

February 9, 2024

John Taylor, Director, Department of Local Services
Jim Chan, Division Director for Permitting
King County Department of Local Services
Sent via email: john-dir.taylor@kingcounty.gov and jim.chan@kingcounty.gov

REFERENCE: Remlinger/STG Music Venue – CINT23-0003 – Parcels 222507-9012, 9013, 9027
SUBJECT: Summary of Teams Meeting on 2-2-2024 and Non-conformance Code Interpretation

Dear John and Jim,

Thank you both for meeting with us (Simone Oliver, Jules Hughes, Marc McGinnis along with Steve Foster, who was not present at the meeting, but has been following this process thoroughly), and three representatives of the Snoqualmie Tribe (Matt Baerwalde, Jaime Martin and Kelsey Payne) last Friday (2-2-2024) regarding the final code interpretation dated 9-1-2023 for CINT23-0003. You requested we provide a summary of that meeting along with any additional information related to this code interpretation and the music venue change of use. Our issues are summarized in Table 1, below. This is not an exhaustive list, but we believe it adequately supports our request that you revoke the code interpretation referenced above and require a permit for this proposed concert venue. Each item is addressed following the table.

Table 1. Summary of issues.

Code section	Issue	Comment
21A.32.100	Temporary uses requiring permits	This activity appears to require a permit, as it is not an allowed use in the zone.
21A.50.040	Revoking permits	This activity appears to meet the requirement for revoking the land use certification as it was based on inaccurate information and conflicts with existing laws and regulations, an error of procedure occurred which prevented consideration of the interests of persons directly affected and may be detrimental to public health and safety.
16.82.130	Violations - corrective work required	Allowing these large concerts to proceed on a site with a recent unresolved code enforcement case is inconsistent with how King County treats every other permit applicant.
21A.25	Shoreline Code	Commercial uses are not allowed in the Conservancy or Resource Shoreline, nor is building of new non-residential structures.
21A.24	Critical Areas Code	Inconsistent with channel migration, flood, and potentially aquatic and wetland sections.

KCC 21A.50.040 Permit suspension, revocation, or modification.

A. Permit suspension, revocation, or modification shall be carried out through the procedures set forth in King County Code (KCC) Title 23. Any permit, variance, or other land use approval issued by King County pursuant to this title may be suspended, revoked, or modified on one or more of the following grounds:

1. The approval was obtained by fraud;
2. The approval was based on inadequate or inaccurate information;

*Based on our long-term residency in Carnation, we know that the information provided on the application was inaccurate. It did not provide a count of attendees on a per event basis, but rather on an annual basis. Many of the events put on at Remlinger Farms are on land within the City of Carnation, not in unincorporated King County. Only events held on the subject parcel should be considered. Additionally, while Remlinger may have had events, for example, a harvest festival during the month of October, which have a high total attendance, these occur over a longer duration, and none have had anything close to the concentration of people in such a brief time span. We can all testify that they have **not** held public events of up to 6,000 people up to 34 times per year since 1991 and the data they provided in no way confirms this. There are no events to our knowledge that had 6,000 people in the course of a few hours in the three decades we have lived in the valley. We request you require Remlinger to provide more accurate data (i.e., proof of ticket sales) on the number of people at specific events with duration of said events.*

Additionally, the non-conformance code interpretation states 'there is no record of code enforcement complaints having been received by King County.' Per a records request, we discovered an active code enforcement case (ENFR23-1289) regarding construction of a permanent concrete stage in the floodplain of the Tolt River that was constructed in the fall of 2023.

Additionally, according to King County public records, there have been several enforcement cases on Parcel 22250079016 also part of Remlinger Farm, that have all been closed. You both stated in the meeting that upon a site review for the current active enforcement case, unpermitted buildings, rides, and grading have occurred in addition to construction of the permanent stage foundation. Remlinger has a history of conducting unpermitted work (grading, dredging) and building unpermitted structures. The lack of permits for the single larger outdoor concert held last June is another example. Since this statement in the vesting interpretation is inaccurate, the vesting document should be revoked.

King County policy has been to not allow permits to be issued with an unresolved enforcement action on the parcel per 16.82.130, "If clearing or grading inconsistent with the purposes and requirements of this chapter in effect at the time of the action has occurred on a site the department shall not accept or grant any development permit or approval for the site, except any permit or approval necessary for the correction of code violations, until the applicant:

1. Completes restoration of the site or the appropriate corrective actions to bring the site into compliance; or
2. Obtains department approval of a permit for the appropriate restoration or corrective action and posts any required financial guarantee.

