



King County
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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: August 31, 2017
Minutes finalized October 18, 2017

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FM: Randy Sandin, Resource Product Line Manager and RRC Co-Chair

Present: Wally Archuleta, Randy Sandin, Laura Casey, Steve Roberge, Sheryl Lux, and Ty Peterson. .

1. Can trails be constructed through wetlands, aquatic areas or their buffers to provide pedestrian or vehicular access as required by KCC 21A.18.100?

Background

The applicant for a proposed destination resort proposes to construct several pedestrian trails through wetlands, across aquatic areas, and in their buffers. They want to know the limit on trail width, and if they can surface it with crushed rock, pea gravel, hog fuel, or beauty bark. The trails may be used by motorized vehicles, including golf carts, maintenance vehicles and emergency vehicles. .

Discussion

Trails, as defined in KCC 21A.06.1285 are man-made pathways designed and intended for use by pedestrians, bicyclists, equestrians, and other nonmotorized recreational users. Trails, except public multi-purpose trails, are constructed of pervious materials and trail width is minimized to the maximum extent practical. Recreational trails are allowed across wetlands, aquatic areas, steep slopes and landslide hazards per the critical areas code 21A.24.045.D.46 and 47.

All permitted nonresidential land uses are required to provide pedestrian and bicycle access within and onto the development site. Standards for pedestrian and bicycle circulation and access for commercial development projects are listed in KCC 21A.18.100. These standards establish a minimum width of four feet and surfacing that meets standards in the King County Road Design and Construction Standards (KCRDCS) for walkways or sidewalks.

Walkways are not defined in the King County Zoning Code but are defined in the KCRDCS as a facility designated for pedestrian and non-vehicular traffic. Bikeway under the KCRDCS is a generic term for any road, street, path or way which in some manner is designated for bicycle travel.

The terms street and road are interchangeable. Street, as defined in KCC 21A.06.1245, is a public or recorded private thoroughfare providing pedestrian and vehicular access through neighborhoods and communities and to abutting property. The pedestrian and vehicular trails to provide internal circulation and access for this proposed development are not trails as that term is used in the King County Code and would be more akin to a private access road. Construction of new private access roads are allowed within wetlands, aquatic areas and their buffers in accordance with KCC 21A.24.045.D.28.

Conclusion

Construction of pedestrian and vehicular access to provide internal circulation through a proposed destination resort is allowed to cross wetlands, aquatic areas and their buffers provided there is no alternative access available, impacts are minimized to the maximum extent practical and impacts to critical areas are mitigated.

2. Should applications for subdivisions, conditional use permits and other similar land use approvals on properties that are subject to a six-year forest practice development moratorium be accepted, and if so, under what circumstances?

Background

The authority and obligation to impose the forest practice development moratorium comes from RCW 76.09.060 and RCW 76.09.460. Under RCW 76.09.460, the moratorium must be in place for six years from the date the forest practice permit was approved OR until the land subject to the moratorium has been brought into compliance with state forest practice standards, SEPA, if required, has been completed and the property has been found to be in full compliance with local ordinances and regulations. If compliance is not found, a mitigation plan must be approved and implemented bringing the property into compliance with applicable local regulations.

Under KCC 16.82.140, the moratorium is enforced for the full six years unless the landowner qualifies for moratorium relief and brings the property into compliance with applicable County regulations. In a prior interpretation, it was concluded that DPER could accept/approve an application to restore a property when they do not qualify for relief from the development moratorium. There were two relevant code provisions that informed that decision. KCC 16.82.130.A provides that the department shall not accept or approve permit applications on sites that have been cleared or graded in violation of KCC 16.82, except for permit or approvals necessary for correction of code violations.

KCC 16.82.140 provides that “the department shall deny a development proposal on that tax parcel when the proposed activity is not related to ongoing forestry, agriculture or other resource management activities.” The basis for this code provision is King County Comprehensive Plan Policy R-632 which states the following:

Harvesting of forest lands for the purpose of converting to non-forest uses shall meet all applicable county standards for clearing and critical areas management. Landowners opting to conduct forest management activities under state approved forest practices permits should be restricted from developing those areas for non-resource purposes for six years from the date of forest practice approval.

