

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

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

SUBJECT: Department of Natural Resources and Parks file no. **E22CT002**
Proposed ordinance no. **2022-0201**
Parcel nos. **1322029083 and 1322029089**

DEVELOPMENT SERVICES OF AMERICA, INC.

Open Space Taxation Application (Public Benefit Rating System)

Location: property abutting and north and east of the intersection of Wax Orchard Road SW and SW 232nd 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
Email: bill.bernstein@kingcounty.gov

SUMMARY OF RECOMMENDATIONS:

Department’s Recommendation: Approve 15.94 acres for 20% of assessed value

Examiner’s Recommendation: Approve 15.94 acres for 20% of assessed value

PRELIMINARY REPORT:

On June 17, 2022, the Department of Natural Resources and Parks (DNRP) submitted its report on file no. E22CT002 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 abutting and north and east of the intersection of Wax Orchard Road SW and SW 232nd Street, Vashon, WA 98070
STR:	NW 13-22-02
Zoning:	RA5
Parcel nos.:	1322029083 and 1322029089
Total acreage:	18.66 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.
- 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.
- A summary of relevant PBRs categories, as set for in DNRP's staff report, follows below. (Plain text represents a category an applicant requested an award for and that DNRP agreed was warranted. Any ~~strike through~~ represents a category an applicant requested an award for but that DNRP disagreed was warranted. Any *italics* represents a

category an applicant did not request an award for, but that DNRP nonetheless concluded was warranted. And any *asterisk* represents a category where DNRP found an award was warranted, but only if certain contingencies or conditions are met.)

PBRS categories:	<u>Open Space Resources</u>	
	Aquifer protection area	0
	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	*
	Significant wildlife or salmonid habitat	0
	Special animal site	0
	Surface water quality buffer	0
	Urban open space	0
	Watershed protection area	0
	<u>Bonus Categories</u>	
	<i>Conservation easement or historic easement</i>	15
	<hr/> Total	<hr/> 20

DNRP’s initially recommended score of 20 points would have resulted in a current use valuation of 30% of assessed value for the enrolled portion of the property.

6. Most of the categories the Applicant initially requested credit for are inapplicable, and the Applicant did not press these. However, the Applicant asserts that these properties qualify under KCC 20.36.100.B.13, as a scenic resource, viewpoint, or view corridor. The Applicant is not allowing “unlimited public access” (or any public access), a requirement to qualify as a (b) viewpoint. And while Vashon does have two “recognized view corridors,” this property is not near either of those, a requirement to qualify as a (c) view corridor.
7. However (a) “scenic resource,” defined as:

an area of ten or more enrolling acres of natural or recognized cultural features visually significant to the aesthetic character of the county. A site eligible as a scenic resource must be significant to the identity of the local area and must be visible to a significant number of the general public from public rights-of-way, must be of sufficient size to substantially preserve the scenic resource value and must enroll at least ten acres of open space,

requires more analysis.
8. Just because the property is a protected historic farm would not, standing alone, make it visually significant to the aesthetic character of the county and significant to the identity of the local area and visible to a significant number of the general public—a high bar to meet. But there are several features in play here. The property is participating in the farmland preservation program and being protected in perpetuity by a conservation

easement. The County is purchasing adjacent properties, demonstrating a serious public interest in the area and a limit in area development. And then, somewhat unique to this parcel, the Applicant has planted two neat rows of trees; normally, tree screen public views and are a detriment, creating a visual barrier to the public. However, these are smaller deciduous trees that burst into color in the fall and draw visitors, as well as being consistent with the property's history as the Wax Orchards. No one of the above items, standing alone, would be sufficient, but in total an award here seems warranted.

9. DNRP pointed out that if or when the property is developed, even just with a residence, eligibility could change. That is true. Future property changes here are more likely to trigger a reevaluation and potential removal of this award category, than for a typical category on a particular property. For example, for property qualifying as forest stewardship land, development outside the forested area would likely not impact continuing eligibility. Conversely, changes here could more easily remove the visual significance to the aesthetic character and significance to the identity of the local area, something an owner might want to keep in mind. However, there is no imminent development on the horizon to reduce the significance of the scenery. And the potential for future changes is not by itself a reason to deny a award under this category for property that, in its present configuration, qualifies.
10. After a robust discussion at hearing, DNRP agreed that, as the property exists today, it likely qualifies as a “scenic resource.” We recommend an award for the scenic resource, viewpoint, or view corridor category. This would add five points and reduce the current use valuation to 20% of assessed value.
11. As to the land area recommended for PBRS enrollment, the Applicant did not specify a requested acreage, and DNRP recommends enrollment of a total of 15.94 acres across the two parcels. (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.)
12. Approval of 25 points and a current use valuation of 20% of assessed value for 15.94 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 20% of assessed value for the 15.94-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. E22CT002

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