This would therefore require the enforcement case to be resolved prior to acceptance of any new permits, including a wetlands review, a building permit or a TUP or CUP. STG is already selling tickets online for concerts this summer season starting in May. We request you uphold the current standards and require issuance and final inspection of building permits for new structures prior to any concerts. Allowing an unreviewed structure to be used for a large commercial enterprise may compromise public safety.

3. *The approval that has been given conflicts with existing laws or regulations applicable thereto; Parcel -9012 is located entirely within Conservancy Shoreline and is therefore subject to the provisions of 21A.25, the Shoreline Code, which significantly limits allowed uses, especially structures (definition from 21A.06.1255 - anything permanently constructed in or on the ground, or over the water; excluding fences six feet or less in height, decks less than 18 inches above grade, paved areas, and structural or non-structural fill), which the new stage would be considered (see*

photo of June 2023 concert stage, below). The structure is over 6' tall and would require a building permit to construct regardless of the vesting of the activity.

A massive crowd traveling on small rural roads to hear amplified music is incompatible with rural character. However, per the Shoreline Code, commercial development is not allowed in a conservancy shoreline. The only allowed recreation is parks and trails are allowed and must meet the standards in KCC 21A.25.140.



4. *The activity would most likely fall under the category of "commercial development", per 21A.08.040. (amusement/entertainment use). Commercial development is not an allowable use in either the Conservancy or Resource Shoreline per KCC 21A.25.100.*
5. *The site is entirely within the 100-year flood plain of the Tolt River. Placement of structures and associated fill should be reviewed for consistency with 21A.24 and federal flood regulations.*
6. *The entire parcel is within the channel migration hazard area, including both severe and moderate. Activity in this area is severely restricted per KCC 21A.24, and the structure has not been reviewed for compliance.*
7. *Parcel -9012 has also benefited from reduced taxes by participating in the Open Space Taxation Program. This was approved by King County Council as it presumably met the criteria in WAC: To be classified as farm and agricultural conservation land, the land shall be:*
(a) Previously classified as farm and agricultural land under RCW 84.34.020(2), that no longer meets the criteria for classification under RCW 84.34.020(2), and that shall be reclassified as open space land under RCW 84.34.020(1); or
(b) Traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably dedicated to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agricultural purposes.

We request that the proposed conversion of this property to high use commercial activity be reviewed by the King County WLRD staff for consistency with the open space taxation program.

8. An error of procedure occurred that prevented consideration of the interests of persons directly affected by the approval;

Without any public review, people directly affected by this determination were not allowed to comment, and most are not aware of this determination. We request you revoke the vesting and require the applicant to go through the standard TUP or CUP process. Because this project will have an enormous impact on surrounding neighbors, including traffic, noise, potentially compromised police, fire, and ambulance access, a public comment period should be held so that impacts to neighbors can be identified and addressed.

9. The approval or permit granted is being exercised contrary to the terms or conditions of such approval or in violation of any statute, law, or regulation;

*Per KCC 21A.32.065 **Nonconformance - expansions of nonconforming uses, structures, or site improvements.** A nonconforming use, structure, or site improvement may be expanded as follows:*

A. The department may review and approve, pursuant to the code compliance process of K.C.C. 21A.42.030, an expansion of a nonconformance only if:

- 1. The expansion conforms to all other provisions of this title, except that the extent of the project-wide nonconformance in each of the following may be increased up to ten percent:*
 - a. building square footage,*
 - b. impervious surface,*
 - c. parking, or*
 - d. building height; and*

2. No subsequent expansion of the same nonconformance shall be approved under this subsection if the cumulative amount of such expansion exceeds the percentage prescribed in subsection A.1;

B. A special use permit shall be required for expansions of a nonconformance within a development authorized by an existing special use or unclassified use permit if the expansions are not consistent with subsection A. of this section;

C. A conditional use permit shall be required for expansions of a nonconformance:

- 1. Within a development authorized by an existing planned unit development approval; or*
- 2. Not consistent with the provisions of subsections A. and B. of this section; and*

D. No expansion shall be approved that would allow for urban growth outside the urban growth area, in conflict with King County Comprehensive Plan rural and natural resource policies and constitute impermissible urban growth outside an urban growth area. (Ord. 15606 § 23, 2006: Ord. 13130 § 5, 1998).

This music venue has not been regularly used for large outdoor concerts, and therefore does not meet the criteria for either non-conformance or an expansion of the non-conformance, so we request the vesting be revoked.

