



King County

Department of Development and Environmental Services

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FINAL CODE INTERPRETATION

L09CI003

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Background

By letter dated August 7, 2009, Mr. Brent Carson, on behalf of his client Rainier Wood Recyclers (Rainier), requested a code interpretation concerning three sections of the King County Code (K.C.C.): K.C.C. 21A.24.240, .250, and .260. The request was made in the context of ongoing discussions between the Department of Development and Environmental Services (DDES) and Rainier to resolve a code enforcement complaint. Code Enforcement Case E03G0006.

Rainier Wood Recyclers operates a materials processing facility in the A-35 zone. Most of the property on which the activity takes place is located within the zero rise floodway of the Snoqualmie River. The facility was originally established in 1998. Rainier brings in raw wood waste throughout the year. Incoming material is stored in piles on the property until it can be processed. After processing, it is again stored in piles on site until it can be sold and transported to its customers. The location and size of the stockpiles changes throughout the year and from year to year. They are generally at their greatest towards the end of the construction season which coincides with the beginning of the flood season.

Discussion

Under the King County Code, the flood hazard area consists of three basic areas: zero-rise flood fringe (K.C.C. 21A.24.240), zero-rise floodway (K.C.C. 21A.24.250), and FEMA floodway (K.C.C. 21A.24.260). These regulations are tiered, with those that apply in the least sensitive area, the zero-rise flood fringe, also applying in the floodway. Likewise, the regulations that apply in the zero-rise flood fringe and zero-rise floodway, also apply in the FEMA floodway. Although some of Rainier's property is located within the flood fringe, the majority of the property and activity takes place in the zero-rise floodway. Consequently, Rainier's operations are at least subject to the regulations found in K.C.C. 21A.24.240 and 21A.24.250.

K.C.C. 21A.06.505 defines the zero-rise floodway as follows:

Floodway, zero-rise: the channel of a stream and that portion of the adjoining floodplain that is necessary to contain and discharge the base flood flow without any measurable increase in base flood elevation.

A. For the purpose of this definition, “measurable increase in base flood elevation” means a calculated upward rise in the base flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and changed conditions directly attributable to alterations of the topography or any other flow obstructions in the floodplain. “Zero-rise floodway” is broader than that of the FEMA floodway but always includes the FEMA floodway.

B. “Zero-rise floodway” includes the entire floodplain unless a critical areas report demonstrates otherwise.

K.C.C. 21A.24.250 includes a general prohibition on increasing the base flood elevation in the floodway.

B. A development proposal shall not increase the base flood elevation except as follows:

1. Revisions to the Flood Insurance Rate Map are approved by FEMA, in accordance with 44 CFR 70, to incorporate the increase in the base flood elevation; and

2. appropriate legal documents are prepared and recorded in which all property owners affected by the increased flood elevations consent to the impacts on their property;

K.C.C. 21A.24.250B.

In the FEMA Floodway, K.C.C. 21A.24.260 allows no increase in the base flood elevation.

A further limitation on development proposals affecting base flood elevations is found in K.C.C. 21A.24.240C. That section requires that “[a] civil engineer shall prepare a base flood depth and base flood velocity analysis and submit the analysis to the department.” This provision also generally prohibits “[d]evelopment proposals and alterations ... if the base flood depth exceeds three feet and the base flood velocity exceeds three feet per second” There are exceptions to this prohibition, but none apply to Rainier’s operations.

Finally, K.C.C. 21A.24.240A provides that a “development proposal shall provide compensatory storage if grading or other activity displaces any effective flood storage volume.”

These are some of the most pertinent regulations that apply to Rainier’s operations in the zero-rise floodway. However, all of the regulations in 21A.24.240 through .260 would apply where relevant.

In its code interpretation request, Rainier argues that the prohibitions in K.C.C. 21A.24.240 through .260 are only intended to govern permanent loss of flood storage and that the stockpiles, which vary in size and location throughout the year, are not permanent. Rainier suggests that support for this analysis can be found in K.C.C. 21A.24.250E, which provides that:

During the flood season from September 30 to May 1 the following are not allowed to be located in the zero-rise floodway;

1. All temporary seasonal shelters, such as tents and recreational vehicles; and
2. Staging or stockpiling of equipment, materials or substances that the director determines may be hazardous to the public health, safety or welfare;

While it is true that K.C.C. 21A.24.250E.1 refers to temporary shelters, there is nothing in the rest of that subsection, or in any other provisions of K.C.C. 21A.24.240 through .260, that suggests that its provisions are intended to apply only to permanent alterations. Title 21A does not include a definition of either “permanent” or “temporary.” However, K.C.C. 21A.08.010 does distinguish between temporary and permanent uses. A temporary use is one that continues for no more than 60 days. This is consistent with the provisions in K.C.C. Chapter 21A.32 governing temporary use permits.

Furthermore, the limitations in K.C.C. 21A.24.250 apply to development proposals and alterations. A development proposal is “any [activity] requiring a permit or other approval from King County relative to the use or development of land.” K.C.C. 21A.06.310. These activities may be either temporary or permanent in nature. For example, certain temporary activities require a temporary use permit. *See* K.C.C. 21A.32.100 - .140. As such, they are considered to be development proposals, even though temporary. An alteration, which is defined as “any human activity that results or is likely to result in an impact upon the existing condition of a critical area or its buffer” may also be a temporary activity. K.C.C. 21A.06.056. For example, placing fill in a critical area buffer is an alteration, even if it is only intended to be temporary.