One of the key parts to the comprehensive plan policies and KCC 16.82.140 is that the department should not approve a development proposal for non-resource purposes.

Discussion

Development proposal is defined in KCC 21A.06.310 as any activities requiring a permit or other approval form King County relative to the use or development of land. A permit that would restore a property to its prior condition would neither relate to a use or to the development of land. Such a permit would be consistent with KCC 16.82.130 and would not be inconsistent with KCC 16.82.140. In a separate prior interpretation, DPER concluded that applications for lot mergers, boundary line adjustments critical area designations and other similar activities could be accepted and approved during the pendency of the six year development moratorium since such approvals would not directly result in the “development or use” of land.

Conclusion

The moratorium provisions in KCC 16.82.140 do not preclude DPER from accepting applications for non-resource land uses or development of land except in instance where the property was cleared or graded in violation of KCC 16.82 unless the application includes the necessary work to correct the code violations. DPER cannot approve or issue a permit for the non-resource uses or development while the moratorium is in effect.

The RRC concluded that development applications could be accepted while the six-year moratorium was still in effect, subject to the following conditions:

- There are no outstanding clearing or grading violations on the property or the application includes the necessary work to correct the violation.
- The applicant acknowledges that they are proceeding at their own risk;
- Permit approval will be contingent upon the moratorium being lifted; and
- The moratorium will expire within 6 months of the date of filing the application.

3. Are dispersion trenches, infiltration facilities, rain gardens or other similar stormwater management facilities allowed within critical area buffers? Are stormwater vaults allowed within the building setback?

Background

Critical Areas staff review numerous applications that propose to locate stormwater facilities within buffers or building setbacks adjacent to buffers. Recently, these have included proposals to locate raingardens, filter strips and dispersion flow spreaders within wetland and aquatic area buffers. Storm water flow control and water quality treatment facilities are not allowed within critical areas buffers per 21A.24.045.D.32. Stormwater conveyance systems may be allowed subject to the conditions in 21A.24.045.D.38. Stormwater vaults may be either a flow control or a water quality treatment facility, and are often installed underground. An applicant recently proposed placing them within the building setback adjacent to a critical area buffer.

Discussion

Storm water conveyance is defined in KCC 21A.06.1271 as a drainage facility designed to collect, contain and provide for the flow of surface water from the highest point on a development site to receiving water or another discharge point, connecting any required flow control and water quality treatment facilities along the way. "Surface water conveyance" includes but is not limited to, gutters, ditches, pipes, biofiltration swales and channels.

As noted above, a new storm water conveyance system is allowed within wetlands, aquatic areas and their buffers subject to the following conditions:

- a. conveying the surface water into the wetland or aquatic area buffer and discharging into the wetland or aquatic area buffer or at the wetland or aquatic area edge has less adverse impact upon the wetland or aquatic area or wetland or aquatic area buffer than if the surface water were discharged at the buffer's edge and allowed to naturally drain through the buffer;
- b. the volume of discharge is minimized through application of low impact development and water quality measures identified in the King County Surface Water Design Manual;
- c. the conveyance and outfall are installed with hand equipment where feasible;
- d. the outfall shall include bioengineering techniques where feasible; and
- e. the outfall is designed to minimize adverse impacts to critical areas.

Under 21A.24.045.D.32, construction of new surface water flow control or surface water quality treatment facility is only allowed when located in an existing roadway and when conducted consistent with the regional road maintenance guidelines.

The zoning code does not define flow control or water quality treatment facility. Under the KCSWDM, these terms mean a drainage facility designed to mitigate the impacts of increased or pollution generating storm water runoff created by site development in accordance with the drainage requirements in KCC Chapter 9.04. Facilities are designed either, to hold water for a considerable length of time and then release it by evaporation, plant transpiration, or infiltration into the ground, or to hold runoff for a short period of time and then release it to the conveyance system.

