

OPEN SPACE AND R-1 SUBDIVISION

REQUEST SUMMARY

Should subdivisions and short subdivisions in the R-1 zoning district be subject to the current code requirement that 50% of the site be held in an open space tract?

INTERPRETATION

In the R-1 zone, the requirement in SMC 21.02.030.E that a subdivision or short subdivision have a minimum of 50% of the site held in a permanent open space tract does not comply with RCW 82.02.020. Therefore, this regulation will not be a requirement of approval for any subdivision or short subdivision in the R-1 zone.

David Pyle August 8, 2024

[David Pyle August 8, 2024 \(Aug 8, 2024 15:00 PDT\)](#)

CONTEXT, FACTS, AND FINDINGS

Sammamish Municipal Code (SMC) 21.02.030.E states: *All subdivisions and short subdivisions in the R-1 zone shall be required to be clustered away from critical areas or the axis of designated corridors such as urban separators or the wildlife habitat network to the extent possible and a permanent open space tract that includes at least 50 percent of the site shall be created.*

This regulation carried over from King County upon incorporation of the City of Sammamish in 1999. The intention was to preserve wildlife habitat and there was concern that adequate preservation would not occur based on conformance with the Critical Areas Ordinance in place at the time. However, the regulation did not require the open space be preserved specifically as habitat or native growth easement or similar ecological resource.

Subsequently, case law in the State of Washington has held that cities and counties must make an individualized determination that the open space required is proportionate to the impact of the development. *See Isla Verde International Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002) (invalidating an across-the-board 30% open space set-aside requirement); *Citizens' Alliance for Property Rights v. Sims*, 145 Wn. App. 649, 187 P.3d 786 (2008) (invalidating regulation that limited clearing to 50% of rural lots).

These cases are based on RCW 82.02.020, which prohibits cities (subject to specific exceptions) from imposing "any tax, fee, or charge, either direct

Related Code References

[SMC 21.02.030.E](#)
Clustered Development

[SMC 21.04.030.C](#)
Residential Site Planning Standards

Resources

[RCW 82.02.020](#)

[King County iMap](#)

[Sammamish Property Tool](#)

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or indirect” on the development of land. Cases like *Isla Verde* and *Citizens’ Alliance* interpret RCW 82.02.020 broadly and consider open space set-asides to be a type of indirect tax, fee or charge. The constitutional requirements of nexus and rough proportionality also implicate open space set-asides as set forth in *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987) and *Dolan v. Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994), respectively.

Additionally, current regulations applicable to the R-1 zone include maximum impervious coverage, floor area ratio, dynamic setbacks, and the Critical Area Ordinance, which is based on best available science. These regulations result in thoughtful development with habitat protections that are specific for each individual site. As such, the 50% open space set-aside requirement is no longer necessary to provide buffers or connectivity for wildlife habitats or corridors.







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Final Audit Report

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