In the context of regulations governing critical areas, including flood hazards, the distinction between temporary and permit alterations is irrelevant. If an alteration to the floodway causes an increase in the base flood elevation, the harm that results will be the same whether the alteration is permanent or temporary. This is particularly relevant considering the facts in this case. The period of highest flood risk is also the period when Rainier has the most material on site.

The purpose behind K.C.C. Chapter 21A.24 also supports the conclusion that locating “temporary” stockpiles in the floodway should be subject to the flood hazard reduction requirements of K.C.C. 21A.24. K.C.C. 21A.24.010 establishes the purposes of the critical area regulations:

The purpose of this chapter is to implement the goals and policies of the Growth Management Act, chapter 3670A RCW, Washington state Environmental Policy Act, chapter 43.21C RCW, and the King County Comprehensive Plan, which call for protection of the natural environment and the public health and safety by:

- A. Establishing development and alteration standards to protect functions and values of critical areas;
- B. Protecting members of the general public and public resources and facilities from injury, loss of life, property damage or financial loss due**

to flooding, erosion, avalanche, landslides, seismic and volcanic events, soil subsidence or steep slope failures;

C. Protecting unique, fragile and valuable elements of the environment including, but not limited to, fish and wildlife and their habitats, and maintaining and promoting countywide native biodiversity;

D. Requiring mitigation of unavoidable impacts to critical areas, by regulating alterations in or near critical areas;

E. Preventing cumulative adverse environmental impacts on water availability, water quality, ground water, wetlands and aquatic areas;

F. Measuring the quantity and quality of wetland and aquatic area resources and preventing overall net loss of wetland and aquatic area functions;

G. Protecting the public trust as to navigable waters, aquatic resources, and fish and wildlife and their habitat;

H. Meeting the requirements of the National Flood Insurance Program and maintaining King County as an eligible community for federal flood insurance benefits;

I. Alerting members of the public including, but not limited to, appraisers, owners, potential buyers or lessees to the development limitations of critical areas; and

J. Providing county officials with sufficient information to protect critical areas.

K.C.C. 21A.24.010 (*emphasis added*).

In light of these considerations, stockpiles of processed wood waste that are located in the flood hazard zone are subject to the provisions of K.C.C. 21A.24.240 through .260.

This does not mean that the stockpiles are necessarily prohibited from locating in the zero-rise floodway. However, any stockpiles must be able to meet the applicable standards in K.C.C. 21A.24.240 through .260. For example, K.C.C. 21A.24.240B prohibits an activity that will raise the base flood elevation. If an applicant is able to demonstrate that stockpiles will not result in an increase in the base flood elevation, they would not be prohibited under this provision.

K.C.C. 21A.24.250E.2, the other relevant provision of this section, prohibits “[s]taging or stockpiling of equipment, materials or substances that the director determines may be hazardous to the public health, safety or welfare” in the zero-rise floodway during the flood season from September 30 to May 1. Thus, if an applicant is able to demonstrate that its stockpiles are not hazardous to the public health and safety so that the director is able to make the required finding, the stockpiles would not violate this provision. Among the factors the director will consider, is whether the requirements of K.C.C. 21A.24.240C have been met. K.C.C. 21A.24.240C prohibits development proposals where the based flood depth exceeds three feet and the base flood velocity exceeds three feet per second. In Rainier’s case, this particular requirement may be insurmountable. It appears that its site is located in an area where the base flood velocity exceeds three feet per second and the base flood depth exceeds three feet.

Decision

Rainier Wood Recyclers operates a materials processing facility located on A zoned property. Much of the property on which the activity takes place is located in the flood hazard area, with most of the area within the zero rise floodway. Rainier accepts a variety of wood waste at its facility and then processes it for sale off-site. The raw and processed wood waste is stored in piles which are located within the flood-hazard area. A code enforcement complaint has been initiated concerning Rainier's operations. In order to resolve one of the issues, Rainier has requested a code interpretation asking whether flood hazard regulations in K.C.C. 21A.24.240-.260 apply to the temporary stockpiling of wood waste within the flood hazard area.

Stockpiles of processed wood waste that are stored in the zero-rise floodway are subject to the provisions of K.C.C. 21A.24.240 and 21A.24.250. The fact that the stockpiles change in size and location during the course of the year does not make them temporary or exempt them from the regulations. K.C.C. 21A.24.250B generally prohibits activities that will increase the base flood elevation. If an applicant can demonstrate that stockpiles of raw and processed wood waste in the zero-rise floodway will not have this effect, they would not be prohibited. Under K.C.C. 21A.24.250E.2, if an applicant can demonstrate to the director that locating the stockpiles in the zero-rise floodway during the flood season will not be hazardous to public health or safety, the director may allow them to remain. One factor the director will consider is whether the area meets the standards set forth in K.C.C. 21A.24.240C, which generally prohibits development proposals that are located in an area where the base flood elevation exceeds three feet and the base flood velocity exceeds three feet per second. Rainier's site may violate both of these conditions.

Finality of Code Interpretations

Under K.C.C. 2.100.040, a code interpretation that relates to a permit application or a code enforcement action is final when the department makes its decision on the underlying permit or code enforcement action. Under K.C.C. 2.100.050, the administrative appeal of a code interpretation that relates to a code enforcement case is consolidated with the appeal of the underlying code enforcement action. The Director determines that this code interpretation relates to Code Enforcement Case E03G0006. Any appeal of this code interpretation shall be consolidated with an appeal of the Department's decision on Code Enforcement Case E03G0006.



Stephanie Warden
Director
Development and Environmental Services

11/03/09
Date