Flow control BMP means a small scale drainage facility or feature that is part of a development site strategy to use processes such as infiltration, dispersion, storage, evaporation, transpiration, forest retention, and reduced impervious surface footprint to mimic pre-developed hydrology and minimize stormwater runoff.

The question whether stormwater vaults could be located in a building setback area was reviewed by the RRC in February 1995. Under KCC Title 21A, all “structures” must meet setback requirements unless specifically exempted elsewhere in the code. A vault, by definition, is a structure and since there are no exemptions for these types of facilities, would not be allowed within a building setback area. The zoning code has not been revised to allow vaults within building setback areas so this RRC decision is still applicable.

Conclusion – Dispersion devices, flow spreaders, infiltration trenches and other similar best management practices that are intended to mimic pre-developed hydrology and minimize stormwater runoff and that are not facilities, as those terms are defined in the KCSWDM, would be allowed to be located within a critical area buffer as part of the approved surface water drainage and conveyance system provided the work conforms to KCC 21A.24.045.D.38. Engineering review staff will be responsible for determining if the stormwater control devices are BMPs or facilities and whether the devices and locations are appropriate for the individual project.

4. Is hand removal of material in a beaver dam clearing or grading? Does hand removal of a beaver dam constitute an alteration under KCC 21A.06.056?

Background – This question has been under discussion for over twenty years. It first came up during the development of the updated May Creek Basin Plan in the mid-1990s. To address community concerns with the proposed plan, the Department of Development and Environmental Services issued a white paper and policy statement that concluded that hand removal of material in a beaver dam was not considered clearing and permits would not be required to remove those features. Regulations have changed since that time and the issue of beaver dam management is currently under discussion again by KCDOT, KCDNRP and DPER.

Clearing is defined in KCC 16.82.020 as the “cutting, grubbing or removal of vegetation or **other organic material** by physical, mechanical or any other similar means.” Clearing is defined

similarly in KCC 21A.06.195, except with the addition of the word “plant”, i.e. other organic **plant** material. (emphasis added)

Vegetation is defined in both the zoning code (KCC 21A.06.1360) and clearing and grading code (KCC 16.82.020.Z) as any “plant life growing at, below, or above the soil surface.”

The first question is whether the removal of dead wood, in any form, would be considered “other organic material” and therefore be regulated as a clearing activity under KCC Chapter 16.82.

The second question would be if removing material from a beaver dam is not considered clearing, would it constitute an alteration under KCC 21A.06.056 and still be a regulated activity under KCC Chapter 21A.24. An alteration is “any human activity that results in or is likely to result in an impact upon the existing condition of a critical area or its buffer.” The term includes any activity that is likely to result in an “impact to ... fish or wildlife or their habitats.”

Discussion

Variations of both of these questions were reviewed by the RRC on October 26, 2006. There have been no changes in the terms evaluated in that decision so the findings and conclusions are still relevant and are incorporated herein. The RRC concluded in that decision that unless the downed wood had become a component of the normal soil vegetative regime, its removal would not be considered clearing. A similar conclusion was reached regarding whether the removal of downed wood from a critical area constituted an alteration.

How these concepts were applied to driftwood in a marine shoreline was pretty straight forward. The same is not true for beaver dams. The general consensus was that if a beaver dam was in the initial stages of construction, its removal by hand would not likely be considered clearing or a critical area alteration. It was also generally agreed that the longer a beaver dam was in place, the less likely it could be removed by hand and the more likely its removal would be considered an alteration under KCC Chapter 21A.24. Because there is no bright line standard for when a beaver dam removal would constitute an alteration, the consensus was that each dam removal proposal would need to be reviewed on a case by case basis.

Conclusion

Hand removal of material in a beaver dam would not be considered clearing unless the material so removed had become a component of the normal soil vegetative regime. Each dam removal proposal needs to be evaluated to determine if its removal constituted a critical area alteration under KCC 21A.06.056.