

CITY COUNCIL STUDY SESSION

Council consideration of an application for Public Benefit Rating System (PBRs) Open Space Classification of the Timiri and Ostergaard property located at 4277 137th Avenue NE, Bellevue, Washington (King County Parcel No. 8669400210).

Liz Stead, Interim Co-Director, 452-2725

Trisna Tanus, Consulting Attorney, 452-2790

Nick Whipple, Planning Manager, 452-4578

Development Services Department

Catherine Drews, Assistant City Attorney, 452-4683

City Attorney's Office

DIRECTION NEEDED FROM COUNCIL

DIRECTION

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

RECOMMENDATION

Move to adopt Resolution No. 10175, approving with conditions the application for Timiri and Ostergaard property located at 4277 137th 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, farmland, and timber land. In return, eligible portions of the property are taxed at a lower rate. The Act provides for counties as the administrators; as authorized, 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. The PBRs program is a points system and the amount of tax reduction is based on the number of points awarded to a property. To be eligible for open space classification under the County's PBRs program, a property must contain one or more qualifying open space resources and have a minimum of five points as determined under the County's PBRs program. 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 (King County Report for Enrollment in the Public Benefit Rating System and Approval). The City does not have a PBRs program and instead reviews the application using the criteria provided in the Act.

Application and Review

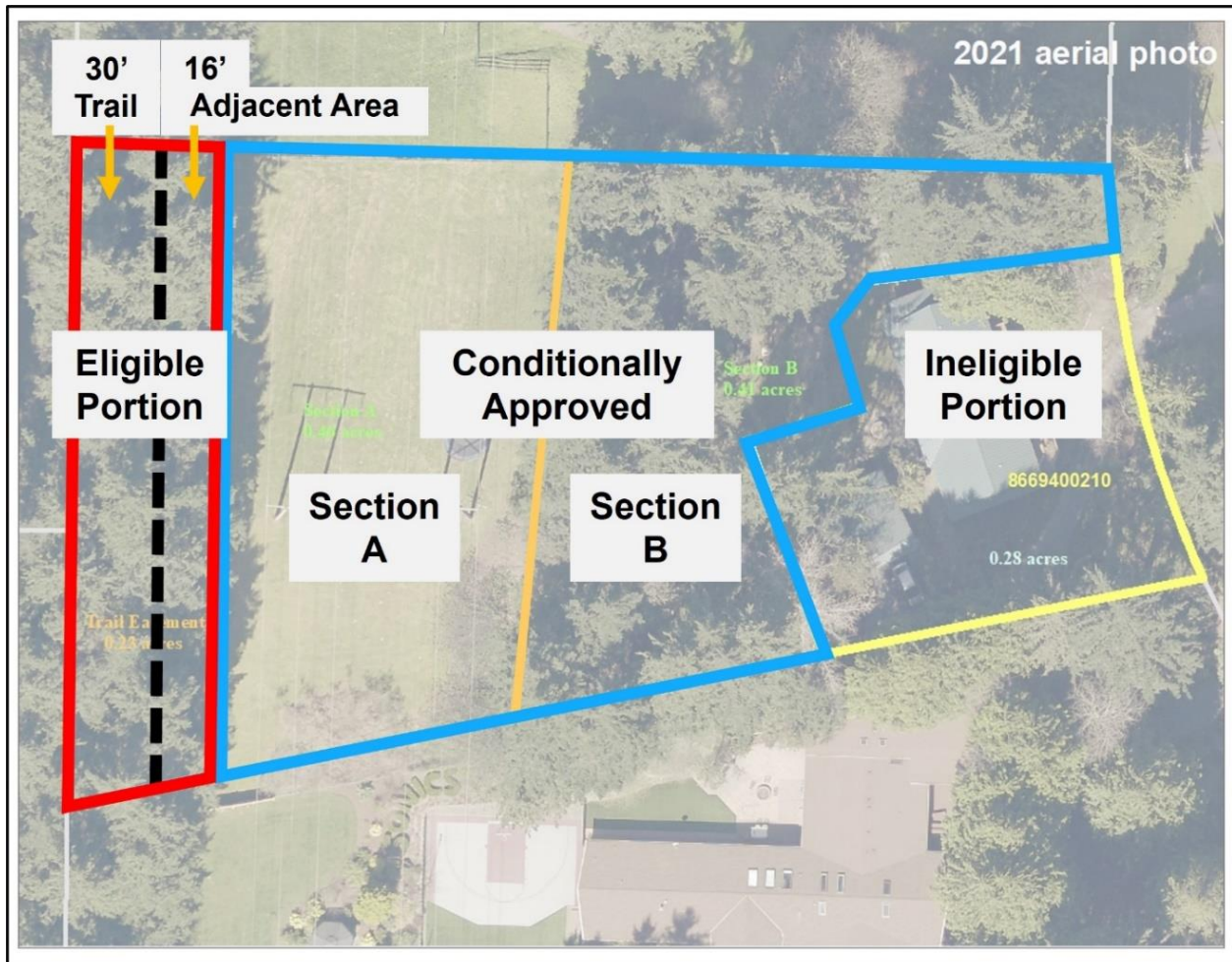
The Timiri and Ostergaard Enrollment Application

The Timiri and Ostergaard applied to King County to enroll approximately 1.33 acres of their 1.38-acre parcel located at 4277 137th 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. 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.

