January 7, 1999

OFFICE OF THE HEARING EXAMINER
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DECISION ON APPEAL OF SEPA THRESHOLD DETERMINATION.

SUBJECT: Department of Development and Environmental Services File No. **L97P0038**

RIVER RIDGE AT DAYBREAK
Appeal of Threshold Determination

Location: Northwest of SE 43rd Street (if extended), and generally between Cedar River Pipeline Road and SE 241st Street.

Applicant/ Appellant: Cedar Valley Associates, LLC, *represented by*
Roger A. Pearce
Attorney At Law
777 - 108th Avenue NE, Suite 1500
Bellevue, WA 98004
(425) 451-0500

Intervenor: Cedar River Associates, *represented by*
Joel Watkins, Jr.
Attorney At Law
600 University Street, Suite 2101
Seattle, WA 98101-4185
(206) 682-0515

King County: Department of Development and Environmental Services
Land Use Services Division, *represented by:*
Rich Hudson
900 Oakesdale Avenue SW
Renton, WA 98055
(206) 296-7157

SUMMARY OF DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Grant appeal

PRELIMINARY MATTERS:

Application submitted:	September 17, 1997
Notice of appeal received by Examiner:	September 11, 1998
Statement of appeal received by Examiner:	September 11, 1998

EXAMINER PROCEEDINGS:

Pre-Hearing Conference:	October 7, 1998 and October 29, 1998
Hearing Opened:	December 23, 1998
Hearing Closed:	December 31, 1998

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- SEPA - determination of significance

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On August 11, 1998, the King County Department of Development and Environmental Services issued a Determination of Significance to Chuck Spoerer, doing business as the Spoerer Corporation, for a proposal to subdivide 28.58 acres into 32 lots for single-family residential development. Mr. Spoerer also submitted a rezone request to amend P-suffix condition TR-P14 to eliminate a requirement that his permit application shall include a development agreement with the King County Executive and the adjacent property owner to the north for the combined development of the two properties. The rezone request is that the Spoerer property be allowed to be developed independently of the adjacent Watkins parcel and that it not be subject to development agreement requirements for public access to the Cedar River and river protection. The threshold determination broadly identifies probable significant adverse impacts to virtually all of the elements of the environment listed at WAC 197-11-444, requiring the preparation of an Environmental Impact Statement.

2. A timely appeal was filed by Mr. Spoerer, now doing business as Cedar Valley Associates, LLC. Mr. Spoerer's appeal maintains that the preliminary plat application will not have any probable significant adverse environmental impacts because proposed residential development is limited to the upland portion of the site and that the impacts of the requested rezone are remote and speculative.

3. The pre-hearing process for this appeal has been somewhat long and contentious, with dispositive motions of various types filed by all participants. The ultimate outcome of this procedural maneuvering was that the adjacent property owner, Joel Watkins, doing business as Cedar River Associates, was admitted to the proceeding as an intervenor, and the substantive matters at issue were narrowed within the Pre-Hearing Order dated November 24, 1998. As stated within the Pre-Hearing Order, parties were directed to focus their preparation on potential sensitive area impacts, particularly regarding steep slopes; groundwater and water quality impacts to the nearby Cedar River; flooding, erosion and sedimentation impacts; loss of floodplain and riparian habitat and

resultant impacts to Cedar River fish and wildlife resources; and impacts to public plans and resources, including the loss of public access and recreational opportunities. These issues were to be reviewed both within the context of the preliminary plat application and with respect to any adverse environmental impacts identified as resulting from amendment of the P-suffix condition.

4. A public hearing on the threshold determination appeal was held on December 23, 1998. It soon became apparent that no unmitigated significant adverse environmental impacts attend to the development of the subdivision alone. The Spoerer and Watkins properties lie west of the Cedar River and contain on their southwest flanks a narrow strip of upland property that drops more than 100 feet down steep slopes to a valley shelf overlooking the Cedar River. The eastern portion of this shelf drops again another 25 feet more or less to a floodplain and riparian area adjacent to the river.

5. Mr. Spoerer has segregated his portion of the floodplain into a separate parcel, and with the exception of storm drainage facilities, proposes no development downslope of the westerly upland portion of his property. Along the eastern boundary of the proposed subdivision, a gravel road constructed long ago traverses the steep slopes down to the upper valley shelf. Mr. Spoerer initially proposed to use this gravel road, which is about 10 feet wide and 20% in grade at some locations, to also access two subdivision building lots. The preliminary plat as revised has deleted these two lower level lots, and the existing private gravel road is simply proposed for use as access to the R/D tract. The only new road development currently planned by the applicant is an extension of SE 243rd Street along the entire length of the 9.2-acre upland portion of the subdivision. It is to be stubbed at the northern boundary line of the Spoerer parcel near the southwest corner of the Watkins property, where it later could be extended to also serve the approximately one-and-a-half acres of upland area on the adjacent parcel.

