

March 16, 2023

**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. **E22CT012**
Proposed ordinance no. **2023-0044**
Parcel nos. **1823039029 and 1823039117**

LARRY AND SUSAN LORACK

Open Space Taxation Application (Public Benefit Rating System)

Location: 13105 Burma Road SW, Vashon

Applicants: Burma Beach Cabin LLC
represented by **Larry and Susan Lorack**
5409 298th Avenue NE
Carnation, WA 98014
Telephone: (425) 880-4831
Email: llorack@aol.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 2.17 acres for 40% of assessed value
Examiner's Recommendation: Approve 2.17 acres for 40% of assessed value

PRELIMINARY REPORT:

On February 16, 2023, the Department of Natural Resources and Parks (DNRP) submitted its report on file no. E22CT012 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 March 2, 2023.

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:

Owners:	Larry and Susan Lorack 5409 298th Avenue NE Carnation, WA 98014
Location:	13105 Burma Road SW, Vashon
STR:	NW-18-23-03
Zoning:	RA2.5
Parcel nos.:	1823039029 and 1823039117
Total acreage:	2.45 acres

2. The Applicants 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.

3. 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	3
	Watershed protection area	5
	<hr/> Total	<hr/> 13

The DNRP-recommended score of 13 points results in a current use valuation of 40% of assessed value for the enrolled portion of the property. There are no contingencies.

4. As to the land area recommended for PBRS enrollment, the Applicant requested 2.11 acres and DNRP recommends 2.17 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.)
5. Except as modified herein, we find the facts set forth in DNRP’s preliminary report and testimony at the March 2, 2023, public hearing correct and we incorporate them by reference. We will provide copies of this report and DNRP’s report to the Metropolitan King County Council for final approval.
 6. Approval of 13 points and a current use valuation of 40% of assessed value for 2.17 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.
 7. Finally, there is one additional feature here only tangentially related to this application. Applicants’ properties are bisected by a public right-of-way that continues through the neighbor’s property to the south before dead-ending. Ex. 1 (map). That right-of-way appears to be mere lines on a map, likely created by a century-old plat, and never built out, as owners developed other ways to access the properties. Heavily forested, it does not appear to provide future access to any properties.
 8. Property owners can petition to “vacate” rights-of-way useless to the road system, meaning the owners acquire the right-of-way, increase their square footage, and remove an encumbrance to their private property. *See* <https://kingcounty.gov/depts/local-services/roads/road-vacations.aspx>. Vacating solely the right-of-way section through Applicants’ properties would probably not “benefit the public” (a bedrock requirement), because that would leave an isolated, orphaned public right-of-way section in the middle of the neighbor to the south’s property—how could the County respond to, for example, illegal dumping on what would become a landlocked public right-of-way? But vacating the right-of-way through all three properties appears, on first-blush, appropriate.¹
 9. Where vacation is warranted, we calculate the compensation the petitioner has to pay to expand their property by starting with the increase in property value their parcel will garner from the extra square footage the (formerly) public right-of-way area adds, and then adjusting downward to reflect the expected value to the public from avoided costs (such as potential management/maintenance). Our most recent recommendations have resulted in compensation requirements of: \$809, \$0, \$6648, \$0, \$890, \$0, and \$0.

RECOMMENDATION:

APPROVE a current use valuation of 40% of assessed value for the 2.17-acre enrolled portion of the property.

¹ We cannot tell how far to the north the right-of-way goes, but participation by northerly owners seems optional, since—unlike the scenario where Applicants petitioned but the neighbor to the south did not join in—the lack of northerly participation would presumably not result in an orphaned public right-of-way section. There is a bar to vacating rights-of-way abutting a body of water, but the right-of-way here does not seem to do that. And all this is just speculation based on looking at one piece of paper. If a vacation petition comes in, we will analyze it on its merits.

DATED March 16, 2023.



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 *April 10, 2023*, 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 *April 10, 2023*, 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 *April 10, 2023*, the Examiner will notify all parties and interested persons and provide information about “next steps.”

**MINUTES OF THE MARCH 2, 2023, HEARING ON THE APPLICATION OF
LARRY AND SUSAN LORACK, FILE NO. E22CT012**

David Spohr was the Hearing Examiner in this matter. Bill Bernstein participated in the hearing.

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

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| 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 |