



Legislation Text

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AN ORDINANCE establishing a demonstration project, as authorized under K.C.C. chapter 21A.55, for the emergency repair or reconfiguration of existing livestock flood sanctuaries or converting existing livestock flood sanctuaries to farm flood pads within the Snoqualmie Agricultural Production District; adding new sections to K.C.C. chapter 21A.06 ; and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings.

A. The Growth Management Act ("GMA"), Countywide Planning Policies ("CPPs") and King County Comprehensive Plan ("KCCP") require the delineation and protection of valuable and increasingly limited agricultural resource lands and supports regulations that serve to encourage the continuation of agriculture land uses.

B. King County has identified and designated a number of Agricultural Production Districts totaling forty-two thousand acres and has implemented protections through the Agriculture zoning designation.

C. King County has enacted land use policies and regulations that focus much of the agriculture within the county towards the agricultural production districts and financially supports agriculture through:

1. Agricultural programs, such as the Farmland Preservation Program, Puget Sound Fresh and farm ditch maintenance; and
2. Funding of the King Conservation District for development of farm management plans.

D. The Snoqualmie Valley Agricultural Production District, at 14,581 acres, is the single, largest agricultural production district in King County and historically has had a very productive agricultural industry.

E. The Snoqualmie Valley Agricultural Production District is regularly inundated by flood waters and has experienced six of the eight largest flood events on record in the last twenty-one years, with the likelihood of more-frequent occurrences in the future.

F. These flood water levels are often increased by a number and variety of factors, such as storm water from development on the uplands that drain into the Snoqualmie valley.

G. The Snoqualmie Valley Agricultural Production District is distinct from the other designated agricultural production districts of King County in that a significant majority of the Snoqualmie Valley Agricultural Production District is located within the one-hundred-year floodplain.

H. The regular occurrence of flooding has greatly impacted agriculture within the Snoqualmie Valley Agricultural Production District due to the lack of elevated farm pads that provide safe havens for farm animals and on which farm products, such as seeds, flower bulbs, hay and similar products and farm equipment could be placed during a flooding event.

I. The county code currently which limit the ability to expand existing livestock sanctuaries within the United States Federal Emergency Management Agency ("FEMA") floodway. In addition, covenants are recorded on deeds of properties with livestock sanctuaries that preclude use of the livestock sanctuaries for the protection of farm equipment and products.

J. The United States Food and Drug Administration considers flood inundated food items, including produce in the ground, to be contaminated, which is known as "adulterated," and the food items must be destroyed.

K. The flood occurrences of November and December 2006 resulted in the death of one horse, two sheep and several chickens, in addition to hundreds of thousands of dollars of feed, hay, produce,

and flowers and damage to farm equipment and a significant impact on the Hmong farming community.

L. It is consistent with the GMA, CPPs and KCCP for the county to support not only the continuation, but also the future growth, of agriculture in the Snoqualmie Valley Agricultural Production District.

M. King County participates in the National Flood Insurance Program, which requires minimum floodplain regulations in order to qualify for federally-backed flood insurance, federal loans, such as those by the Veterans Administration, Federal Housing Administration and Rural Housing Services and federal assistance following a president-declared flood disaster.

N. King County participates in the Community Rating System, which is a voluntary program to reduce the cost of flood insurance in return for requiring a higher level of flood protection than the minimum standards required under the National Flood Insurance Program.

O. King County is currently a class 3 community under the Community Rating System and is the highest rated county in the United States, resulting in an average saving of three hundred forty-seven dollars per flood insurance policy countywide.

P. King County will be reclassified as a class 2 community on October 1, 2007, which is estimated to provide an additional seventy-eight thousand nine hundred ninety-seven dollars savings in flood insurance in unincorporated King County.

Q. A small, controlled expansion of the size and use of a limited number of existing livestock sanctuaries within the floodways of the Snoqualmie Valley Agricultural Production District would have little or no effect upon the intensity of flooding occurrences on upstream and downstream properties, if appropriate measures are implemented.

R. The appropriate measures, such as the scope of modifications to development standards, location of development proposals, duration and process, would be implemented through a demonstration project, authorized under and consistent with K.C.C. chapter 21A.55.