10. The use for which the approval was granted is being exercised in a manner detrimental to the public health or safety;

Since the proposal is not going through a conditional or temporary use permit process, as would normally be required, public health and safety concerns have not been addressed at all. These include noise, traffic, emergency access, stormwater pollution and runoff, associated environmental impacts to water quality, wildlife, light pollution. Per the King County noise code, in the rural residential zone, a decibel limit of 52 is required, which is compared to moderate rainfall. Outdoor concerts typically range between 90-120 dB(A) with over 85 dB(A) being harmful to human hearing.

We consulted with land-use attorney, Alan Wallace, who informed us that the vesting does not immunize Remlinger or STG from these public safety issues and codes and from nuisance law pertaining to public health and safety. He also represented wineries in Woodinville related to abiding by the noise codes in which the maximum noise range cannot leave the property line. This is impossible with the use of an amplifier. During the unpermitted June 2023 concerts held at Remlinger, there were many complaints regarding noise, traffic, lack of camping facilities that even resulted in illegal camping at Tolt McDonald Park and the alleys within Carnation. We request that you contact the King County Sheriff's office for a list of complaints made during last June's concerts relating to public health, safety, and noise.

Ingress and egress on a rural two-lane road (NE 32nd Street) with 6,000 concert goers will affect the ability of Carnation and unincorporated King County residents to travel on SR 203 and will increase emergency response times. The intersection of SR-203 and NE 32nd Street is notorious for accidents and discussions are ongoing regarding construction of a roundabout to assuage safety concerns at that intersection. At a minimum, a comprehensive traffic study should be required, and potential mitigation measures implemented prior to these events.

In 1995, Remlinger applied for a permit to have music on their City parcel, 3-4 events with 3,000 people max. per event. During SEPA review, 5 groups appealed the project including the Girl Scouts of Western Washington, Tolt Community Club, Swiftwater HOA, Indian Creek HOA, and local residents. Due to the appeals, Remlinger withdrew their application. Once the vesting decision on the current proposal becomes mainstream public knowledge, opposition will be significant.

The Girl Scout Camp located next door utilizes NE 32nd Street for emergency vehicle access during their summer camp session. They have not been notified of this new concert series. These concerts will impact their access and have the potential to cause many safety concerns for the girls at the camp.

B. Authority to revoke or modify a permit or land use approval shall be exercised by the issuer.

Jim, you have the authority, based on the above information, to revoke this decision or at minimum request more information on the historical use, to ensure that the proposed use is not an illegal expansion of a nonconforming use.

Project Background

We are Carnation residents who have lived in the area for decades. We heard about the attempt to utilize Remlinger property as a music venue from a Seattle Times article dated 11-6-2023. We were also very aware of the negative effects of the concerts that occurred without permits on Parcel 222507-9012 on June 16-18, 2023. Due to concerns related to this new use, we started investigating the likelihood of permitting within unincorporated King County. In our research, we came across the above-referenced code interpretation by Jim Chan. Needless to say, with our history of living in the Carnation area, we were incredibly surprised by this interpretation of Remlinger's historical use. So, we contacted King County Councilmember Sarah Perry's office who put us in touch with you to set up this meeting.

Thank you again for meeting with us and reviewing our concerns and providing your understanding of the background of this interpretation. You both told us how Remlinger applied for a permit for the June 2023 shows, but was not granted the permit in time, therefore hosted the show with STG with no permits in place. You said they then followed up with a meeting to discuss how to permit shows such as these (up to 6,000 people) in rural zoned parcels they own. Jim, you said you directed them to the

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Conditional Use Permit. Carnation Farms is currently under review for a Temporary Use Permit for similar concert events. This process is the legal way to permit change of use and allows for full public review and evaluation under the State Environmental Policy Act (SEPA) to occur to fully evaluate and address the impact of the proposal.

You both said that Remlinger's attorneys then produced the idea of permitting this use through a non-conformance interpretation, which would allow them to hold these concerts with no further permitting required for this new use. In the documentation, they provided total attendees to the farm on an annual basis from 1991-present, rather than on a by event basis. Jim, you gave us the example of 44,000 people on the farm in one year. Remlinger has historically utilized Parcel -9012 primarily for company picnics and small private events, outside of the Carnation 4th of July event and the unpermitted June 2023 concert. There have never been regular concerts of 6,000 people within the whole of Snoqualmie Valley. Those are reserved for venues like Marymoor Park and Chateau Ste. Michelle Winery that have capacity, permits, parking, police support, and street infrastructure to manage those crowds. This proposal for the Remlinger property even exceeds the capacity of those two other venues by 1,000 and 2,000 people, respectively.

