March 5, 2010

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Natural Resources & Parks (DNRP), Water and Land Resources Division, file no. **E09CT042**
Proposed Ordinance No. **2010-0032**

Open Space Taxation (Public Benefit Rating System; PBRS)
Application of
DAN NOWAK and EMILEE CLINE
P.O. Box 1374
Fall City, Washington 98024

Location of Property: 31431 SE Issaquah-Fall City Road
Fall City, Washington

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve 8.78 acres for 20% of market value
Department's Final:	Approve 8.78 acres for 20% of market value
Examiner:	Approve 8.78 acres for 20% of market value

PRELIMINARY REPORT:

The Department of Natural Resources & Parks, Water and Land Resources Division Report on item no. E09CT042 was received by the Examiner on February 18, 2010.

PUBLIC HEARING:

After reviewing the report and examining available information on file with the application, the Examiner conducted a public hearing on the application as follows:

The hearing on item no. E09CT042 was held by the Examiner on March 3, 2010, in the Hearing Examiner's Conference Room, 400 Yesler Way, Room 404, Seattle, Washington.

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 office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner:	Dan Nowak and Emilee Cline	
Location:	31431 SE Issaquah-Fall City Road, Fall City	
PBRS categories requested:	**Open space resources** Buffer to public land Significant wildlife or salmonid habitat Surface water quality buffer Watershed protection area **Bonus categories** Additional surface water quality buffer	
Categories recommended:	**Open space resources** Buffer to public land Significant wildlife or salmonid habitat Surface water quality buffer Watershed protection area **Bonus categories** Additional surface water quality buffer	
STR:	SW 16-24-07	
Zoning:	RA-5	
Parcel nos.:	162407-9019	162407-9063
Total acreage:	4.58 acres	5.62 acres
Recommended PBRS:	4.46 acres	4.32 acres

(The land area recommended for PBRS enrollment is the entire parcel less the excluded area, which is what has been 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.)

2. Timely application was made to King County for PBRS current use valuation of the property to begin in 2011. Notice of the application was given as required by law.

3. Except as modified herein, the facts set forth in the King County Department of Natural Resources & Parks, Water and Land Resources Division, Preliminary Report and testimony for the March 3, 2010, public hearing are found correct and are incorporated herein by reference. Copies of the department report will be provided with the copies of this report submitted to the Metropolitan King County Council.

4. Award under the watershed protection area category is given if "the enrolling forested area...consist[s] of an additional fifteen percent of forest cover beyond that required by county...regulation." [KCC 20.36.100.A.20] The property has not been shown to qualify by providing forest cover substantially in excess of currently effective regulations. Nevertheless, award should continue to be granted based on the clearing limits of KCC 16.82.150 effective prior to their judicial invalidation. Even though that regulatory basis of award consideration has been undercut by the invalidation, the established award structure was in part predicated on its effectiveness, and the policy principle behind the award structure remains and should be respected as intended. The principle is that forest cover is valuable for watershed protection and is eligible for PBRS award if its area is substantially (at least 15 percent) over and above the base expressed as the minimum value, whether expressed by the prior regulation or by any regulation which is currently effective.

5. The property contains priority open space resources and is eligible for a total award of 23 points under the King County Public Benefit Rating System. The resulting current use valuation therefore would be 20% of market value for 8.78 acres of the property.

CONCLUSION:

1. Approval of current use valuation of 20% of market value for 8.78 acres of the property pursuant to the Public Benefit Rating System adopted by Chapter 20.36 KCC would be consistent 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 current use valuation of 20% of market value for 8.78 acres of the property, subject to the conditions recommended in the Department of Natural Resources & Parks Report for the March 3, 2010, public hearing.

Current use valuation shall be subject to all terms and conditions of RCW Chapter 84.34 and KCC Chapter 20.36, as may be amended from time to time, and all regulations and rules duly adopted to implement state law and county ordinances pertaining to current use valuation.

RECOMMENDED March 5, 2010.

Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of $250.00 (check payable to King County Office of Finance) ***on or before*** **March 19, 2010**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before*** **March 26, 2010**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council is final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE MARCH 3, 2010 PUBLIC HEARING ON DEPARTMENT OF NATURAL RESOURCES & PARKS FILE NO. E09CT042:

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Bill Bernstein. There were no other participants in this hearing.