S. The demonstration project is adopted as an interim official control under RCW 36.70A.390 and the effective period of the ordinance may not exceed six months from council action.

T. Given the likelihood that future floods will increase in frequency and intensity and in order to expedite the repair, reconstruction and expansion activities authorized by this demonstration project prior to the start of the next flood season in late 2007, a waiver of state and county public notice requirements is necessary and an emergency action by the council is appropriate.

NEW SECTION. SECTION 2. There is hereby added to K.C.C. chapter 21A.06 a new section to read as follows:

Farm flood pad: an artificially created mound of earth or an elevated platform placed within a flood hazard area constructed to an elevation that is above the base flood elevation to provide an area of refuge for livestock or small animals, and for the storage of farm vehicles, agricultural equipment, and shelter for farm products including, but not limited to, feed, seeds, flower bulbs and hay.

NEW SECTION. SECTION 3. There is hereby added to K.C.C. chapter 21A.06 a new section to read as follows:

Livestock flood sanctuary: an artificially created mound of earth allowed by the county to be placed within a flood hazard area following the floods of 1990 to provide an area of refuge for livestock.

SECTION 4. As allowed under K.C.C. chapter 21A.55, the council hereby authorizes the Livestock Flood Sanctuaries and Farm Flood Pads Demonstration Project, which shall comply with the following:

A. The purpose of the livestock flood sanctuaries and farm flood pads demonstration project is:

1. To provide modifications from certain development standards and permit requirements to allow emergency repair or reconfiguration of existing livestock flood sanctuaries before the 2007-2008 flood season for a limited number of agricultural landowners in the Snoqualmie Valley Agricultural Production District,

2. To determine if innovative permit processing and limited modifications of flood regulations will result in an impact on flood storage and conveyance within the Snoqualmie river floodplain;

3. To identify information and data to assist in development of new or revised methods of protecting agriculture from flooding; and

4. To research and possibly test alternative flood protection structures that would not require the placement of additional fill in the floodplain, such as elevated or floating structures.

B. The demonstration project shall be implemented within the Snoqualmie Valley Agricultural Production District floodplain, including the FEMA floodway. Specific farms shall be identified by the King County agricultural commission for inclusion in this demonstration project. The boundaries of the demonstration project shall be as delineated for the one-hundred-year floodplain on Attachment A to this ordinance.

C. The demonstration project shall be administered jointly by the department of natural resources and parks, water and land resources division, and the department of development and environmental services, land use services division and building services division. These departments are authorized to implement the development standards of K.C.C. Title 16 and K.C.C. Title 21A, as modified in subsection D. of this section.

The roles and responsibilities of each department are as follows:

1. Department of natural resources and parks:

a. coordinate with the King County agricultural commission and farmers;

b. complete hydraulic modeling and jointly review with the department of development and environmental services the proposals for compliance with flood hazard regulations; and

c. prepare the report to council as required in subsection H. of this section;

2. Department of development and environmental services:

a. jointly review with the department of natural resources and parks the proposals for compliance with flood hazard and other applicable development regulations; and

b. conduct site inspections to determine the proposal is in conformance with the agreed design; and

3. The department of development and environmental services shall make the final decision to approve or deny the proposals based on the criteria in subsection F. of this section. The department of development and environmental services will consult with the department of natural resources and parks prior to making this decision.

D. For the purposes of this demonstration project, the following development standards are modified as set forth in this subsection and shall be implemented by the department of natural resources and parks, water and land resources division and the department of development and environmental services, land use services division and building services division:

1. K.C.C. 16.82.095 is modified to allow clearing and grading between October 1 and April 30, provided that the substantive standards of this section and Appendix D to the King County Surface Water Design Manual are met;

2. The demonstration project shall not reduce the effective base flood storage volume of the floodplain, however K.C.C. 21A.24.240.A. is modified as follows:

a. compensatory storage may be provided at different elevations to that being displaced if there is no feasible location on site or in the vicinity at the same elevation; and

b. compensatory storage does not need to be hydraulically connected to the source of flooding if that cannot be achieved on site or in the immediate vicinity.