King County's Analysis and Decision

After its evaluation of the Timiri and Ostergaard application into the PBRs program, King County grouped the property into three portions 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	Overall Tax Reduction	City Revenue Impact
0.23 acres	50%	~\$278	~\$28

- *Public recreation area (5 points)*: The Eligible Portion qualifies as *public recreation area* because it contains a 30-foot-wide trail (along the west property line), with public access provided on the face of the plat. This trail runs north to south and begins at NE 40th Street, and outlets at 132nd Avenue NE. The public recreation area points recognize that the trail is well used. The approximately 16-foot-wide area adjacent to the trail, while not publicly accessible, is included pursuant to KCC 20.36.190, as it is contiguous to the trail and contains mostly native plants.
- *Unlimited public access (5 points)*: The Eligible Portion qualifies as *unlimited public access* because the 30-foot-wide trail (described above) provides unlimited public access.

**(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	Overall Tax Reduction	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 *urban open space*, the enrolling area must be at least one (1) acre or be at least one-half (0.5) acre and contains land that conserves, enhances or protects natural resources. Approval of this category is conditioned on restoration of 0.87 acres (Sections A and B) with native plantings, consistent with the resource restoration category below, within three (3) years, or by December 31, 2025.
- *Resource restoration (5 points)*: To be eligible for *resource restoration*, the property owners must perform restoration to improve the health and diversity of their property, including removal of invasive species (English Ivy, Scotch broom, Himalayan blackberry, etc.) and planting native vegetation. Approval of this category is conditioned on implementing King County- and City-approved restoration plan within three (3) years, or by December 31, 2025.

(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 part of King County's PBRS program and therefore reviewed by the County. Council has three

options when reviewing the application: (1) approve the application with King County's conditions; (2) approve the application and impose different conditions or no conditions; or (3) deny the application if Council finds the application unsupported by the record. 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. If the Council determines the application satisfies the statutory criteria and votes to approve the application, that action must occur at the November 28 Council meeting to provide sufficient time to draft the required agreement between the parties before the year end. If the Council determines to deny the application in whole or in part, then staff will return with a resolution memorializing the Council's findings supporting the denial in December.

The criteria for considering an application to reclassify land to open space for taxation purposes are set forth in the Act (RCW 84.34.037(2)):

- (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[.]

Staff Recommendation

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 and concluded the impact is *de minimus*. Staff recommends approving the application and imposing three additional conditions:

1. The applicant shall obtain in writing an approval of the restoration and replanting plan for the Conditionally Approved area (sections A and B) from Puget Sound Energy (PSE) and the Olympic Pipeline Co. (OPL) by February 28, 2023.
2. The applicant shall obtain City approval of the restoration and replanting plan for the Conditionally Approved area through Predevelopment Services (DC Permit) by April 28, 2023 and provide a copy of the PSE and OPL-approvals of the restoration and replanting plan.
3. The applicant shall obtain any and all required permits and approvals, such as clearing and

grading permits or environmental review, for the work to restore and replant the Conditionally Approved area. All permit applications and approvals shall be consistent with the restoration and replanting plan approved by the City.

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 includes a 30-foot-wide trail that is publicly accessible through a plat dedication.

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

Response: A new easement is not needed. The plat dedicates the 30-foot-wide trail to the public.

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. This portion is conditionally approved under different categories—urban open space and resource restoration—which do not require public access.

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. This purpose aligns with Council priorities of placing “value [on] the City’s abundant open space,” and preserving the natural environment as part of the City’s sustainability goals. See, 2021-2023 Bellevue City Council Vision & Priorities and the below Comprehensive Plan policies.

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

Response: The property owners must provide annual progress reports for the first five years to King County. 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 withdraw 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. When the property is being sold, the new owner must sign a

Notice of Continuance, or otherwise the property is subject to the applicable additional tax, interest, and penalties.

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

Response: Approving this application aligns with Council priorities and various Comprehensive Plan policies and sets an example of how private property owners can directly preserve, protect or restore open space resources. There is a fiscal impact to the City for the loss of property taxes for this exchange of public benefit. However, it is not possible to reasonably predict if other property owners will follow the Timiri and Ostergaard example, if it is approved.

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. 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 Bridle Trails homeowners association. Staff met with the association representatives, and have exchanged many emails about the Timiri and Ostergaard application 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 for this property. 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 and do not account for differences in values of land and improvements.

OPTIONS

1. Move to adopt the Resolution approving with conditions the application for PBRs Open Space Classification of the Timiri and Ostergaard property located at 4277 137th Avenue NE.
2. Do not adopt the Resolution and provide alternative direction to staff.

ATTACHMENTS

A. King County Report for Enrollment in the Public Benefit Rating System and Approval
Proposed Resolution No. 10175

AVAILABLE IN COUNCIL LIBRARY

N/A