

## CITY COUNCIL STUDY SESSION

Responding to Council's request for additional information on the application for Public Benefit Rating System (PBRs) Open Space Classification of the Timiri and Ostergaard property located at 4277 137<sup>th</sup> Avenue NE, Bellevue, Washington (King County Parcel No. 8669400210), and seeking Council direction on approval or disapproval of the application.

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## DIRECTION NEEDED FROM COUNCIL

### DIRECTION

Madhukirana Reddy Timiri and Velma Ostergaard applied to King County to enroll approximately 1.33 acres of their 1.38-acre parcel located in Bellevue, into King County's PBRs program for reclassification as open space. Council held a public hearing and discussed this application on September 6. Following discussion, Council directed staff to provide information concerning several topics regarding this application.

Following discussion, staff is seeking Council direction on approval or disapproval of the PBRs application.

## RECOMMENDATION

Move to adopt Resolution No. 10140, approving with conditions the application for Timiri and Ostergaard property located at 4277 137<sup>th</sup> Avenue NE, Bellevue, Washington (King County Parcel No. 8669400210).

## BACKGROUND & ANALYSIS

### Regulatory Context

Washington enacted the Open Space Taxation Act, Chapter 84.34 RCW, (the "Act") in 1970, primarily as an incentive for property owners to preserve open space, farm land, and timber land. In return, eligible portions of the property are taxed at a lower rate. The Act provides for counties as the administrators; King County adopted a "Public Benefit Rating System," or PBRs (Chapter 20.36 of the King County Code (KCC)) for open space classification.

Consistent with state goals, the purpose of King County's PBRs program is to encourage the conservation of natural resources in the County, including resources within city boundaries, to maintain important wildlife habitat, open space, wetlands and streams, working forests and productive farmlands. The PBRs program is a points system, where the amount of tax reduction is based on how much "public benefit" a property provides. There are 25 categories of open space resources—19 regular and six (6) bonus categories. King County is responsible for evaluating point values for these categories of

open space resources/public benefits. The Act and the PBRs provisions are described in detail in the Agenda Memo for the September 6 Public Hearing and Attachment A.

### **Application and Review**

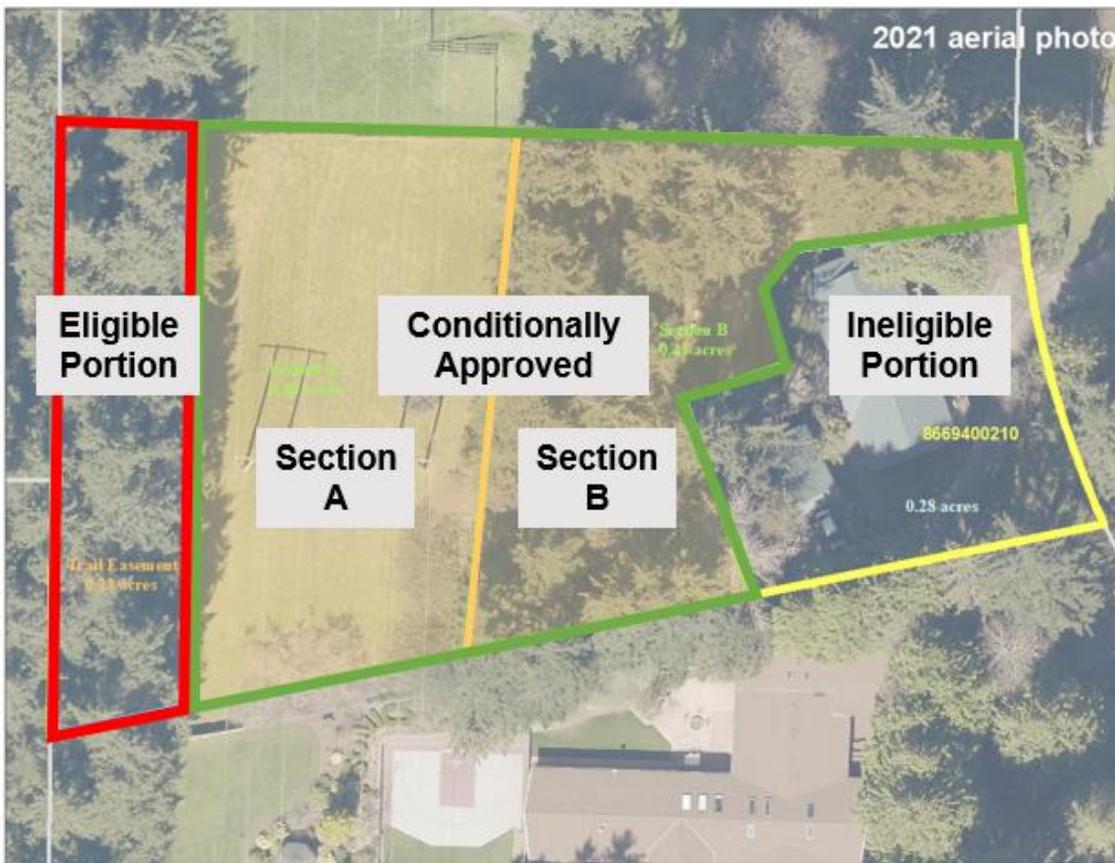
#### The Timiri and Ostergaard Enrollment Application

