

**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

APPLICANT: Melissa Rohan

File No. E15CT025

A. GENERAL INFORMATION:

1. Owner: Melissa Rohan
8410 SW 184th Street
Vashon, WA 98070
2. Property location: same as above
3. Zoning: RA2.5
4. STR: SE- 32-23-03
5. PBRs categories requested by applicant and *suggested by program staff*:

Open space resources

- *Aquifer protection area
- *Buffer to public or current use classified land
- Rural open space
- Significant plant or ecological site
- *Significant wildlife or salmonid habitat
- Surface water quality buffer
- *Watershed protection area

Bonus category

- *Resource restoration
- **Conservation easement
- **Easement and access

NOTE: *Staff recommends credit be awarded for these PBRs categories. **Award of these categories are 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:	322303-9088
Total acreage:	3.12
Requested PBRs:	2.40
Home site/excluded area:	1.06
Recommended PBRs:	2.06*

NOTE: The portion recommended for enrollment in PBRs is the entire property less the excluded area as measured. The attached 2013 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 resource restoration category, which requires an approved resource restoration plan be implemented to address restoration needs throughout the areas to be enrolled. Without award of this category, the property would not be eligible to participate in PBRs.**

B. FACTS:

1. Zoning in the vicinity: Properties in the vicinity are zoned RA2.5 and RA5.
2. Development of the subject property and resource characteristics of open space area: The property contains a single family residence, paved access driveway, landscaping, garden, ram pump, rope swings, walking paths and fruit trees. The open space is a mix of coniferous and deciduous forest with native understory that is heavily impacted with invasive species (primarily Himalayan blackberry and English ivy) that must be addressed by the landowners via a restoration plan. There is a stream that flows along the northern property line that empties into Puget Sound which is adjacent to the east property boundary.
3. Site use: The property is used as a single family residence.
4. Access: The property is accessed from SW 184th Street.
5. Appraised value for 2015 (Based on Assessor's information dated 2/26/2016)

<u>Parcel #322303-9088</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$482,000.00*	\$128,000.00	\$610,000.00
Tax applied	\$5,838.36	\$1,550.43	\$7,388.79

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. 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 #B11.

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
The entire property is located in an area designated as a critical aquifer recharge area (CARA 1 and 3). In order to be eligible for this category, a minimum of 1.00 enrolling acre must be designated as a CARA and be natively vegetated. **Credit for this category is recommended dependent upon the award of the resource restoration category and the implementation of an approved resource restoration plan.**
- Buffer to public or current use classified land
The property is adjacent to King County owned properties (parcels 3322303-9011 to the north and 322303-9079 to the south). The enrolling open space area is providing a buffer of native vegetation of more than 50 feet to the adjacent lands, which exceeds the category's requirement. **Credit for this category is recommended dependent upon the award of the resource restoration category and the implementation of an approved resource restoration plan.**
- Rural open space
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 property contains less than ten acres of native vegetation. Credit for this category cannot be recommended.
- Significant plant or ecological site
The property is impacted by invasive species (primarily Himalayan blackberry and English ivy) and qualification for this category requires native vegetation and the existence of a rare plant species or ecosystem identified by the Washington Department of Natural Resources' Natural Heritage Program, existence of which must be confirmed by an expert. A further study by the owners is not expected. Credit for this category is not 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 candidate species of concern by the Washington Department of Fish and Wildlife. Upon conducting a site visit, program staff determined areas of the forest on the property is of sufficient age and diversity to support the species regular use of the property. Award of this category is consistent with habitat as defined by KCC 20.36.100, section B.15.a(1). **Credit for this category is recommended dependent upon the award of the resource restoration category and the implementation of an approved resource restoration plan.**
- Surface water quality buffer
This property is adjacent to Puget Sound (type F waters). As required by county code (KCC 21A.24.358.C), 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 averages 116 feet, which is less than 1.5 times the buffer required. Credit for this category cannot be recommended.
- Watershed protection area

In order to be eligible for this category, the enrolling area must be contiguous, consist of additional native forest cover beyond that required and be at least 65% of the property acreage. For this property, at least 2.03 contiguous forested acres are required to participate for credit to be awarded. The landowner plans to enroll 2.06 acres of forest. **Credit for this category is recommended dependent upon the award of the resource restoration category and the implementation of an approved resource restoration plan.**

Bonus categories

- Resource restoration

The majority of the open space is encumbered with Himalayan blackberry and ivy (among other weeds) that must be addressed for the property 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

The landowner is pursuing an easement with the Department of Natural Resources and Parks to conserve and preserve the native open space. If an approved easement is recorded with the King County Recorder's Office by December 31, 2016, **and** an approved resource restoration plan is received by its deadline, then credit for this category should be awarded administratively.

- Easement and access

Although this category was not requested, the landowner is providing at least one open space resource and is interested in pursuing an easement with the Department of Natural Resources and Parks that would conserve the native open space as well as provide public access along the currently private beach. If an approved easement is recorded with the King County Recorder's Office by December 31, 2016, **and** an approved resource restoration plan is received by its deadline, then credit for this category should be awarded administratively. If credit is awarded for this category, signage may be required to notify the public that access is allowed along the tidal lands.

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 land	3**
Rural open space	0
Significant plant or ecological site	0
Significant wildlife or salmonid habitat	5**
Surface water quality buffer	0
Watershed protection area	5**

Bonus category

Resource restoration	5*
Conservation easement	***
Easement and access	***

TOTAL 23 points

NOTE: *Enrollment in PBRS is dependent upon the approval and implementation of a resource restoration plan. **Award of these additional categories is dependent upon the award of resource restoration category.

***The point total could further increase to a maximum of 73 and the percent reduction to 90% for the portion of the property being enrolled if credit is awarded for the conservation easement (15 pts) and easement and access (35 pts) categories.

PUBLIC BENEFIT RATING

For the purpose of taxation, 18 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 18 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 10 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.
 9. Grazing of livestock is prohibited on the open space Property.
 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. An owner of property enrolled in the program may be required to submit a monitoring report on an annual or less frequent basis as requested by program staff. This report must include a brief description of how the property still qualifies for each awarded resource category. It must also include photographs from established points on the property and any observations by the owner. The owner must submit this report to the department by email or by other mutually agreed upon method. An environmental consultant need not prepare this report.
 12. Public access shall be permitted upon any area of the open space Property that is designated for public access.

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
Melissa Rohan, applicant
Wendy Morse, King County Department of Assessments