3. K.C.C. 21A.24.240.C. is modified to allow the repair and reconfiguration of existing livestock flood sanctuaries in portions of the floodplain where the base flood depth exceeds three feet or the base flood velocity exceeds three feet per second;

4. The standards for livestock flood sanctuaries in K.C.C. 21A.24.240.K. are modified and replaced with the standards in subsection F. of this section;

5. The prohibition on livestock flood sanctuaries in the FEMA floodway in K.C.C. 21A.24.260 does

not preclude repair and reconfiguration to existing livestock flood sanctuaries under this demonstration project;

6. K.C.C. 21A.24.270 is modified except a FEMA elevation certificate shall be required as specified in K.C.C. 21A.24.270.A and provided to the department of development and environmental services no later than December 31, 2007;

7. All other flood hazard area standards in K.C.C. 21A.24.230 through 21A.24.260 apply to this demonstration project; and

8. For purposes of this demonstration project, "repair or reconfiguration" may include a vertical expansion of the existing livestock flood sanctuary if the expansion does not increase the footprint laterally, except as needed for slope stability.

E. The following process shall be used to process requests for modifications of regulations and limitations on permit requirements:

1. The King County agricultural commission shall identify the specific livestock flood sanctuaries that will be included in this demonstration project.

a. The agricultural commission must specify the exact request for each proposal including:

(1) the parcel number of each livestock flood sanctuary that is requested to be repaired or reconstructed;

(2) a description of the intended future use of the pad;

(3) the square footage needed above the base flood elevation; and

(4) the amount and location of compensatory storage provided; and

b. The agricultural commission shall use the following criteria when selecting farms to be included in the demonstration project, in order of importance:

(1) those that can meet the compensatory storage requirements in K.C.C. 21A.24.240.A;

(2) those that can use existing fill on site but cannot meet the compensatory storage requirements of K.C.C. 21A.24.240.A.1. and 21A.24.240A.2. and do not require additional fill;

(3) those that require additional fill to raise the livestock flood sanctuary to at least one foot above the base flood elevation;

c. additional consideration should include:

(1) there is no feasible alternative, such as an elevated structure built with post and piling construction or flow-through foundation or floating structure, that will meet the same objective;

(2) it is determined that the landowner cannot wait another year without sustaining significant loss in order to evaluate the potential alternatives to fill;

d. Farms that do not need structural changes to their existing livestock flood sanctuaries and that can find protection through operational practices shall not be included in this demonstration project;

e. Legal nonconforming farms that are not in violation of K.C.C. chapter 16.82 through the placement of illegal fill in the floodplain may be included in this demonstration project; and

f. A King County agricultural commissioner who requests a repair, reconfiguration or conversion under this section shall not participate in the identification process under this subsection E.1;

2. The applicant submits an application for a shoreline exemption approval to demonstrate compliance with WAC 173-27-040 and pays applicable fees, **except as limited under subsection E.4. of this section.** For purposes of this demonstration project, requirements for clearing or grading permits under K.C.C. 16.82.050 are waived;

3. The department of natural resources and parks and the department of development and environmental services shall complete a flood hazard analysis for each livestock flood sanctuary to demonstrate compliance with the compensatory storage requirements of K.C.C. 21A.24.240.A, as modified in subsection D. of this section, and the zero-rise requirements of K.C.C. 21A.24.250.B. and 21A.24.260.B. and determine which modifications of the regulations are needed to achieve the desired proposal; and

4. The total fees for permits and review charged by the department of natural resources and parks and department of development and environmental fees to participants in this demonstration project shall not exceed five hundred dollars per participant. When the demonstration project is complete, if either department finds that the fee limitation caused a financial hardship, the department shall report the hardship to the task force described in subsection H. of this section and shall include such information in the review and recommendations required under subsection H.