The property owners Timiri and Ostergaard applied to King County to enroll approximately 1.33 acres of their 1.38-acre parcel located at 4277 137<sup>th</sup> Avenue NE, Bellevue, Washington (King County Parcel No. 8669400210) into the PBRs program. Since the property is in the City, both the City and King County review and take action on the application. City and County staff conducted a joint site visit and worked cooperatively in reviewing and evaluating the Timiri and Ostergaard application. On June 21, King County held a public hearing, and based on its evaluation of the property and open space public benefits, King County approved the reclassification, allocating the property certain points outright, and additional points conditionally. See Attachment A. The Timiri and Ostergaard property and the application process are described in detail in the Agenda Memo for the September 6 Public Hearing.

#### King County's Analysis and Decision

As a result of King County's evaluation of the Timiri and Ostergaard application, King County grouped the property into three groups in its decision: (1) Eligible; (2) Conditionally Approved—Sections A and B; and (3) Ineligible. See Figure 1 below.

**Figure 1. Timiri and Ostergaard Property**



**(1) Eligible Portion: 0.23 acres (10 points)**

Land Area	Percent Reduction	Approximated Overall Tax Reduction	Approximated City Revenue Impact
0.23 acres	50%	\$278	\$28

- *Public recreation area (5 points):* The property contains a portion of a trail (along west property line), used by the public. The property has a recorded easement titled “Roads, Bridle Trails, Water Lines and Tanks” dated 1959 and the easement is shown on the face of the plat, providing for this publicly accessible trail. This trail runs north/south and begins at NE 40<sup>th</sup> Street, and ultimately outlets at 132<sup>nd</sup> Avenue NE. This public recreation area points recognize that the trail is well used, and pedestrians and equestrians can continue and access trails in Bridle Trails state park. Trail use was observed during the site visit by City and County staff.
- *Unlimited public access (5 points):* The owners provide unlimited public access to the portion of a trail (along west property line), used by the public. This trail runs north/south and begins at NE 40<sup>th</sup> Street, and ultimately outlets at 132<sup>nd</sup> Avenue NE where pedestrians and equestrians can continue and access trails in Bridle Trails state park. This unlimited public access points recognize that this portion has unlimited public access, allowing pedestrians and equestrians to continue their use.

