

PUBLIC WORKS

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STAFF REPORT

FOR HEARING EXAMINER MEETING

OF WEDNESDAY, August 20, 2008

FILE: LoPriore Critical Areas Variance

#RECA-2008-01 KIVA #RECA-2082474

<u>APPLICANT</u>: Ralph LoPriore

19837 148th Ave. SE Renton, WA 98058

<u>REQUEST</u>: The applicant requests relief from the Critical Areas Ordinance,

specifically relief from prohibition of constructing residential structures within the floodway pursuant to Kent City Code (KCC)

14.09.180.

STAFF

<u>REPRESENTATIVE</u>: Beth Tan, P.E.,

Senior Environmental Engineer

STAFF

RECOMMENDATION: APPROVAL

I. <u>GENERAL INFORMATION</u>

A. Description of the Proposal

The applicant requests relief from the Critical Areas Ordinance, specifically relief from prohibition of constructing residential structures within the floodway pursuant to Kent City Code (KCC) 14.09.180. The applicant plans to install a double wide manufactured home on the site.

B. Location

The property is located at 6805 S. 262nd Street and is identified by King County tax parcel number 020000-0060.

C. Zoning

The property is zoned AG, Agricultural General District. The purpose of the AG zone is to provide appropriate locations for agricultural related industries and retail uses in or near areas designated for long-term agricultural use. Such areas may contain prime farmland soils which may be currently or potentially used for agricultural production.

D. Land Use

The site is approximately 144,472 Sq. Ft (3.42 acres) in size. Access is proposed from S. 262nd Street. The subject property is bordered by West Valley Highway on the west side and S. 262nd Street to the north. The properties to the south and east have agricultural uses as well as residential structures. The surrounding properties to the north, east and south are zoned AG (Agricultural General District). The property on the west side of West Valley Highway is located in unincorporated King County and is zoned A10 - Agriculture, 1 unit per 10 acres.

E. History

The property has historically been used for agriculture. It is anticipated that the property will remain in use consistent with the AG zone.

II. **ENVIRONMENTAL CONSIDERATIONS**

Α. **Environmental Assessment**

This variance is exempt from SEPA pursuant to WAC 197-11-800(6)(b), as adopted by the Kent City Code 11.03.200. The Environmental Engineering Section has reviewed and approved the Wetland Delineation Report, which indicated wetlands are not present on-site, and has assessed the environmental impacts of the requested relief (see V below).

В. Infrastructure

The property takes access from S. 262nd Street. All other provisions for water, sewer and storm drainage will be met prior to the issuance of any construction permit for the property.

III. **CONSULTED DEPARTMENTS AND AGENCIES**

The following departments and agencies were advised of this application:

Police Department City Attorney City Clerk Economic Development Manager

Planning Department

Washington State Dept. of Fish & Wildlife Muckleshoot Tribe King County DNRP **US Post Office**

King County Transit

Fire Department Parks Department Public Works Department Building Department

Washington State Dept. of Ecology

Kent School District King County DDES

In addition to the above, all persons owning property located within 300 feet of the site were notified of the application and public hearing. A Notice of Application was posted on the site on July 21, 2008 and was published in the Kent Reporter on July 23, 2008. Notice for this public hearing was posted on site on August 8, 2008 and published in the Kent Reporter on August 9, 2008. The public comment period was July 23, 2008 through August 6, 2008.

Agency comments are as follows:

Comments were not received from any agencies. Questions were received and responded to from the Muckleshoot Indian Tribe. Those questions and responses are included below.

1. What is the current zoning of the property?

Current zoning is AG - Agriculture / General. The purpose of the AG zone is to provide appropriate locations for agriculturally related industrial and retail uses in or near areas designated for long-term agricultural use. Such areas may contain prime farmland soils which may be currently or potentially used for agricultural production.

2. How is the property currently used for agricultural and will these uses continue on the property?

The majority of the property is currently being used for farming. The property owner has stated his intentions to continue this usage. Uses consistent with Kent City Code for the AG zone will be allowed.

3. How will the floodway compensatory storage site be permanently protected?

The City does not require the floodway compensatory storage site to be placed in a permanent easement or tract. The property owner will be required to obtain a grading permit consistent with Kent City Code prior to making modifications to the site in the future.

4. Is the Mill Creek buffer located on the property in the NE corner as suggested by the Wetland Determination report by Sewall Wetland Consulting Inc? If so, how will this project impact this buffer and what is the proposed mitigation?