6. With respect to drainage impacts, flows will need to be piped downslope to the drainage tract, where due to its proximity to the Cedar River, flows will likely require water quality treatment but not detention. Based on soils permeability, it is considered probable that storm flows can be infiltrated on-site. If not, they will need to be piped to the river. No other downslope impacts are likely to be created by development of the subdivision.

7. As presently configured, viewing the Spoerer and Watkins properties together, most of the easily accessible upland area is on the former and most of the environmentally sensitive floodplains on the latter. The developable portion of the Watkins property largely consists of an 18.5-acre section of valley upper shelf. The problem faced by Mr. Watkins is that this valley shelf area can only be reached from the upland road system by traversing the steep slopes, unless some arrangement can be worked out with the King County Parks Department for road access at the property's northern tip where the old railroad grade (now dedicated for public trail use) crosses it.

8. It is generally agreed that in 1994 when the County Council enacted the predecessor P-suffix condition to the current TR-P14, the *quid pro quo* for permitting R-4 densities on the developable portions of the two parcels was the receipt of public benefits from combined development, including dedication of riparian habitat as open space, protection of floodplain and riparian habitat, and enhanced drainage requirements. Staff's concern is that the proposed rezone will allow Mr. Spoerer to reap the benefits of the increased zoning density without having to bear his fair share of the public burden. A secondary concern is that the separate development of the Spoerer and Watkins properties will impose greater impacts on the environment than would result from an integrated site plan encompassing the two properties together. Finally, Staff is concerned that a P-suffix amendment which releases Mr. Spoerer from his development agreement obligations will make such obligations unworkable for the Watkins property as well. The feared

result is a domino effect where greater zoning density will have been conferred but the bargained-for public benefits will be lost.

9. Mr. Spoerer's position is that he tried to reach agreement with Mr. Watkins on a joint development package but that it could not be accomplished. Concluding that the development agreement framework is a failed vehicle, he now wishes to go his own separate way. While Staff is probably correct in believing that a Comprehensive Plan Amendment dealing with the entire P-suffix condition would be a better way to fix the problem, the fact that it has legitimate reservations about the advisability of approving a quasi-judicial rezone for the Spoerer property alone does not necessarily imply that requiring an Environmental Impact Statement is an appropriate response.

10. Staff appears to envision the EIS as an alternative tool for analyzing development options for the combined Spoerer and Watkins properties. But it concedes that until some site development plans are formulated for the Watkins parcel, any impact thereto resulting from the Spoerer rezone would necessarily be speculative. Generally, Staff professes serious concerns from separate site development in the areas of providing road access to the Watkins parcel, avoiding adverse drainage impacts to the Cedar River and providing adequate public access.

11. The most likely adverse environmental impact resulting from the amendment of the TR-P14 P-suffix condition to allow for separate development of the Spoerer parcel appears to be that such action would require the Watkins property to develop its own separate access over the steep slopes. However, this analysis relies for its force on a conclusion that the existing gravel road across the Spoerer property is fundamentally adequate to serve as a public access to the lower development shelf on the combined properties. Although there seemed to be a consensus that this location is as good as any for an access road, the testimony was clearly to the effect that a road within the existing 30-foot easement would not be able to meet the requirements of the King County Road Standards without the issuance of variances or a reasonable use exception. As such, the feasibility of using this route as a public access road remains uncertain, and any conclusion that a second route into the Watkins property would result in a major increase in adverse impacts becomes purely conjectural.

12. Assigning adverse impacts to the other elements of the environment identified for review within the Pre-Hearing Order is yet more speculative. While important water quality and habitat functions undoubtedly occur within the floodplain areas on the Watkins parcel, in the absence of any proposal whatever for downslope residential development, no basis exists for analyzing the extent and significance of potential development impacts. Finally, while there may be precedential or land use planning consequences of an unfortunate nature resulting from approval of a rezone request on the Spoerer parcel in isolation from the Watkins property, it is not clear that studying such effects within an EIS would do any good. The ultimate question is whether the County will see fit to require Mr. Spoerer to stick to the terms of the bargain struck in 1994, and no amount of study or elaboration is likely to make this decision easier.