**(2) Conditionally Approved—Section A (0.46 acres) and B (0.41 acres) for 0.87 acres: (Additional 10 points for 20 points total)**

Land Area	Percent Reduction	Approximated Overall Tax Reduction	Approximated City Revenue Impact
1.1 acres (includes Eligible Portion of 0.23 acres plus Sections A and B of 0.87 acres)	70%	\$4,298	\$443

- *Urban open space (5 points):* To be eligible for this category the enrolling area must be at least one (1) acre or be at least one-half (0.5) acre and meets one of the criteria listed in KCC 20.36.100.B.18.a (the land conserves, enhances or protects natural resources). With the approval above of 0.23 acres of open space, a minimum of an additional 0.27 acres of natively vegetated area (resource restoration, see below) must be provided to meet both the requirement for one-half acre enrolling and criteria 1 of KCC 20.36.100.B.18.a. Thus, this credit is conditional and can be awarded administratively after restoration is completed should the property owner elect to do so.

- *Resource restoration (5 points)*: This credit requires restoring the land and improving the health and diversity of their property, including removal of invasive species (English Ivy, Scotch broom, Himalayan blackberry, etc.) and planting native vegetation. To qualify for this category, the property owner must submit a restoration plan to King County for review and approval consistent with the terms of the condition, and the restoration must be implemented consistent with the approved plan. Credit for this can be awarded administratively. All planting activity must be completed within a three (3)-year period, and the property owner must submit to King County an annual progress report for the first five (5) years of restoration effort. The Conditionally Approved portion includes Sections A and B, where Section A is encumbered by easements for the City, Puget Sound Energy, and Olympic Pipe Line Co. See Figure 1 above. Therefore, revegetation of Section A, currently in grass and weeds, must meet the height and species requirements of all easement holders the PBRs program, and applicable City requirements.

### **(3) Ineligible Portion**

The land improved with the single-family home is not included in the Timiri and Ostergaard application and is ineligible for reclassification into the PBRs program.

### City Review

The City conducts an independent review of the application using the review criteria in the Act, which are also in King County's PBRs program within the various categories and therefore reviewed by the County. Consequently, King County's staff report is useful when considering the approval criteria, and how King County, the administrator of the Act, has rated the open space resources (public benefits) being provided.

Council has four options when reviewing the application: (1) approve the application with King County's conditions or modify the County's conditions; (2) approve the application and impose different conditions; (3) approve the application with no conditions; or (4) deny the application if Council finds the application unsupported by the record. If the City imposed a different condition or removed or modified a condition King County imposed, the application would return to King County for additional review and action because, under the Act, the conditions must be identical. The City may deny the application if the Council finds the application does not meet the stated criteria based on information before the Council. Denials must be in writing and must include reasons for the denial (WAC 458-20-250). Applicants may appeal denials of open space classifications to superior court, which are reviewed for arbitrary and capricious action. If an application is denied, an applicant must wait 365 days to reapply.

The criteria for considering an application to reclassify land to open space for taxation purposes are set forth in the Act, those criteria least relevant to the application are shown in strikethrough:

- (2) Benefits to the General Welfare. City may recognize the benefits to the general welfare resulting from preserving the current use of the property and shall consider:
  - (a) The resulting revenue loss or tax shift;
  - (b) Whether granting the application [for open space classification] will;
    - (i) **conserve or enhance natural, cultural, or scenic resources,**

- ~~(ii) protect streams, stream corridors, wetlands, natural shorelines and aquifers,~~
- (iii) protect soil resources and unique or critical wildlife and native plant habitat,**
- (iv) promote conservation principles by example** ~~or by offering educational opportunities,~~
- ~~(v) enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces,~~
- (vi) enhance recreation opportunities,**
- ~~(vii) preserve historic and archaeological sites,~~
- ~~(viii) preserve visual quality along highway, road, and street corridors or scenic vistas, [and]~~
- (ix) affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the property[.]**

(RCW 84.34.037(2)).

As discussed above, King County has evaluated the approval criteria by rating the application under the County's PBRs program, which is in its staff report. See Attachment A. Staff has reviewed King County's evaluation and approval and concluded it satisfies the relevant approval criteria set forth in RCW 84.34.037(2). Staff has also reviewed the impacts on tax revenue from this application and concluded the impact is *de minimus*. The process and next steps are described in detail in the Agenda Memo for the September 6 Public Hearing and Attachment A.

