



**King County**  
**Department of Permitting**  
**and Environmental Review**  
35030 SE Douglas St., Ste. 210  
Snoqualmie, WA 98065-9266  
**206-296-6600** TTY Relay: 711  
www.kingcounty.gov

## **REGULATORY REVIEW COMMITTEE**

**- MINUTES -**

**MEETING DATE: May 24, 2018**  
Minutes finalized: July 16, 2018

**TO:** Wally Archuleta                      Chris Ricketts  
         Sheryl Lux                              Steve Roberge  
         Ty Peterson

Jim Chan, Interim Director  
Lisa Verner, Legislative Coordinator and RRC Co-Chair  
Devon Shannon, Prosecuting Attorney's Office

**FM:** Randy Sandin, Interim Assistant Director and RRC Co-Chair

Present: Wally Archuleta, Randy Sandin, Steve Roberge, Sheryl Lux, Devon Shannon (by phone), Lisa Verner, Chris Ricketts and Ty Peterson. .

### **1. Is a code amendment needed to allow an appeal to a code interpretation under K.C.C. 2.100.050 relative to a code enforcement case prior to issuance of a notice and order?**

#### Background

If DPER issues a code interpretation under K.C.C. 2.100 that applies to review of a specific development proposal that is before the department, any appeal of the code interpretation is consolidated with and is subject to the same appeal process as the underlying development proposal. Similarly, if the code interpretation request relates to a code enforcement action, any appeal of the code interpretation is consolidated with and is subject to the same appeal process as the code enforcement action. In all other cases, the director's decision is the county's final decision. (K.C.C. 2.100.050)

## Discussion

If the director renders a code interpretation decision that relates to a code enforcement action, an appeal of that code interpretation could not be filed until after issuance of a notice and order. If that code interpretation is a determinant on whether there is an actual code violation, it seems an unnecessary administrative step to go through the time-consuming notice and order machinations to obtain a regulatory interpretation that may obviate the need for the notice and order. Besides being a potential waste of already overburdened Code Enforcement resources, this seems suboptimal, for two reasons.

The Supreme Court dealt with a similar issue in *Sackett v. Environmental Protection Agency*. The unanimous Court there was troubled that someone had to subject themselves to enforcement penalties in order to get an appealable ruling on the applicability of a regulation. Making somebody who has a legitimate difference of opinion on what a regulation covers basically have to invite a notice and order—which gets recorded against their title—just to get the issue in front of the examiner, seems unnecessarily burdensome.

There is a process available to prospective permit applicants to get an opinion from DPER on the applicability of zoning and other land development regulations to their proposed development. During the pre-application permit process, if DPER issues a preliminary determination that something is not allowed, the applicant can appeal that to the examiner. KCC 20.20.030.D. The applicant does not have to go through the permit process or demand a final permit decision, just to get an unfavorable ruling that she could appeal to us.

## Conclusion

The King County Code should be amended to allow an administrative appeal of a code interpretation related to a code enforcement action prior to issuance of a notice and order. In preparing this amendment, the department should consider amendments to Titles 2, 20 and 23 and also consider modifying the fees required for a code interpretation.

## **2. Where slope stabilization is performed within the shoreline jurisdiction, is it considered shoreline stabilization subject to K.C.C. 21A.25.160 and .170?**

### Background

The City of Snoqualmie is proposing to stabilize an eroding steep slope along the access road to Canyon Springs to protect a water transmission pipeline that is a portion of Snoqualmie's municipal water supply system. The work is within the Forestry Shoreline Environment but all of the work will occur above the ordinary high water mark (OHMW) of the River. Shoreline stabilization is an allowed alteration within the Forestry Shoreline Environment pursuant to K.C.C. 21A.25.160, but would require a Shoreline Conditional Use Permit.

## Discussion

The term “shoreland” refers to land above, or landward of, the OHWM of a shoreline of the state. “Shoreline” refers to the area at or below the OHWM. “Shoreline” also refers to the area of jurisdiction under the County’s Shoreline Master Program (SMP) and the state Shoreline Management Act (SMA) which includes shorelands. The term shoreline is used in both contexts throughout the SMA and SMP.

A shoreline use is an activity allowed within a shoreline environment (21A.25.090.A). The use that is the subject of this review is a utility facility (21A.06.1350), specifically a water transmission pipeline that is a portion of the City of Snoqualmie’s municipal water supply system. Utility facilities are an allowed use in the Forestry shoreline environment. The slope stabilization that is proposed will protect the water line and access road from future erosion.

A shoreline modification is construction of a physical element or alteration that changes the natural or existing shoreline conditions (21A.25.090.B). Guidance for authorizing shoreline modifications under the SMP comes from WAC 173-26-231. The standards for the specific modifications listed in K.C.C. 21A.25.160 are based upon guidance from WAC 173-26-231(3). The standards for shoreline modifications not listed in KCC 21A.25.160 would be subject to the general principles in WAC 173-26-231(2). Shoreline modifications that are necessary to support or protect an allowed primary structure or use are allowed subject generally to the mitigation sequencing and no net loss provisions of the SMP and K.C.C. 21A.25.080 and .090.