CONCLUSIONS:

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.

2. The adverse environmental impacts of upland development on the Spoerer parcel, as proposed within the revised preliminary plat application, are subject to adequate mitigation under applicable County standards. Accordingly, approval of the preliminary plat in itself will not cause significant adverse environmental impacts.

3. The separate development of the Spoerer and Watkins properties may result in a higher level of adverse environmental impacts than would result from their combined development according to a single site plan. But in the absence of a development plan for the portion of the two properties below the steep slopes, such impacts can never be more than speculative. Even if Mr. Spoerer were required to perform an EIS on alternative site plans for the two properties together, there could be no certainty that Mr. Watkins actually would consent to any of these alternatives. If Mr. Spoerer's quasi-judicial rezone proposal is a bad idea because it jeopardizes the public benefit anticipated from the enactment of P-suffix condition TR-P14, the rezone should simply be rejected on its merits. The arguments for and against approving the rezone application can be sufficiently developed without the necessity of an EIS.

4. Based on the record, the decision of the SEPA official was clearly erroneous and must be reversed.

DECISION:

The threshold determination appeal of Cedar Valley Associates, LLC, is GRANTED. The determination of significance issued by King County Department of Development and Environmental Services is VACATED, and the applications are remanded to DDES for issuance of a new threshold determination consistent with the terms of this decision.

ORDERED this 7th day of January, 1999.

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Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 7th day of January, 1999, to the following parties and interested persons:

Terry & Kevin Bell
Carl Cangie
Michael Cranstoun
Claus Dassel
Rich DeLappe
Roger Dorstad
William C. Gamble, Jr.
Joel Haggard
John Hendrickson
David Hill
Sally Hopkins & Michael Threlfall
John L Scott Land Department
Jeff King
Jeff King
Walter Lain
Katherine Laird
Lambert Family
Rich De Lappe
Greg McCormick
Eleanor Moon
Garet P. Munger
Roger A. Pearce
Larry & Margie Shelton
Russell D. Shelton
Charles Spoerer, III
H. Joel Watkins, Jr.
H. Joel Watkins, Sr.
Anne Bikle
Greg Borba
Kim Claussen
Rich Hudson
Bruce Whittaker

MINUTES OF THE DECEMBER 23, 1998 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT & ENVIRONMENTAL SERVICES FILE NO. L97P0038 -- RIVER RIDGE AT DAYBREAK:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Rich Hudson, Greg Borba, Kim Claussen, Roger Pearce, Charles Spoerer III, Joel Haggard, Joel Watkins, Sr., Michael Cranstoun, Carl Cangie, and Garret Munger.

The following exhibits were offered and entered into the record on December 23, 1998:

Exhibit No. 1A Rezone application, L97RZ002, received September 16, 1997
Exhibit No. 1B Plat application, L97P0038, received September 17, 1997
Exhibit No. 2 SEPA Threshold Determination, Determination of Significance, August 11, 1997
Exhibit No. 3 SEPA File E97E0221
Exhibit No. 4 Kroll map, W & E 15-22-6
Exhibit No. 5 Site plan, received September 17, 1997
Exhibit No. 6 P-suffix TR-P14
Exhibit No. 7A Letter from Sally Hopkins & Michael Threlfall, opposing development
Exhibit No. 7B Letter from Terry & Kevin Bell, opposing development
Exhibit No. 8 Site plan, September 17, 1997 (same as Exhibit No. 5)
Exhibit No. 9 Short Plat Technical Report
Exhibit No. 10 Revised preliminary plat map with lots 31 and 32 deleted
Exhibit No. 11 Copy of P-suffix condition, effective August 18, 1997
Exhibit No. 12 Topographical map of subject area
Exhibit No. 13 P-Suffix Condition Query Results
Exhibit No. 14 Development concept sketch
Exhibit No. 15 Resume of Carl Cangie
Exhibit No. 16 Boundary line adjustment map
Exhibit No. 17 Resume of Garrett Munger
Exhibit No. 18 Copy of text from P-suffix, Ordinance #11653
Exhibit No. 19 Copy of text from Comprehensive Plan Update, Ordinance #12061

The following exhibit was entered pursuant to administrative continuance:

Exhibit No. 20 Letter dated December 28, 1998, from Roger Pearce to Examiner, with enclosed 1990 Lot Line Adjustment

SLS:gb
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