



## King County

### Department of Development and Environmental Services

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## REGULATORY REVIEW COMMITTEE

- MINUTES -

**MEETING DATE: September 11, 2008**

**TO:** Building Services Division Staff

Jim Chan, Manager

Chris Ricketts

Mark Bergam

Jarrold Lewis

Joelyn Higgins

Fire Marshal Division Staff

John Klopfenstein, Fire Marshal

Stephanie Warden, Director

Joe Miles, Deputy Director

Harry Reinert, Special Projects Manager and RRC Co-Chair

Cass Newell, Prosecuting Attorney's Office

Land Use Services Division Staff

Randy Sandin, Manager

Lisa Dinsmore

Deidre Andrus

Steve Bottheim

Doug Dobkins

Pesha Klein

Molly Johnson

**FM:** Harry Reinert, Co-Chair

Present: Randy Sandin, Pesha Klein, Dave Baugh, Mark Bergam, Joelyn Higgins, Steve Bottheim, Jarrod Lewis, DeeAnn Stevens, Chris Ricketts, Rebecca Scheffer, Iris Hofner, Cass Newell, Ray Florent, and Harry Reinert

### 1. **Is a diversion channel and intake pond for a Weyerhaeuser Mill an instream structure or a utility facility for purposes of the CAO?**

#### Background.

The Weyerhaeuser Snoqualmie Mill site relies on water diverted from Tokul Creek to provide fire suppression and industrial uses. Weyerhaeuser has a water right. Over time, sediment builds up at the point of diversion, requiring sediment removal at the point of the diversion.

Weyerhaeuser has suggested that the diversion channel is either a instream structure or a utility

facility and, therefore, maintenance would be considered to be an allowed alteration under K.C.C. 21A.24.045.

### Discussion

K.C.C. 21A.06.638 defines an instream structure as " anything placed or constructed below the ordinary high water mark, including, but not limited to, weirs, culverts, fill and natural materials and excluding dikes, levees, revetments and other bank stabilization facilities." This definition is consistent with the definition of structure, which includes " 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." K.C.C. 21A.06.1255. In both cases fill is specifically mentioned. However, in this case, the diversion is not fill, but is an unimproved channel and is not a structure, and therefore, is also not an instream structure.

K.C.C. 21A.06.1350 defines utility facility as " a facility for the distribution or transmission of services" and identifies several different types of facilities, including water pipelines and water storage reservoirs and tanks. In this case, the diversion is distributing water services to Weyerhaeuser's facility. In aquatic areas, a utility facility may be maintained, subject to conditions 32, 34, and 36. K.C.C. 21A.24.045D. Condition 32 is limited to projects in the roadway. Condition 36 applies to private individual utility service connections. Neither is applicable here. Condition 34 applies to "pipelines, cables, wires and support structures of utility facilities within utility corridors." 21A.06.1348 defines a utility corridor as "a narrow strip of land containing underground or above-ground utilities and the area necessary to maintain those utilities. A 'utility corridor' is contained within and is a portion of any utility right-of-way or dedicated easement." The diversion here is not within a utility right-of-way or a dedicated easement and, therefore, does not qualify for Condition 34.

K.C.C. 21A.24.070A allows for critical area alteration exceptions. Alteration exceptions are either linear or non-linear alterations. A linear alteration is defined as "infrastructure that supports development that is linear in nature and includes public and private roadways, public trails, private driveways, railroads, utility corridors and utility facilities." K.C.C. 21A.24.070C. Since the diversion is a utility facility, Weyerhaeuser may apply for a linear alteration exception.

### Conclusion

The Tokul Creek Diversion for the Weyerhaeuser Snoqualmie Mill is not an instream structure and does not meet the requirements of K.C.C. 21A.24.045D.34 to allow modification of a utility facility. Because the diversion is a utility facility, it does meet the definition of a linear alteration under K.C.C. 21A.24.070C. Weyerhaeuser may apply for a linear alteration exception under K.C.C. 21A.24.070A in order to maintain the diversion.

## **2. How does the definition of site in K.C.C. 21A.06.1170 apply to different scenarios?**

### Background.

K.C.C. 21A.06.1170 defines site for purposes of the zoning code as

A single lot, or two or more contiguous lots that are under common ownership or documented legal control, used as a single parcel for a development proposal in order to calculate compliance with the standards and regulations of this title.

The Permit Center has been faced with a number of different circumstances where it has had to implement this section. The discussion that follows summarizes the preliminary discussion of these issues. The Regulatory Review Committee will revisit these issues at a subsequent meeting.

### Discussion

*Question 1.* An applicant owns two contiguous lots and wishes to build a structure on one. For purposes of setbacks, is each individual lot evaluated independently or are setbacks established for the site as a whole, as if there were no individual lots?

Because there is no way to guarantee that after the building permit has been issued the site will be maintained as a whole and not as individual lots, the property owner must merge the lots through a boundary line adjustment.

*Question 2.* An applicant wishes to build a structure that straddles two lots? Do the property lines disappear for the purposes of review? What are the IBC/IRC issues?

Structures are not generally allowed within setbacks, including interior setbacks. See, e.g., K.C.C. 21A.12.170. However, K.C.C. 21A.12.130A. provides "When the common property line of two lots is covered by a building(s), the setbacks required by this chapter shall not apply along the common property line." This suggests that a building may be located on a common lot line between two parcels.

The IRC and IBC do not provide a similar exception. Therefore, although a structure may be allowed to straddle the line, different building code standards may apply to those portions of the building within the setback.

*Question 3.* If an existing structure is currently straddling a common property line with the lots under the same ownership, is this a non-conforming structure? Would any new structure need to conform to K.C.C. 21A.32.055 or K.C.C. 21A.12.030A? Would a zoning variance be an option?

K.C.C. 21A.06.800 defines a nonconformance as "any use, improvement or structure established in conformance with King County rules and regulations in effect at the time of establishment that no longer conforms to the range of uses permitted in the site's current zone or to the current development standards of the code due to changes in the code or its application to the subject property."

Since K.C.C. 21A.12.170 waives the setback requirements for a building that is located on the property line between two lots, that building conforms to the current development standards and is not a non-conforming use or structure. K.C.C. 21A.12.170 is less clear

as to whether it would allow a new structure to be constructed on the property line between two lots.

*Question 4:* Does DDES still do lot merger reviews or does this require a boundary line adjustment?

DDES no longer performs lot merger reviews. These requests are handled as a request for a boundary line adjustment.

*Question 5:* Does a “site” qualify as contiguous if the multiple parcels owned by the same person are separated by a street (or other possible legal feature)?

To qualify as a site, multiple lots must be contiguous and under common ownership or documented legal control. If lots are separated by a street, they are not contiguous and may not be considered a site for purposes of complying with the requirements of Title 21A.

Conclusion.

The Regulatory Review Committee only reached tentative conclusions on the questions posed by Permit Center staff. The general direction of the Committee was to require an applicant to eliminate lot lines through a boundary line adjustment when structures straddle the lot line or when adjacent parcels must be considered as a whole in order to comply with a zoning code requirement.