Shoreline stabilization is defined in K.C.C. 21A.06.1082C as a structure or device including but not limited to breakwaters, bulkheads, jetties, groins and riprap, that is placed so as to prevent erosion or to alter the normal currents, wave actions or other natural forces or actions of a waterbody. In the Forestry environment, new shoreline stabilization would require a shoreline conditional use permit. It is clear in this context that shoreline stabilization is directed to the area at or below the OHWM of the shoreline water body, not to the adjoining shoreland areas.

Slope stabilization is an alteration addressed specifically under the Critical Areas Code in 21A.24.045.D.15 and is an allowed alteration where erosion or landsliding threatens a utility facility if, to the maximum extent practical, stabilization work does not disturb the slope and its vegetative cover and any associated critical areas. This code section is expressly adopted into shoreline jurisdiction in 20.12.205. Therefore, slope stabilization on a steep slope could be allowed within shoreline jurisdiction.

## Conclusion

Stabilization of an eroding steep slope located landward of the ordinary high water mark of a shoreline water body to protect a water transmission line is not shoreline stabilization as that term is defined in KCC 21A.06.1082C and would be allowed within the Forestry shoreline environment without a shoreline conditional use permit provided the work was consistent with the SMP and relevant provisions of KCC 21A.25.

**3. Is storage and intermittent use of search and rescue equipment, vehicles and a mobile office an allowed use in the RA-5 zone?**

Background

The King County Search and Rescue Association (SAR) was established in 1965 as a non-profit volunteer group to promote development of a unified organization of field teams that are trained and highly proficient in search and rescue techniques and operations. There are currently eight different SAR member teams that belong to the association.

The King County Sheriff's Office is responsible for search and rescue activities in King County under the mandates of R.C.W.38.52. This and other volunteer groups along with Sheriff's Office Search & Rescue personnel respond to numerous incidents involving lost or injured hikers, hunters and children and down missing aircrafts but they have no affiliation with the Sheriff's Office.

In 2018, SAR leased approximately one acre from the Snoqualmie Valley Hospital District to store their search and rescue equipment, vehicles and a mobile office. The property is zoned RA-5 and is located on the SR-18 extension approximately 700 feet north of Interstate 90. The property was formerly used as a private recreational vehicle (RV) park and campground. The leased area was previously used for RV campsites. The office is used one day per month for training and the site is accessed once or twice per week to retrieve vehicles and equipment. This usually entails two or three people bringing in their private vehicle and driving out with SAR vehicles.

SAR has been issued a notice of violation for clearing, grading and placement of the mobile office without the required permits. SAR is requesting a determination from DPER whether the proposed use is allowed before they attempt to secure permits to correct the cited code violations.

Discussion

The Standard Industrial Classification (SIC) Manual, 1987 edition, prepared by United States Office of Management and Budget is used, with modifications, to list and define land uses authorized to be located in the various zones consistent with the comprehensive plan land use map. These uses are compiled in K.C.C. 21A.08 but do not include a specific use category that covers the use described by SAR.

Some uses that are somewhat analogous to the proposed use include a public agency or utility yard or an off-site required parking lot. In the RA zone, public agency yard is limited to road maintenance use and storage only. The off-street parking provision would only work if SAR were affiliated with the Sheriff's Office, a fire department or other government agency. Another similar use is self-storage which is not a permitted use in the RA zone. But self-storage facilities are defined as establishments containing separate storage spaces that are leased or rented as individual units, which is not the case here. Establishments which cannot be classified in any other industry are designated by the SIC Manual as Nonclassifiable Establishments. Such

establishments that can be classified in a SIC division should be classified in the most appropriate industry within that division.

The Director is authorized under K.C.C. 21A.02.070 to determine whether a proposed land use not specifically listed in a land use table or specifically included within a SIC classification is allowed in a particular zone. The director's determination shall be based on whether or not permitting the proposed use in a particular zone is consistent with the purposes of the zoning code and the zone's purpose as set forth in K.C.C. 21A.04, by considering the following factors:

1. The physical characteristics of the use and its supporting structures, including but not limited to scale, traffic and other impacts, and hours of operation;
2. Whether or not the use complements or is compatible with other uses permitted in the zone; and
3. The SIC classification, if any, assigned to the business or other entity that will carry on the primary activities of the proposed use.

The proposed SAR is consistent with the rural area zone. The condition of the site and the physical characteristics of the use have minimal impact on the surrounding area and the use is compatible with other uses allowed in the rural area zone. The sites close proximity to SR-18, SR-202 and I-90 make the site the ideal location for this type of use. The final element the director must consider is the SIC classification assigned to the business entity that will carry out the activity. The SIC Manual contains very little in the way of use categories that are applicable to non-profit volunteer organizations. The closest the committee could get to a comparable use category was SIC 83 – Social Services, which is an allowed use in the rural area zone under some conditions.

Conclusion:

A search and rescue association's use of rural area zoned property to store their equipment, vehicles and a mobile office that is used monthly for specialized training for their members is an allowed use, subject to obtaining all of the required permits.

**4. May the existing use of a property with the following P-suffix condition:**

**FC-P02: Change the zoning map to an I zone and add a p-suffix condition with two conditions, the first that the on site storage would be that as of today which would be uses such as boats, trailers or tractors and the second, if the ownership changes the uses would revert to NB zone.**

**continue after the property is sold?**

This was the subject of director's interpretation CINT18-0001. The discussion and conclusion are documented in that decision document and will not be repeated here.