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

Exhibit No. 1 *Not submitted*
Exhibit No. 2 *Not submitted*
Exhibit No. 3 *Not submitted*
Exhibit No. 4 DNRP Preliminary Report to the Hearing Examiner
Exhibit No. 5 Affidavit of Publication
Exhibit No. 6 Notice of hearing from the Hearing Examiner's Office
Exhibit No. 7 Notice of hearing from the PBRS/Timber program
Exhibit No. 8 Legal notice and introductory ordinance to County Council
Exhibit No. 9 Application signed/notarized

Exhibit No. 10 Assessor's map
Exhibit No. 11 King County Assessor's database printout
Exhibit No. 12 Arcview and orthophoto/aerial map
Exhibit No. 13 Letter to neighbors re: notification of PBRS application
Exhibit No. 14 Letter to applicant re: received application and approval schedule
Exhibit No. 15 *Not submitted*
Exhibit No. 16 Legal description of area to be enrolled

PTD:mls
E09CT042 RPT
Attachment

This document is provided for information only. DO NOT complete and return. A completed copy will be furnished to the Applicant(s) by the Office of the Hearing Examiner after the application has been approved by the Metropolitan King County Council.

OPEN SPACE TAXATION AGREEMENT
Chapter 84.34 RCW
(To be used for "Open Space", "Timber Land" Classification or "Reclassification" Only)

Property Owner: **XX**
Property Address: **XX**
Granting Authority **King County, Washington**
Legal Description:

(legal description)

Assessor's Property Tax Parcel or Account Number: **XXX**
Department of Natural Resources & Parks File Number: **E0XCT0XX**
This agreement is between **XX** hereinafter called the "Owner", and
King County, Washington hereinafter called the "Granting Authority".

Whereas, the owner of the above described real property having made application for classification of that property under the provisions of Chapter 84.34 RCW. And whereas, both the owner and granting authority agree to limit the use of said property, recognizing that such land has substantial public value as open space and that the preservation of such land constitutes an important physical, social, esthetic, and economic asset to the public, and both parties agree that the classification of the property during the life of this agreement shall be for:

Open Space Land

Now, therefore, the parties, in consideration of the mutual covenants and conditions set forth herein, do agree as follows:

1. During the term of this agreement, the land shall be used only in accordance with the preservation of its classified use.
2. No structures shall be erected upon such land except those directly related to, and compatible with, the classified use of the land.
3. This agreement shall be effective commencing on the date the legislative body receives the signed agreement from the property owner and shall remain in effect until the property is withdrawn or removed from classification.
4. This agreement shall apply to the parcels of land described herein and shall be binding upon the heirs, successors and assignees of the parties hereto.
5. The landowner may withdraw from this agreement if, after a period of eight years, he or she files a request to **withdraw** classification with the assessor. Two years from the date of that request the assessor shall withdraw classification from the land, and the applicable taxes and interest shall be imposed as provided in RCW 84.34.070 and 84.34.108.
6. After the effective date of this agreement, any change in use of the land, except through compliance with items (5), (7), or (9), shall be considered a **breach** of this agreement, and shall be subject to removal of classification and liable for applicable taxes, penalties, and interest as provided in RCW 84.34.080 and RCW 84.34.108.
7. A **breach** of agreement shall not have occurred and the additional tax shall not be imposed if removal of classification resulted solely from:
   a) Transfer to a governmental entity in exchange for other land located within the State of Washington;
   b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power in anticipation of the exercise of such power and having manifested its intent in writing or by other official action;
   c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the land owner changing the use of such property;
   d) Official action by an agency of the State of Washington or by the county or city where the land is located disallowing the present use of such land
   e) Transfer of land to a church when such land would qualify for exemption pursuant to RCW 84.36.020;
   f) Acquisition of property interests by State agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 (see RCW 84.34.108(6)(f));

g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(e):

h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification;

i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

j) The creation, sale, or transfer of a fee interest or a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as forest land under chapter 84.33 RCW, or under chapter 84.34 RCW continuously since 1993. The date of death shown on the death certificate is the date used; or

l) The discovery that the land was classified in error through no fault of the owner.

8. The county assessor may require an owner to submit data relevant to continuing the eligibility of any parcel of land described in this agreement.
9. The owner may apply for reclassification as provided in Chapter 84.34 RCW.
10. This agreement shall supersede any previous current use taxation agreement entered into for the subject property.

This agreement shall be subject to the following conditions:

See attached Hearing Examiner Report and Recommendation

It is declared that this agreement specifies the classification and conditions as provided for in Chapter 84.34 RCW and the conditions imposed by this Granting Authority. This agreement to tax according to the use of the property is not a contract and can be annulled or canceled at any time by the Legislature (RCW 84.34.070).

Granting Authority:

Dated _____

King County, Washington

_____

Bob Ferguson
Chair of Council

As owner(s) of the herein-described land I/we indicated by my/our signature(s) that I am/we are aware of the potential tax liability and hereby accept the classification and conditions of this agreement.

_____ Print Name

_____ Signature

State of Washington
County of _____

Subscribed and affirmed to before me this _____ day of _____, _____

_____
Notary's Signature

_____
My Appointment Expires

Date signed agreement received by Legislative Authority _____

For tax assistance, visit http://dor.wa.gov/content/taxes/property/default.aspx or call (360) 570-5900. To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users may call 1-800-451-7985.

REV 64 0022e (w) (7/21/09)