#### Council Questions and Staff Responses

During the September 6 meeting, Council discussed and asked for additional information on several topics. Staff has documented responses provided at the meeting as well as additional answers on these topics for Council's consideration.

1. Is there public access to the trail—the eligible portion in Figure 1 above?

*Response:* The eligible portion (the 30-foot-wide trail) is publicly accessible through a recorded easement. This trail is also part of the plat for the surrounding residential development, running north to south, beginning at NE 40<sup>th</sup> Street, and out letting at 132<sup>nd</sup> Avenue NE. The trail is well used by pedestrians and equestrians. King County approved this portion as a public recreation area and public access (5 points each).

2. Should there be a new easement providing for public access of the trail easement area?

*Response:* A new easement is not necessary. The existing easement, which is also part of the plat, provides public access north to south, on the Timiri and Ostergaard property and the other surrounding properties.

King County also evaluated whether the property could qualify for "equestrian-pedestrian-bicycle trail linkage" and/or "active trail linkage," and concluded that it could not. King County found that the easement and the trail itself did not meet King County standards for design, maintenance, and other elements, and it did not provide a required linkage to and between trails within the county's regional trail system. To be clear, while King County decided that the property did not meet these two categories, the property was found to qualify for the public

recreation area and public access categories, outright and with the existing easement.

3. Will there be public access to the conditionally approved portion, Sections A and B?

*Response:* There will not be public access to the conditionally approved portion. Correspondingly, King County conditionally qualified this portion under different categories, urban open space and resource restoration, which do not require public accessibility.

4. How does the public benefit from open space that is not publicly accessible?

*Response:* The purpose of the Act and the PBRs program is “to maintain, preserve, conserve and otherwise continue in existence adequate open space lands... 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.” KCC 20.36.010, *see also* RCW 84.34.010 (Legislative declaration). This purpose aligns with Council priorities of placing “value [on] the City’s abundant open space – whether it be the tranquility of a wooded trail or a paddle through the Mercer Slough” or somewhere else in the “City in a Park,” and preserving the natural environment as part of the City’s sustainability goals. 2021-2023 Bellevue City Council Vision & Priorities. Additionally, there is consistency with various land use, environmental, and Bridle Trails policies in the Comprehensive Plan.

These goals and policies are advanced even without public accessibility. For instance, the conditional approval for Sections A and B means that the property owners have to restore the land with vegetation native to the Pacific Northwest. Native plants provide stormwater and water quality benefits, are excellent for wildlife habitat, resist most diseases and, in many cases, grow vigorously enough to outcompete insects and diseases. Thus, while restoration of open space resources will certainly be good for the property owners and their property itself, restoration benefits extend to the public overall and advance the City’s environmental priorities.

5. Will there be monitoring of the open space on the property to ensure continuing compliance with the PBRs program?

*Response:* If Council approves this application consistent with King County’s decision, King County will prepare an agreement for the owner(s) to sign, which typically includes a description of how the classified land may be used to retain its status, actions that will cause the removal of the land from the program, and consequences of a change in the classified use of the land.

If the property owners move forward with compliance with the conditional approved portions, King County will review the restoration plan, the plantings and restoration itself, annual progress reports for the first five years. After the five years of reporting, King County monitors their property once every few years, and encourages owners to also self-report to document their compliance.

6. What if the owner (or any subsequent owner) of the property withdraws from the PBRs program?

*Response:* Under the Act and the PBRs program, if the use changes from open space or is otherwise removed from the program prior to 10 years, the property would be subject to the

additional tax, interest, and penalty (20 percent) provisions of the Act. The classification continues until the owner requests removal, the use no longer complies, or a sale renders the land exempt from property taxes. If the property is sold, the new owner must sign a Notice of Continuance, or otherwise the property is subject to additional tax, interest, and penalties if the land is out of compliance and does not meet one of the statutory exceptions in the Act.