Per Kent City Code 11.06.160, buffers and buffer areas are "...a vegetated zone contiguous to and surrounding a critical area..." The City does not require enforcement of buffers for critical areas beyond the point where the continuity of the buffer is broken by a structure such as a paved roadway. S. 262nd St. is on the north side of this proposal between the LoPriore site and Mill Creek and the LoPriore site will consequently not be regulated as a buffer.

5. How does the project avoid and/or impact Wetland 311 or its regulated buffer as identified by the City as being onsite?

The City has investigated the site and agreed with the applicant's consultant's conclusion that there are no wetlands on site. I am attaching a copy of the City's wetland determination review from October, 2007.

6. If there are impacts to Wetland 311, what is the proposed mitigation for these impacts?

N/A

No comments were received from City of Kent departments.

IV. ZONING CODE REVIEW

If the variance to the critical areas code is approved, the applicant will propose to install a double wide manufactured home in the AG Zone, Agricultural General District. This is permitted in the AG zone.

V. <u>ENVIRONMENTAL ENGINEERING REVIEW</u>

A. Critical Areas Ordinance

In May 2005, the City of Kent adopted a revised Critical Areas Ordinance (KCC Chapter 11.06 and KCC 14.09), pursuant to the Washington State Growth Management Act mandates. This adopted code revision not only evaluated existing regulatory requirements for streams, wetlands, frequently flooded areas and geologic hazard areas in light of Best Available Science (BAS), it also includes new sections for wildlife conservation areas and aquifer recharge areas. Another goal of this revision was to consolidate all of the regulations into one comprehensive Critical Areas Ordinance (CAO), except for the frequently flooded areas which remain KCC Chapter 14.09.

11.06.020 Purpose and intent.

- A. The city of Kent contains numerous areas that can be identified and characterized as critical or environmentally sensitive. Such areas within the city include wetlands, streams, wildlife and fisheries habitat, geologic hazard areas, frequently flooded areas, and aquifer recharge areas.
- B. The city finds that these critical areas perform a variety of valuable and beneficial biological, physical and economic functions that benefit the city and its residents. Alteration of certain critical areas may pose a threat to public safety, private property, and the environment. The city finds, therefore, that identification, regulation, and protection of critical areas is necessary to protect the public health, safety, and general welfare. The city further finds that the functions of critical areas, and the purpose of these regulations, include the following:
 - 5. Specific Flood Hazard Regulations. This section of the Kent City Code, and other sections as incorporated by reference, contain standards, procedures, criteria and requirements intended to identify, analyze and mitigate potential impacts to the City's critical areas and to enhance and restore degraded resources where possible. The general intent of these regualtions is to avoid impacts to critical areas. In appropriate circumstances, impacts to specified

critical areas resulting from regulated activities may be minimized, rectified, reduced and/or compensated for, consistent the requirements of this chapter.

The following Code sections are applicable to this application:

C. <u>14.09.180 Floodways.</u>

Within the floodway of the areas of special flood hazard, the following provisions apply:

- Prohibit encroachments, including fill, new construction, substantial
 improvements, and other development unless certification by a registered
 professional engineer or architect is provided demonstrating that encroachments
 shall not result in any increase in flood levels during the occurrence of the base
 flood discharge.
- 2. Construction or reconstruction of residential structures is prohibited within designated floodways, except for: repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and repairs, reconstruction, or improvements to a structure, the cost of which does not exceed fifty (50) percent of the market value of the structure either before the repair, reconstruction, or repair is started, or if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to comply with existing health, sanitary, or safety codes or to structures identified as historic places shall not be included in the fifty (50) percent determination.
- 3. If subsection (1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of KCC 14.09.170.

VI. <u>CRITERIA FOR EVALUATING A VARIANCE REQUEST</u>

KCC 14.09.220 states variances to KCC 14.09 shall be completed in accordance with those provisions identified in the city of Kent critical area regulations found in KCC Title 11. According to Kent City Code 11.06.100 (Variance Provision), applicants for variances from the strict application of the terms of this chapter to a specific property may be submitted to the city. All variances except administrative variances per subsection B shall be considered by the Hearing Examiner as a Process III application, pursuant to KCC Chapter 12.01.040.

In order to evaluate this request, staff has applied the criteria for a Variance (pursuant to KCC 11.06.100) and offers the following analysis:

1. There are unique physical conditions peculiar and inherent to the affected property which makes it difficult or infeasible to strictly comply with the provision of this section.

Applicant Response:

About 9% (13,279 sq-ft) of the 3.4-acre site is within the floodway storage portion of the FEMA floodway—the remaining 91% is within the floodway (as shown in the KC FEMA appeal map). Per KCC 14.09.180-2, construction of residential structures is prohibited within designated floodways. This is a request

for a variance to allow construction of a residence within the floodway <u>storage</u> part of the floodway.

