 7.64
 - Requested PBRs: 6.64
 - Home site/excluded area: 1.00
 - Recommended PBRs: 6.64**

NOTE: The portion recommended for enrollment in PBRs is the entire property less the excluded area as measured. The attached aerial photo (winter 2010) outlines the parcel in yellow and in area 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.

B. FACTS:

1. Zoning in the vicinity: Properties in the vicinity are zoned RA5, R10, A35, UR or are within the City of Enumclaw.
2. Development of the subject property and resource characteristics of open space area: The property is undeveloped. The open space portion of the property is primarily pasture, except for a series of small drainages that intersect in the northwest corner (one running diagonally that crosses the southern boundary approximately 235 feet east of the southwest corner, a second along the western boundary and another along the northern boundary).
3. Site use: The property is used as farm land.
4. Access: The property is accessed from 276th Avenue SE.
5. Appraised value for 2011 (Based on Assessor's information dated 11/21/2011):

<u>Parcel #362006-9021</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$124,000	\$0	\$124,000
Tax applied	\$1,614.61	\$0	\$1,614.61

NOTE: For taxation purposes, PBRs participation reduces the **land assessed value** for the **portion** of the property enrolled.

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. 2008 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.

- E-107** 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 should 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, saltwater shorelines and their protective buffers;
 - e. Channel migration hazard areas;
 - f. Designated wildlife habitat networks;
 - g. Critical Aquifer Recharge Areas;
 - h. Marine beaches, wetlands, intertidal and subtidal habitat and riparian zones including bluffs;
 - i. Regionally Significant Resource Areas and Locally Significant Resource Areas;
 - j. Fish and Wildlife Habitat Conservation Areas; and
 - k. Volcanic hazard areas.

NOTE: PBRs is an incentive program provided to encourage voluntary protection of open space resources and maintain high quality resource lands.

E-420 King County recognizes that protecting and restoring headwater and upland forest cover is important for preventing flooding, improving water quality, and protecting salmon and other wildlife habitat. The central role that forest cover plays in supporting hydrologic and other ecological processes should be reflected in policies and programs addressing stormwater management, flooding, wildlife, and open space.

E-422 King County recognizes the value of trees and forests in both rural and urban communities for benefits such as improving air and water quality and enhancing fish and wildlife habitat. The county promotes retention of forest cover and significant trees using a mix of regulations, incentives, and technical assistance.

E-449 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, 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.

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
The property is located in an area designated as a critical aquifer recharge area (CARA 2). However, award of this category requires that at least one acre of the enrolling land be natively vegetated, and in this case the property is almost entirely active farm land/pasture. Credit for this category cannot be recommended.
- Farm and agricultural conservation land
Although the property has not participated in the farm and agricultural open space program (RCW 84.34) in the past it is traditional farm land and has been used in conjunction with the adjacent farm to the south, which is enrolled in the farm and agricultural program. The applicant is currently working with the King Conservation District to produce a farm management plan, a plan that must be **provided by April 2, 2012**, in order to qualify for this category. Credit for this category is recommended conditionally and is dependent upon the implementation of a farm management plan.
- Rural open space
In order to be eligible for this category a property must be located in the rural area and contain ten or more acres of native vegetation. Although the property is located in the rural area, it is less than ten acres in size. Credit for this category cannot be recommended.
- Urban open space
In order to be eligible for this category a property must be located in the urban area. This property is located in the rural area and therefore, credit for this category cannot be 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 | 0 |
| • Farm and agricultural conservation land | 5* |
| • Rural open space | 0 |
| • Urban open space | 0 |

TOTAL 5 points

Note: *Award of this category is necessary for the property to participate in PBRs.

PUBLIC BENEFIT RATING

For the purpose of taxation, 5 points result in 50% of market value and a 50% 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 5 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 and 9 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;

1. 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 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. 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.
11. 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:

Peter Donahue, King County Hearing Examiner
Deena L. Fuller, applicant
Wendy Morse, King County Assessors Office