



King County
Department of Development
and Environmental Services
900 Oakesdale Avenue Southwest
Renton, WA 98055-1219

FINAL CODE INTERPRETATION L04CI002

Background

By letter dated May 12, 2004, Ms. Jane Ryan Koler requested an interpretation of K.C.C. 21A.24.050B as it relates to tree farming. Ms. Koler, based on county policies and state law, asks that the department determine that tree farming is an agricultural activity that is exempt from the sensitive area requirements.

Discussion

K.C.C. Chapter 21A.24 regulates development and other alterations in sensitive areas. Sensitive areas include streams, wetlands, landslide hazard areas, and other similar environmentally sensitive or hazard areas.

Certain activities are exempt from sensitive areas regulations, including some agricultural activities.

The following are exempt from the provisions of this chapter and any administrative rules promulgated thereunder: ...

B. Agricultural activities as described below, in existence before November 27, 1990, and performed not less often than once every five years thereafter:

1. Mowing of hay, grass or grain crops;
2. Tilling, discing, planting, seeding, harvesting, soil preparation, crop rotation and related activities for pasture, food crops, grass seed or sod if such activities do not take place on steep slopes;
3. Normal and routine maintenance of existing irrigation and drainage ditches not used by salmonids;
4. Normal and routine maintenance of farm ponds, fish ponds, manure lagoons and livestock watering ponds; and
5. grazing by livestock.

...

H. The following exempt activities are permitted in coal mine hazard areas, provided that the applicable landowner, operator or utility is made aware of potential hazards:

1. Forest practices;
2. Agricultural activities;
3. Mining activities;
4. Power, telephone, and cable television utility lines;

5. Grading, filling, stockpile removal, and reclamation activities performed in conjunction with or by the Department of Interior's Office of Surface Mining, Reclamation and Enforcement with the intent of eliminating or mitigating threats to human health, public safety, environmental restoration or protection of property; and
6. Land uses and activities that existed prior to November 30, 1998.

...

K.C.C. 21A.24.050.

Tree farms are not specifically identified among the list of agricultural activities that are exempt for the sensitive areas ordinance.

K.C.C. Title 21A does not define agricultural activities, nor is the term defined elsewhere in the King County Code. Therefore, the provisions of K.C.C. 21A.24.050 must be read based on its plain meaning.

K.C.C. 21A.24.050B begins with the statement that "agricultural activities as described below." This suggests that the list is exclusive. In other cases, the King County Code recognizes that a list is not exclusive. For example, K.C.C. 21A.24.260 prohibits a "development proposal including but not limited to new or reconstructed structures" from causing an increase in the based flood elevation.

Following this introductory statement, K.C.C. 21A.24.050B.2 lists "[t]illing, discing, planting, seeding, harvesting, soil preparation, crop rotation and related activities for pasture, food crops, grass seed or sod if such activities do not take place on steep slopes" as agricultural activities that are exempt from the sensitive areas restrictions. Ms. Koler suggests that the phrase "for pasture, food crops, grass seed or sod" only applies to the "related activities." She suggests this interpretation is necessary to give every word in the sentence meaning. However, every word in the sentence can be given meaning by applying the ordinary meaning of the term "and." The first part of the sentence, up to "related activities" is a list of different types of activities involved in agricultural production. The phrase "related activities" recognizes that there are other activities involved in agricultural production beyond those listed. The remainder of the sentence specifies the purpose of those activities. They are for "pasture, food crops, grass seed or sod."

In order to have the meaning Ms. Koler proposes, the sentence would need to read "[t]illing, discing, planting, seeding, harvesting, soil preparation and crop rotation and related activities for pasture, food crops, grass seed or sod if such activities do not take place on steep slopes." Adding the word "and" after "soil preparation" would signal the end of the first list and that the words following "related activities" modified only related activities and not the entire list.

The purposes of K.C.C. 21A.24 also counsel for a narrow reading of this provision. K.C.C. 21A.24 is intended to protect "unique, fragile and valuable elements of the environment including, but not limited to, wildlife and its habitat" and to prevent "cumulative adverse environmental impacts on water availability, water quality, ground water, wetlands and streams." K.C.C. 21A.24.010. Interpreting K.C.C. 21A.24.050 broadly to allow complete exemptions from the sensitive area regulations would run counter to the purposes of the chapter and the sensitive area regulations.

Ms. Koler also argues that various state laws and due process rights argue for treating tree farms no differently than sod farms. These are matters that are best resolved through judicial review.

Decision

Existing K.C.C. 21A.24.050B exempts certain agricultural activities from the requirements of King County’s sensitive area regulations. These agricultural activities are limited to tilling, discing, planting, seeding, harvesting, soil preparation, crop rotation and related activities. In order to be exempt, agricultural activities are required to be in furtherance of pasture, food crops, grass seed or sod. Activities related to tree farming do not fall within the terms of this exemption.

The King County Council is considering an Executive recommended update to K.C.C. Chapter 21A.24. Proposed Ordinance 2004-0122. Under that proposed ordinance, the answer to this question would be different. The proposed ordinance allows “horticulture activity including tilling, discing, planting, seeding, harvesting, preparing soil, rotating crops and related activity” as an allowed alteration within most sensitive areas. King County Council Proposed Ordinance 2004-0122.1, page 75.

Appeal of Final Code Interpretations

This code interpretation does not relate to a development permit application currently pending before the County and is therefore final. K.C.C. 2.100.050. A final code interpretation that is not related to a development permit application is not subject to administrative appeal.

_____/s/
Stephanie Warden
Director
Development and Environmental Services

August 6, 2004
Date