Environmental Engineering Comment:

The current FEMA maps identify nearly the entire site as being within the floodway, except for a very small area on the western edge of the site. Northwest Hydraulics Corporation, a King County Consultant, recently completed a report titled Floodplain Mapping Study for Lower Green River which identified the Lopriore site as being located within the floodway except a portion of the site, approximately 13,279 sq. ft., as being outside the floodway but within the flood storage area.

The City of Kent received a letter (attached as an exhibit) from the Washington State Department of Ecology dated July 10, 2008 which states,

"Based on research we conducted, we have concluded that the residential floodway prohibition does not apply to lands with storage floodway of lower Mill Creek, from the Creek's crossing at Highway 167 downstream to its confluence with the Green River. Washington's floodway law was passed in 1969 and was based on conveyance floodways, i.e., areas with faster moving waters with significant potential to inflict damages. The primary concern in the Law was public safety; the faster and deeper the floodwaters, the greater the threat to public safety including the threat to life and property. The lower Mill Creek floodway in its entirety does not possess these characteristics of high velocity flows with significant depth."

The City of Kent concurs with the analysis and conclusion related to the applicability of the residential construction prohibition in Kent City Code 14.09.180 to this reach of the lower Mill Creek floodway.

2. The variance is the minimum to accommodate the building footprint and access.

Applicant Response:

The variance request is to allow the proposed home to be constructed within the floodway storage portion of the FEMA floodway (including some minor filling within the floodway storage area for a driveway and building pad), with 100% floodway compensatory volume created by removing a volume of soil within the onsite floodway with volume equal to the proposed filling.

Environmental Engineering Comment:

The variance is for a double wide manufactured home. The variance will not permit additional structures on the property. The home will only be allowed to be constructed within the floodway storage area as shown on the maps included in the Northwest Hydraulics Report, Floodplain Mapping Study for Lower Green River referenced above.

3. The proposed variance would preserve the functions and values of the critical area, and/or the proposal does not create or increase a risk to public helath, safety and general welfare, or to public or private property.

Applicant Response:

The proposal would have no effect on any risk to the public health, safety, and general welfare, or to public or private property.

Environmental Engineering Comment:

If the variance is approved, the project would be required to provide 100% compensatory storage to mitigate any impacts, thus preserving the functions and values of the floodway storage area. The project will not create a public health, safety or general welfare issue to public or private property.

4. The proposed project would not adversely affect properties surrounding the subject site.

Applicant Response:

Because of the compensatory volume created within the flood [floodway] to offset the proposed filling, the proposed variance would not adversely affect properties surrounding the subject site.

Environmental Engineering Comment;

If the variance is approved, the project would be required to provide 100% compensatory storage to mitigate any impacts, thus adverse impacts to adjacent properties would not occur. The applicant will be required to meet all other provisions of KCC Chapter 14.09.

5. Adverse impacts to critical areas resulting from the proposal are minimized.

Applicant Response:

The proposal involve a minimum of filling in the floodway storage area.

Environmental Engineering Comment;

If the variance is approved, the project would be required to provide compensatory storage to mitigate any impacts, thus minimizing or eliminating impacts to the critical area. Analysis indicates there will be no rise to the flood elevation in the area.

In addition, the structure will be restricted to being located within the floodway storage area per the Northwest Hydraulics Corporation report.

6. The special circumstances or conditions affecting the property are not a result of the actions of the applicant or previous owner.

Applicant Response:

The floodway conditions are not due to the applicant or previous owners of the property.

Environmental Engineering Comment;

The presence of the storage floodway is not a result of actions by the applicant or previous owner.

7. The variance shall not constitute a grant of special privilege.

Applicant Response:

There are houses on all of the nearby parcels: there is no request for special privilege for constructing one on this parcel too.

Environmental Engineering Comment:

Construction is the minimum in the floodway storage area. It can be demonstrated by the study conducted by Northwest Hydraulics Corporation that there is an area of the property outside the floodway. The City determined that if compensatory storage volume is provided, flood levels will not increase. Other proposals within this watershed will be evaluated by the same parameters.

VII. CITY STAFF RECOMMENDATION

Upon review of the merits of this request and code criteria for granting a **REASONABLE USE EXCEPTION**, City Staff recommends **APPROVAL** of the proposed variance request.

KENT ENVIRONMENTAL ENGINEERING August 8, 2008 S:\Permit\ENG\2006\2082474staffrpt.doc