



## King County

Department of Development  
and Environmental Services  
900 Oakesdale Avenue Southwest  
Renton, WA 98055-1219

### FINAL CODE INTERPRETATION L04CI001

#### Background

By letter dated February 10, 2004, Mr. Randall C. Johnson requested an interpretation of K.C.C. 21A.24.330 and 21A.24.370. Mr. Johnson asks whether restoration of a stream as allowed under K.C.C. 21A.24.370 includes straightening and enlarging a channel and whether K.C.C. 21A.24.330 allows a wetland to be regraded to drain to a stream and to be reseeded with non-native grasses. The request for an interpretation has been raised in the context of litigation between Mr. Johnson's clients, Dennis and Marilyn Griffin, and the Griffin's previous neighbors, the Andersons. The Griffins have since moved.

#### Discussion

##### Stream Relocation

Under the King County Code, alterations to a stream or stream buffer are limited to those activities either expressly allowed or that are exempt from King County's Sensitive Areas Ordinance. Allowed alterations to a stream are set forth in K.C.C. 21A.24.370. A stream relocation is subject to the following restrictions:

- H. Stream relocations may be allowed only for:
  - 1. class 2 streams as part of a public road project for which a public agency and utility exception is granted pursuant to K.C.C. 21A.24.050; and
  - 2. class 3 streams for the purpose of enhancing resources in the streamif:
  - a. appropriate floodplain protection measures are used; and
  - b. the relocation occurs on the site, except that relocation off the site may be allowed if the applicant demonstrates that any on-site relocation is impracticable, the applicant provides all necessary easements and waivers from affected property owners and the off-site location is in the same drainage sub-basin as the original stream;

K.C.C. 21A.24.370H. The proposed relocation of the stream on the Anderson's property does not fit into either of the two allowed alterations. The proposal is not part of a public road project and it is not being proposed for the purpose of enhancing resources.

Stream channels may be stabilized under limited circumstances:

- J. A stream channel may be stabilized if:
  - 1. Movement of the stream channel threatens existing residential or commercial structures, public facilities or improvements, unique natural resources or the only existing access to property; and

2. The stabilization is done in compliance with the requirements of K.C.C. 21A.24.230 through 21A.24.270 and administrative rules promulgated pursuant to this chapter;

K.C.C. 21A.24.370J. Based on the information available, stabilizing the stream channel on the Anderson's property does not meet this requirement. There is no indication that stream movement is a problem. In addition, the flooding that occurs does not appear to threaten structures or public facilities.

K.C.C. 21A.24.370 allows for enhancement or restoration of a stream under the following circumstances.

K. Stream enhancement not associated with any other development proposal may be allowed if accomplished according to a plan for its design, implementation, maintenance and monitoring prepared by a civil engineer and a qualified biologist and carried out under the direction of a qualified biologist;

L. A minor stream restoration project for fish habitat enhancement may be allowed if:

1. The restoration is sponsored by a public agency with a mandate to do such work;

2. The restoration is unassociated with mitigation of a specific development proposal;

3. The restoration is limited to placement of rock wiers, log controls, spawning gravel and other specific salmonid habitat improvements;

4. The restoration only involves the use of hand labor and light equipment; or the use of helicopters and cranes which deliver supplies to the project site provided that they have no contact with sensitive areas or their buffers; and

5. The restoration is performed under the direction of a qualified biologist;

The proposed stream relocation does not qualify as restoration either. K.C.C. 21A.06.1000 defines restoration as:

Restoration: returning a stream, wetland, other sensitive area or any associated buffer to a state in which its stability and functions approach its unaltered state as closely as possible.

The stream relocation will not return the stream or its buffer a naturally functioning condition.

