



King County

Department of Development
and Environmental Services
900 Oakesdale Avenue Southwest
Renton, WA 98057-5212

REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: January 11, 2007

TO: Building Services Division Staff
Mike Dykeman, Manager
Chris Ricketts
Jim Chan
Pam Dhanapal

Land Use Services Division Staff
Joe Miles, Manager
Lisa Dinsmore
Randy Sandin
Deidre Andrus
Steve Bottheim

Stephanie Warden, Director
Harry Reinert, Special Projects Manager and RRC Co-Chair
Cass Newell, Prosecuting Attorney's Office

FM: Harry Reinert, Co-Chair

Present: Lisa Dinsmore, Steve Bottheim, Pam Dhanapal, Randy Sandin, Jim Chan, Cass Newell,
and Harry Reinert

- 1. Does the definition of maintenance in K.C.C. 21.24.045A.59 and K.C.C. 16.82.051C.13 allow for the placement of sand, pea gravel on lake's edge and the placement sod within a critical area, e.g. a wetland or its buffer or an aquatic area or its buffer?**

Background

In five pending code enforcement cases, property owners have brought in sand or pea gravel to maintain beaches that were previously created along the lakefront at Shady Lake. Approximately 100 to 130 square feet of beach is maintained for each property. In several cases, property owners have also brought in dirt to reseed lawns within the wetland buffer. Property owners state they are maintaining preexisting conditions.

Complainants in these cases have raised concerns about increased flooding and the removal of native wetland vegetation. Recent aerial photographs of these properties depict native vegetation along the lakeshore. The property owners state that weeds and grass grew up through the sand and gravel. Older aerial photographs show areas that could be beaches or lake access points on some of the properties. Many of these properties have Sensitive Area Notice on Titles stating

that the buffer can be maintained in existing conditions. Many, perhaps a majority of the properties along Shady Lake have constructed sandy/gravel beachfronts.

Discussion

K.C.C. 21A.24.045A.59 allows for the maintenance of lawn, landscaping or gardening for personal consumption within existing landscaped areas or other previously disturbed areas.

K.C.C. 16.82.051C.13 exempts from permitting requirements the maintenance of lawn, landscaping and gardening for personal consumption in an aquatic area and buffer.

13. In conjunction with normal and routine maintenance activities, if:
 - a. there is no alteration of a ditch or aquatic area that is used for salmonids:
 - b. the structure, condition or site maintained was constructed or created in accordance with law; and
 - c. the maintenance does not expand the roadway, lawn, landscaping, ditch, culvert or other improved area being maintained.

The definition of maintenance in K.C.C. 21A.06.731 allows for the prevention of decline in a lawfully established condition, such as a landscaped area. In this case, where landowners seek to maintain the use of a landscaped lawn and beach area, routine maintenance would include replacement of a sod lawn where lawn or maintained landscape previously existed and additional placement of gravel or sand in an area already maintained as beach front.

To be considered maintenance, these activities need to be undertaken at normal and routine intervals. The definition also requires that maintenance not expand or significantly change the originally established condition. Areas that have returned to a natural, unmaintained state, would not be allowed to be landscaped under this interpretation. K.C.C. Chapter 21A.32 establishes the standards for determining whether a non-conforming use has been abandoned and the standards for routine maintenance intervals.

Although the addition of gravel or sand in these circumstances is an allowed alteration under K.C.C. 21A.24.045, other provisions may require addressing drainage or flood impacts. For example, if the addition of material is in a flood hazard area, K.C.C. 21A.24.240 through 21A.24.260 require compensatory storage for "any grading or other activity that displaces any effective flood storage volume." K.C.C. 21A.24.240A. Similar provisions apply through the surface water design manual for development proposals not located within a flood hazard area.

Conclusion

Property owners along a lake shoreline may bring in sand and gravel and plant grass seed or bring in sod to maintain a previously existing beach or lawn, even though the area is within a critical area or critical area buffer. This allowance does not apply to a beach or landscaped area that has not been maintained and that has reverted to native vegetation.

If sand or gravel is placed in a flood hazard area or a lake or river shoreline, compensatory storage to address any loss of effective flood storage volume is required.