The vesting you certified allows for an unlawful expansion of the existing non-conformance on the parcel and violation of numerous code sections as defined above and should be revoked or at minimum modified to realistic vested use in terms of type of use and quantity of attendees. We have a meeting with Councilmember Sarah Perry on 2-22-24 and would like to receive your response to these requests by then. Thank you for your willingness to re-review this important project.

Sincerely,

Simone Oliver, Jules Hughes, Marc McGinnis, and Steve Foster

Attachment: Non-conformance Code Interpretation dated 9-1-23

cc:

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King County

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SEPTEMBER 1, 2023

FINAL CODE INTERPRETATION CINT23-0003 (Nonconformance)

Background

The Department of Local Services, Permitting Division, received a code interpretation application dated June 16, 2023 from Cheryl Paquette representing Remlinger Farm, LLC, concerning whether holding live events at Remlinger Farm would be considered a nonconforming use under King County Code.

Remlinger Farm is located on multiple parcels near the City of Carnation, and events have taken place on parcel 2225079025 (which is located in the City of Carnation) and parcels 2225079012, 2225079027, and 2225079013 (which are located in unincorporated King County and are in the RA-10 zone) every year since at least 1991. Parcel 2225079012 has been used for the events themselves, while Parcels 2225079027 and 2225079013 have been used for parking. There have been 6-34 events per year, with 20 or more events held most years. The events have included private live music events, public live music events, private corporate events, public corporate sponsored events, concerts, and theater and in 29 of the past 32 years, there have been at least 20 events per year. Events have had 100 to 6,000 attendees per event.

Event management provided by Remlinger Farm has typically included: access to restrooms, staff attendants, and setup and clean up services. There is no record of code enforcement complaints having been received by King County.

Code Sections Subject to Interpretation:

KCC 21A.06.800 Nonconformance: a use, improvement or structure established in conformance with King County's rules and regulations and other applicable local and state rules and regulations in effect at the time the use, improvement or structure was established that no longer conforms to King County's rules and regulations or other applicable local and state rules and regulations due to changes in the rules and regulations or their application to the subject property.

Discussion & Analysis

The applicant is seeking a code interpretation to determine whether the events that have been held since at least 1991 are a nonconforming land use. The applicable code standards for determining whether a land use is a nonconformance would be those adopted at the time the use began. The zoning code in place prior to 1993 was adopted by Resolution 25789¹, which is therefore understood to be the applicable code.

According to Article 11 of Resolution 25789, permitted uses at the time included "Unclassified Uses as provided in Article 22". Among the uses in this list are "Commercial establishments or enterprises involving large assemblages of people or automobiles as follows... open-air theatres". The use "open-air theatres" fits the live events use Remlinger Farm has been holding.

To be considered a nonconformance, a land use must have been established in conformance with King County's rules and regulations in effect at the time the use was established. Under the zoning code adopted by Resolution 25789, uses such as open-air theatres would not have been permissible if the "intended use would create an incompatible or hazardous condition".

¹ <https://kingcounty.gov/~/media/depts/records-licensing/archives/researchguides/environmental/RES25789-opt.ashx?la=en>

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Remlinger Farm has provided services through its event management to mitigate impacts and avoid creating an incompatible or hazardous condition. Mitigation has been effective enough to have garnered no code enforcement complaints throughout Remlinger Farm's history of holding events. Therefore, the use appears to have conformed with King County's rules and regulations in effect at the time the use was established, consistent with the definition of Nonconformance.

Decision

The demonstrated unique historical use that has occurred is consistent with "open-air theatre" involving large assemblages of people or automobiles and qualifies as a nonconforming use on Remlinger Farm on parcels 2225079012, 2225079027, and 2225079013 and this use may continue, provided that:

- Events are of a similar size (i.e., up to 6,000 people);
- Events take place only on Parcel 2225079012, and Parcels 2225079027 and 2225079013 are used to support the use only by providing temporary associated event parking;
- Events take place at a similar frequency as they have historically (i.e., up to 34 per year);
- Impacts continue to be mitigated to a level consistent with past use;
- Any modification or expansion of the use complies with nonconformance standards in K.C.C. 21A.32; and
- Larger or more frequent events must be authorized through a Temporary Use Permit.

Finality of Code Interpretation

Pursuant to K.C.C. 2.100.050.A, the director's decision is the county's final decision, and there is no administrative appeal.

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9/1/2023

Jim Chan

Director, Permitting Division
Department of Local Services

Date