#### Wetland alteration

K.C.C. 21A.24.330 establishes the standards for allowed alterations of wetlands. An alteration to a wetland is allowed under the following circumstances:

A. Alterations may be permitted if King County determines, based upon its review of special studies completed by qualified professionals, that:

1. the wetland does not serve any of the valuable functions of wetlands identified in K.C.C. 21A.06.1415 including, but not limited to, biologic and hydrologic functions; or

2. the proposed development will;

- a. protect, restore or enhance the wildlife habitat, natural drainage or other valuable functions of the wetland resulting in a net improvement to the functions of the wetland system;
- b. develop a plan for its design, implementation, maintenance and monitoring prepared by a civil engineer and a qualified biologist;
- c. perform the restoration or enhancement under the direction of a qualified biologist; and
- d. will otherwise be consistent with the purposes of this chapter.

...

D. There shall be no introduction of any plant or wildlife which is not indigenous to King County into any wetland or buffer unless authorized by a state or federal permit or approval;

...

K. Alterations to isolated wetlands may be allowed only as follows:

1. on sites of less than twenty acres in size, one isolated wetland may be altered by relocating its functions into a new wetland on the site pursuant to an approved mitigation plan;
2. on sites twenty acres or greater in size, up to three isolated wetlands may be altered by combining their functions into one or more replacement wetlands on the site pursuant to an approved mitigation plan; and
3. whenever an isolated wetland is altered pursuant to this subsection, the replacement wetland shall include enhancement for wildlife habitat;

...

P. Wetland enhancement or restoration not associated with any other development proposal may be allowed if accomplished according to a plan for its design, implementation, maintenance and monitoring prepared by a civil engineer and a qualified biologist and carried out under the direction of a qualified biologist. Restoration or enhancement must result in a net improvement to the functions of the wetland system ....

K.C.C. 21A.24.330.

King County classifies wetlands into three classes based on the size and nature of the wetland. K.C.C. 21A.06.1415. A grazed wet meadow is a type of wetland, K.C.C. 21A.06.1390, and can be any class. In the rural area, isolated wetlands are those wetlands less than 5,000 square feet that are not hydrologically connected to a stream or wetland and are of low function. K.C.C. 21A.06.1410.

The proposed filling of the grazed wet meadow would be an alteration of a wetland. If the entire two acre area is a wetland, it is not an isolated wetland. K.C.C. 21A.06.1410. This eliminates the option in K.C.C. 21A.24.330K for filling an isolated wetland.

The proposal does not meet the requirements for a restoration project. As noted above, restoration requires returning a wetland to its natural functioning conditions. K.C.C. 21A.24.330K requires that the restoration project result in a net improvement in the wetland's functions. This is also required by K.C.C. 21A.24.330A, which allows an alteration to a wetland only if the wetland serves no valuable functions and if the proposed alteration will result in a net

improvement in the wetland's functions. The proposed filling of the wetland would not meet these requirements.

#### Other options

There are other options available for altering sensitive areas, such as streams or wetlands. The two basic options are the variance and the reasonable use exception.

A variance may be used to allow an alteration to a wetland or stream buffer, but not to the wetland or stream itself. K.C.C. 21A.44.030L. As a result, neither of the two proposed alterations would be allowed as a variance.

King County may authorize a reasonable use exception if application of the Sensitive Areas Ordinance would deny all reasonable use of a property. K.C.C. 21A.24.070. Although each reasonable use exception is evaluated on its merits, King County normally interprets this provision to allow construction of a single family residence, if public health and safety are not be affected. Both the Griffin and the Anderson properties have residences. Therefore, approval of a reasonable use exception is unlikely.

#### **Decision**

K.C.C. Chapter 21A.24 governs alterations to wetlands and streams. Stream relocations and alterations are governed by K.C.C. 21A.24.370. A stream may be relocated only as part of a public road project or a restoration project. A proposal that a stream channel be reestablished in order to allow water to flow freely and so that water in the restored stream channel does not overtop the banks would not qualify as either a public road project or a restoration project under K.C.C. 21A.24.370. A proposal that a grazed wet meadow be covered with topsoil and regraded to prevent water from flowing into that area is not an allowed alteration under K.C.C. 21A.24.330.

Neither of these proposed actions meet the requirement for a variance, since they propose to alter the wetland and stream. A reasonable use exception could be sought, however the County generally interprets this provision to allowance of a single-family residence.

