



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**May 11, 2009**

**Ordinance 16500**

**Proposed No.** 2009-0119.2

**Sponsors** Constantine

1 AN ORDINANCE concurring with the recommendation of  
2 the hearing examiner to approve, subject to conditions, the  
3 application for public benefit rating system assessed  
4 valuation for open space submitted by Bill and Jami  
5 Wheeler for property located at 29312 SE 408th Street,  
6 Enumclaw, WA 98022, designated department of natural  
7 resources and parks, water and land resources division file  
8 no. E08CT074.

9

10 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

11 SECTION 1. This ordinance does hereby adopt and incorporate herein as its  
12 findings and conclusions the findings and conclusions contained in the report and  
13 recommendation of the hearing examiner dated April 16, 2009, to approve subject to  
14 conditions, the application for public benefit rating system assessed valuation for open  
15 space submitted by Bill and Jami Wheeler for property located at 29312 SE 408th Street,  
16 Enumclaw, WA 98022, designated department of natural resources and parks, water and

**Ordinance 16500**

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17 land resources division file no. E08CT074, and the council does hereby adopt as its  
18 action the recommendation or recommendations contained in the report.

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Ordinance 16500 was introduced on 2/23/2009 and passed by the Metropolitan King  
County Council on 5/11/2009, by the following vote:

Yes: 8 - Mr. Constantine, Mr. Ferguson, Ms. Hague, Ms. Lambert, Mr. von  
Reichbauer, Mr. Gossett, Ms. Patterson and Mr. Dunn

No: 0


Excused: 1 - Mr. Phillips

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON



Dow Constantine, Chair

ATTEST:



Anne Noris, Clerk of the Council

**Attachments**      A. Hearing Examiner Report dated April 16, 2009

April 16, 2009

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

400 Yesler Avenue, Room 404  
Seattle, Washington 98104  
Telephone (206) 296-4660  
Facsimile (206) 296-1654  
Email: hearingexaminer@kingcounty.gov

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

SUBJECT: Department of Natural Resources & Parks (DNRP), Water and Land Resources Division,  
file no. **E08CT074**  
Proposed Ordinance No. **2009-0119**

Open Space Taxation (Public Benefit Rating System; PBRs)

Application of

**BILL & JAMI WHEELER**

29312 SE 408th Street  
Enumclaw, Washington 98022

Location of Property: 29312 SE 408th Street  
Enumclaw, Washington

**SUMMARY OF RECOMMENDATIONS:**

Department's Preliminary:	Approve 4.14 acres for 40% of market value (contingent)
Department's Final:	Approve 4.14 acres for 40% of market value (contingent)
Examiner:	Approve 4.14 acres for 40% of market value (contingent)

**PRELIMINARY REPORT:**

The Department of Natural Resources & Parks, Water and Land Resources Division Report on item no. E08CT074 was received by the Examiner on March 31, 2009.

**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. E08CT074 was held by the Examiner on April 8, 2009, 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: Bill and Jami Wheeler

Location: 29312 SE 408th Street, Enumclaw

PBRS categories requested: **Open space resources**  
 Aquifer protection area  
 Forest stewardship 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**  
 Aquifer protection area (contingent)  
 Forest stewardship land (contingent)  
 Significant wildlife or salmonid habitat (contingent)  
**Bonus categories**  
 Resource restoration (conditional)

STR:	NW 08-20-07	
Zoning:	A-35	
Parcel nos.:	082007-9089	082007-9090
Total acreage:	4.33 acres	4.77 acres
Recommended PBRS:	3.50 acres	0.64 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 2010. 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 for the April 8, 2009, 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. Credit under the aquifer protection area and significant wildlife or salmonid habitat categories is contingent upon award of credit under either the forest stewardship land category or the resource restoration area category with a plan for the reforestation of at least the southern 1.53 acres of parcel no. 082007-9089 (outlined in green on Exhibit no. 4). Failure to qualify for either or both of these categories would reduce the total point award by 5 points each and may result in a less reduced valuation for the enrolled portion of the property.
5. Award of credit under the forest stewardship land category is contingent on Applicant submittal of a forest stewardship plan by July 1, 2009, and subsequent approval by September 1, 2009. The plan must address the control and removal of invasive vegetative species and reforestation to provide at least four acres of contiguous forest within three years of enrollment. Failure to qualify for this category would reduce the total point award by 5 points and may result in a less reduced valuation for the enrolled portion of the property.
6. As an alternative to award under the forest stewardship land category, credit may be awarded administratively under the resource restoration category, subject to Applicant submittal and County approval of a resource restoration plan by September 1, 2009. Under the PBRS program, award under this category may not be granted concurrent with award under the forest stewardship land category, and therefore award would have no direct effect on the total point award and the current use valuation for the enrolled portion of the property.
7. Failure to qualify under either the forest stewardship land category (see Finding no. 5 above) or the resource restoration category (see Finding no. 6 above) would preclude the property from enrollment in the PBRS program at present due to lack of eligibility under any other resource categories.
8. 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 its recent 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 over and above the base expressed as the minimum value, whether expressed by the prior regulation or by any regulations which are currently effective.
9. Enrollment of parcel no. 082007-9090 is contingent upon enrollment of parcel no. 082007-9089
10. Enrollment of the qualifying areas of the property in the PBRS program is contingent on replanting of the areas outlined in green on Exhibit no. 4 within three years from the date of enrollment.
11. Subject to the above-noted contingencies, the property contains priority open space resources and is eligible for a total award of 15 points under the King County Public Benefit Rating System.

The resulting current use valuation therefore would be 40% of market value for 4.14 acres of the property.

CONCLUSION:

1. Subject to the above-noted contingencies, approval of current use valuation of 40% of market value for 4.14 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 40% of market value for 4.14 acres of the subject property, subject to the conditions recommended in the Department of Natural Resources & Parks report for the April 8, 2009 public hearing, the above-noted contingencies and the following conditional allowance:

- A. Credit may be awarded administratively under the resource restoration category as stated in Finding no. 6 above. Award under this category may not be concurrent with award under the forest stewardship land category.

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 April 16, 2009.

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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 April 30, 2009**. 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 May 7, 2009**. 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 3<sup>rd</sup> 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 APRIL 8, 2009 PUBLIC HEARING ON DEPARTMENT OF NATURAL RESOURCES & PARKS FILE NO. E08CT074:

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Ted Sullivan. 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 *Reserved for future submission of Forest Stewardship Plan or Resource Restoration Plan*
- Exhibit No. 16 *Reserved for future submission of legal description of area to be enrolled*

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

Assessor's Property Tax Parcel or Account Number: **XXX**  
Department of Natural Resources & Parks File Number: **E0XCTXXX**  
This agreement is between **XXX** 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/Timber 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 for the riparian open space program 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.
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 open space 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

\_\_\_\_\_  
Council Chair

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 (must be signed by all owners).

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

Date signed agreement received by Legislative Authority \_\_\_\_\_

For tax assistance, visit <http://dor.wa.gov> or call 1-800-647-7706. 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) (7/27/05)