7. What is the long-term effect of approving this application into the PBRs program?

*Response:* As explained above, the purpose of the Act and the PBRs program is “to maintain, preserve, conserve and otherwise continue in existence adequate open space lands... 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.” KCC 20.36.010. This purpose aligns with Council priorities and various Comprehensive Plan policies.

Under the Act, the Council should consider the fiscal impact of the application before the Council. As explained above, there is a fiscal impact in the amount of \$28.00 and possibly \$443.00. However, in response to the Council’s question, it is not possible to reasonably predict if other property owners will follow the Timiri and Ostergaard example. In fact, the Act and the PBRs program have been in existence for a few decades, and there has not been a rush to apply for enrollment within Bellevue. A preliminary review of similarly-situated properties to the Timiri and Ostergaard property, i.e. located next to a trail, which is a subset of properties that may qualify, shows around 259 properties. However it is unknown how many property owners, if any, may be interested in the PBRs program and how many properties would qualify. There will be different site conditions with any new applications, which will have to go through the same process as for the Timiri and Ostergaard application.

8. What is the requirement for noticing this PBRs application and/or decision on neighboring property owners?

*Response:* The Act requires the granting jurisdictions to hold a public hearing on the application prior to making a decision on the reclassification and that public notice be provided at least 10 days prior to the hearing in a newspaper of general circulation. On August 22, the City published a Notice for the September 6 Public Hearing in the Seattle Times.

Per Council’s request, staff also reached out to and will be meeting with the Bridle Trails Community Club board to inform them of the Timiri and Ostergaard application, the review process for reclassifying property into the PBRs program, and the scheduled Council meeting to consider this item.

## POLICY & FISCAL IMPACTS

### Policy Impact

The Timiri and Ostergaard application is supported by the following Comprehensive Plan Policies:

- **Comprehensive Plan Policy LU-2:** Retain the city’s park-like character through the preservation and enhancement of parks, open space, and tree canopy throughout the city.

- **Comprehensive Plan Policy LU-33:** Preserve open space and key natural features through a variety of techniques, such as sensitive site planning, conservation easements, transferring density, land use incentives and open space taxation.
- **Comprehensive Plan Policy EN-11:** Support partnerships between the city and private landowners to steward private lands, streams, habitat and other natural resources for public benefit.
- **Comprehensive Plan Policy EN-57:** Provide incentives to private property owners to achieve specific habitat improvement goals, including retention and enhancement of native vegetation.
- **Comprehensive Plan Policy EN-70:** Improve wildlife habitat especially in patches and linkages by enhancing vegetation composition and structure, and incorporating indigenous plant species compatible with the site.
- **Bridle Trails Subarea Plan Policy S-BT-40:** Natural vegetation should be protected and preserved to provide buffers between land uses.

### **Fiscal Impact**

If the PBRs enrollment application is approved, the City would receive approximately \$28.67 less in annual tax revenue specific to this property's reduction. If the applicant is awarded additional acreage for the two Bonus Categories, this amount will increase to approximately \$443.21. Please note calculations to determine revenue impacts are general in nature and do not account for differences in values of land and improvements, therefore they are best estimates for informational purposes only.

### **OPTIONS**

1. Adopt the Resolution approving with conditions the application for Timiri and Ostergaard property located at 4277 137<sup>th</sup> Avenue NE, Bellevue, Washington (King County Parcel No. 8669400210).
2. Direct staff to return with a resolution approving the application with conditions different than King County's.
3. Direct staff to return with a resolution denying the application.
4. Direct staff to bring this item back for action at a future meeting.

### **ATTACHMENTS**

- A. King County Report for Enrollment in the Public Benefit Rating System and Approval Proposed Resolution No. 10140

### **AVAILABLE IN COUNCIL LIBRARY**

N/A