



**King County**  
**Department of Permitting**  
**and Environmental Review**  
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## **REGULATORY REVIEW COMMITTEE**

**- MINUTES -**

**MEETING DATE: March 22, 2018**  
Minutes finalized: April 2, 2018

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

Jim Chan, Interim Director  
Randy Sandin, Interim Assistant Director  
Devon Shannon, Prosecuting Attorney's Office

**FM:** Lisa Verner, Legislative Coordinator and RRC Chair

Present: Devon Shannon (by phone), Wally Archuleta, Steve Roberge, Sheryl Lux, Lisa Verner, Randy Sandin, and Fereshteh Dehkordi.

### **1. Is the placement of fill on a piece of property generated from off-site sources an allowable stand-alone land use under KCC 21A.08?**

#### Background

DPER has an application to mine gravel from an M-zoned property located in south King County. The excavation will be approximately 30 feet deep. Concurrent with the mining, the excavation will be backfilled with clean soil to generally match existing adjacent grades in accordance with the reclamation standards in KCC 21A.22.081. Once reclamation is complete, the applicant proposes to continue filling to a height approximately 60 feet above existing adjacent grades. There is no contemplation of fill being removed from the site or of the filled area being put to any future use. Several examples of similar situations arose during the discussion. In one, a mine owner reclaimed a mine site and the state signed off that the reclamation met the minimum reclamation standards in RCW 78.44. The property owner then asked to bring additional fill dirt onto the site permanently, ostensibly, as continuation of the previous reclamation. There were no plans for any future use of the area that would be filled.

These are in contrast to other examples that involved the permanent placement of imported fill material but where the fill was being used to construct farm pads which are an allowed agricultural land use.

#### Discussion

Fill as an independent use is at issue here. "Permanent fill" is not listed as a permitted use in any of the land use tables in KCC chapter 21A.08. The only land use that is remotely comparable is landfill which is identified as a regional land use in KCC 21A.08.100. Landfill is a defined term and is limited to sites where refuse is deposited. Uses not listed are not permitted by the code.

Reclamation standards are listed in KCC 21.22.081.C. Final grades of reclaimed property shall encourage permitted uses in the zone to locate or relocate on the site; the drainage patterns shall reestablish natural conditions within six months of reclamation and preclude water from collecting or becoming stagnant. All reclaimed slopes shall comprise an irregular, sinuous appearance in both profile and plan view and blend with adjacent topography to a reasonable extent.

Fill that goes above what is needed for reclamation is not permitted under the code. Fill placement that is not related to an approved land use is not permitted.

#### Conclusion

A site may not be used for the permanent disposal of fill as a standalone land use. This is not a permitted use under the land use tables. While the permanent disposal of fill is clearly not an allowed use now, it should be considered for a code amendment to potentially allow it in the future under limited circumstances.

## **2. How is "development" defined for purposes of the Shoreline Master Program (KCC chapter 21A.25)?**

#### Background

An RV Park was purchased by the County and the structures above ground were removed several years ago in preparation for installation of a new setback levee and habitat restoration project. The property abuts the Snoqualmie River. A Shoreline Substantial Development Permit (SSDP) was not required for removal of the structures because the work did not constitute development as defined in WAC 173-27-030 which expressly excludes the dismantling or removing structures from the definition of development as long as there is no other associated development or redevelopment. However, based upon the zoning code definition of structure in KCC 21A.06.1255, removal of the roadway and asphalt surface would not be considered a structure and removal of such would require a SSDP. DNRP is ready to do the rest of the site demolitions and has asked that DPER revisit that earlier determination.

#### Discussion

For shorelines, KCC 21A.25.020.A defines "development" as "defined in chapter 90.58 RCW." RCW 90.58.030(3)(a) defines development as "a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or

temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level". WAC 173-27-030(6) defines development the same way RCW 90.58.030 does with an additional sentence added at the end: "development" does not include dismantling or removing structures if there is no other associated development or re-development."

WAC 173-27-030(15) defines "structure" as "a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels".

KCC 21A.06.1255 defines "structure" as "anything permanently constructed in or on the ground, or over the water, excluding fences six feet or less in height, decks less than eighteen inches above grade, paved areas, and structural or non-structural fill.

Under the WAC definition of structure, which is not as limiting as the zoning code definition, the roadway and paving would be considered structures.

### Conclusion

Under KCC 21A.25.020, the definitions in 90.58 RCW and chapter 173-26 WAC apply if there is a conflict with the definitions in KCC chapter 21A.06. The state's definition includes fill and pavement. An SSDP is not necessary for removing the remaining asphalt and utilities on the RV Park site.