



King County

Department of Development and Environmental Services

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FINAL CODE INTERPRETATION L08CI004

Background

Background

On June 11, 2008, Roseanne Zemp filed a complete Code Interpretation Request concerning a P-Suffix Condition that applies to Parcel 172308-9006. The property is zoned RA-5P. P-Suffix Condition SV-P36 imposes three conditions on the property. One of the conditions requires that "a twenty-five foot native growth protection buffer shall be placed on all property boundaries adjacent to any urban development."

Ms. Zemp's Code Interpretation Request asks whether this requirement precludes road access through the buffer to an adjacent urban subdivision with dead end streets that end at the parcel boundary. Ms. Zemp included a number of documents, including a Wetland and Stream Delineation Study prepared by the Watershed Company.

This Code Interpretation Request does not relate to a permit application pending before King County.

Discussion

Parcel 172308-9006 was rezoned in 2001 from F to RA-5P. The parcel is slightly larger than 166 acres and is triangular shaped. Two sides of the parcel are adjacent to the urban growth area and the city of North Bend. This is the Forster Woods subdivision. The remainder of the parcel is adjacent to RA-5 or RA-10 zoned property without any P-Suffix conditions or to F zoned property. A vicinity map is attached.

P-Suffix Condition SV-P36 applies to this parcel and reads as follows:

1. All residential lots shall be clustered on the lower (approximately 50 acre) portion of the property adjacent to the Forster Woods development;
2. A twenty-five foot native growth protection buffer shall be placed on all property boundaries adjacent to any urban development; and
3. The remainder of the parcel shall be voluntarily dedicated upon final plat approval as permanent open space and shall remain in a natural state.

There is little legislative history that discloses the King County Council's intent when it rezoned this property and added the P-Suffix Condition. The change was not a recommendation from the King County Executive. The amendment proposing to rezone the property was offered by Councilmember Pullen. The effect statement that accompanies the proposal mostly restates the terms of the proposed condition. However, it does state that the clustering of residential lots on the lower 50 acres is done "so as not to disturb environmentally sensitive portions of the site."

The required native growth protection buffer is adjacent to the Forster Woods development. There are two roads through the subdivision that dead end at Ms. Zemp's parcel. In order to access these dead ends from her property, the roads would need to traverse the native growth protection buffer.

The King County Code contains no definition of a native growth protection buffer. The closest comparable term is the native growth protection easement that is referenced in K.C.C. 21A.24.325 and in the King County Surface Water Design Manual (SWDM). The SWDM defines the native growth protection easement as "an easement granted to the County for the protection of native vegetation within a sensitive area or its associated buffer." The definition goes on to note that this meaning of the term was replaced by "critical area" and "critical area buffer." Another related term used in the SWDM is "native growth retention area." This is defined as "the area of native vegetated surface set aside by a covenant, easement, or tract for purposes of implementing a flow control BMP."

Under any of these potential meanings, there is nothing to indicate that alterations of the native growth protection area are prohibited. In fact, with respect to critical areas, King County's Critical Area Regulations specifically allow road crossings in critical areas, either as an allowed alteration or as an alteration exception. See K.C.C. 21A.24.045 and 21A.24.070. In these circumstances, appropriate mitigation is required.

The actual easement language DDES uses to establish a Native Growth Protection Easement does not preclude alterations to the easement. The easement only states that the vegetation in the area may not be cut or otherwise disturbed "without approval in writing from ... [DDES]."

In the particular circumstances of this property, allowing road access through the Native Growth Protection Buffer would have lesser environmental impacts than the alternative. Ms. Zemp's Code Interpretation Request included a Wetland and Stream Delineation Study prepared by the Watershed Company. A preliminary lot sketch shows that only one stream crossing would be necessary to provide road access through the Native Growth Protection Buffer to the Forster Woods development. The alternative would require a road 3600 feet long that would have five stream crossings and would traverse the area that SV-P36 requires be set aside as permanent open space and to remain in a natural state. A stated purpose of the clustering provisions and open space set-aside requirements of SV-P36 is to avoid disturbing environmentally sensitive portions of the site.

In other words, if road access through the native growth protection buffer is not allowed, the result would be construction of a road that would disturb those areas that the P-Suffix condition explicitly directs to be protected as open space and to remain in a natural state.


Decision

P-Suffix Condition SV-P36 applies to Parcel 172308-9006 and includes three conditions. One condition requires a twenty five foot native growth protection buffer to be placed on the parcel boundaries that are adjacent to urban areas. Ms. Roseanne Zemp has asked whether this requirement precludes a road crossing through the buffer to a dead end road on the adjacent urban development.

A road crossing is allowed through the native growth protection buffer required by P-Suffix Condition SV-P36. There is nothing in the legislative history of this P-Suffix condition to indicate otherwise. With appropriate mitigation, road crossings are allowed through stream and wetland buffers, which are similar in purpose to the native growth protection buffer. Areas protected by Native Growth Protection Easements may also be disturbed upon approval by DDES. In addition, the alternative here would be to require a much longer road that would traverse several streams and cross portions of the property that SV-P36 requires to remain in a natural state. This would be likely to result in greater overall environmental impact and would conflict with the purpose of SV-P36 to leave large portions of the property undisturbed.

Finality of Code Interpretations

Under K.C.C. 2.100.040, if a code interpretation request does not relate to a specific development proposal that is pending before the Department of Development and Environmental Services, the code interpretation is final when issued by the director. The Director determines that this code interpretation does not relate to a development proposal that is pending before the Department. Therefore, this code interpretation is final when it is issued.



Stephanie Warden
Director
Development and Environmental Services

8/12/08
Date