F. The modification or waiver of standards in subsection D. of this section shall be approved if:

1. The combined impact of all development proposals does not exceed forty thousand square feet of cumulative encroachment, except that proposals that can meet the compensatory storage requirements shall not be included in the forty-thousand-square-foot limitation;

2. The flood hazard analysis demonstrated compliance with K.C.C. 21A.24.240.A, as modified in subsection D. of this section, and the zero-rise requirements of K.C.C. 21A.24.250.B. and 21A.24.260.B;

3. The repair or reconfiguration complies with the Livestock Flood Sanctuaries in Flood Hazard Areas Best Management Practices approved under King County Public Rule, Farm Management Plans, except for:

a. the requirement that the compensatory storage be provided in equivalent volume at equivalent elevation to that being displaced by the pad and that it be hydraulically connected to the source of flooding;

b. the restriction on development where the base flood depth exceeds three feet or the base flood velocity exceeds three feet per second;

c. the prohibition on livestock flood sanctuaries in the FEMA floodway; and

d. the limitation on construction during the wet season provided the substantive standards of K.C.C. 16.82.095 and Appendix D to the King County Surface Water Design Manual are met;

4. The footprint of existing livestock flood sanctuaries is not expanded laterally, except as needed for slope stability; and

5. The property owners sign a nonconversion agreement stating that the farm flood pad or livestock flood sanctuary will not be converted to a nonagricultural use. The nonconversion agreement is recorded on the title with the King County records, elections and licensing services division and runs with the land.

G. The demonstration project shall be run from July 30, 2007, to December 31, 2007. The following deadlines are also established:

1. By August 13, 2007, the agricultural commission must identify the farms or specific livestock flood sanctuaries that will be included in the demonstration project and the exact proposal for repairing or reconfiguring each livestock flood sanctuary;

2. By August 20, 2007, the department of natural resources and parks, river and floodplain management unit shall complete hydraulic modeling to determine compliance with the flood hazard regulations as modified by this demonstration project;

3. By August 27, 2007, the applicants submit applications for shoreline exemptions and provide the flood hazard analysis. All proposals will be batched for review of the impacts on the floodplain;

4. By September 10, 2007, the department of natural resources and parks, river and floodplain management unit, and the department of development and environmental services, building services division, shall complete the flood hazard analysis and the department of development and environmental services shall complete the review and renders a decision on the request for a the shoreline exemption;

5. By December 31, 2007, all work, including inspections, must be completed; and

6. By December 31, 2007, a FEMA elevation certificate must be completed by a Washington state-licensed civil engineer or land surveyor and returned to the department of development and environmental services, with a copy to the department of natural resources and parks.

H. Motion 12559 (Proposed Motion 2007-0337), which was approved by the council on July 30, 2007, directs the executive to convene a task force to review and make recommendations in regards to farm

protection measures for the Snoqualmie Valley Agricultural Production District. The task force is directed to complete the review and forward recommendations to the council no later than February 1, 2008. If this demonstration project or the task force, or both, identify any specific alternative standards that require legislation, the executive shall prepare legislation and transmit the legislation to the council on a date determined by the task force.

I. The task force shall evaluate this demonstration project to include a comprehensive inventory of existing livestock flood sanctuaries and their current ability to provide flood protection under existing conditions. This information shall be in a quantifiable form that could be used for assessing the impacts from flooding at various flood levels and the impact any changes in code might have on the storage and conveyance of floodwaters during flood events. In addition, the evaluation should determine the agricultural needs in the Snoqualmie valley, such as how much agriculture is engaged in livestock production, other small animal production, such as chickens, how many acres in horticulture, the type of horticulture, and the need for processing agricultural products: At a minimum, the evaluation must include:

1. A complete inventory of all existing livestock flood sanctuaries in the Snoqualmie Agricultural Production District and the parcel number of where they are located;
2. The size and base flood elevation of each livestock flood sanctuary;
3. An assessment of the need for new livestock flood sanctuaries and an assessment for the need for farm flood pads. This assessment must include an evaluation of alternative to fill for the storage of farm vehicles, agricultural equipment, and shelter for farm products including, but not limited to feed, seeds, flower bulbs and hay;
4. A determination of the impact on the available compensatory storage, backwater effects and base flood elevation as a result of this demonstration project; and
5. An identification of possible funding assistance in the form of grants or loans for farmers that could be used for alternative flood protection solutions that would not require placing additional fill in the floodplain.

SECTION 5. For the reasons set forth in section 1 of this ordinance, the county council finds as a fact and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public peace, healthy or safety or for the support of county government and its existing public institutions.

SECTION 6. This ordinance is adopted as an interim official control under RCW 36.70A.390 and expires February 1, 2008.