



King County

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

REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: October 26, 2006

TO: Building Services Division Staff Land Use Services Division Staff
Mike Dykeman, Manager Joe Miles, Manager
Chris Ricketts Lisa Dinsmore
Jim Chan Randy Sandin
Pam Dhanapal 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, Pam Dhanapal, Chris Ricketts, Jim Chan, Cass Newell, Jennifer Stacy, Deidre Andrus, and Harry Reinert

1. A. Does the provision in K.C.C 21A.24.045.D.21 allowing the cutting of firewood in a critical area buffer also apply to collecting driftwood off the beach of Puget Sound and cutting it for firewood?

B. Is the removal of driftwood or other downed wood from a critical area buffer considered clearing under K.C.C 21A.24.045 and K.C.C 16.82.051?

Background

Many people around Vashon Island routinely collect and cut up driftwood for firewood. Some folks have expressed concern about the impact of this action on the shoreline environment. Is this an allowed alteration? If so, do citizens need a forest management plan or rural stewardship plan for this activity?

Discussion

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 in KCC 21A.06.195 similarly, except with the addition of the word “plant” – other organic plant material.

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

The central issue for both questions is whether the removal of driftwood or other standing or downed dead wood is clearing as that term is defined in code. More precisely, is dead wood, in any form, “other organic material” and therefore regulated as a clearing activity under K.C.C. Chapter 16.82 or K.C.C. Chapter 21A.24.

The current definition of clearing in KCC 16.82.020 is a byproduct of a proposed ordinance developed by DDES in conjunction with DNRP in the late 1990s. A primary purpose of the change was to promote implementation of the King County Surface Water Design Manual and to address compliance with the Washington State Department of Ecology’s then proposed stormwater recommendations for western Washington. The then existing definition of clearing in K.C.C. Chapter 16.82 included the phrase “or other organic plant material,” the same as currently provided in the zoning code. The proposed change in definition was carried forward from this 1990s era proposal to the CAO.

The terms ‘plant material’ have varied meanings depending upon the industry using them. In the landscaping business, plant material means the live plants that go into a landscape. In soil science, plant material is the detritus that creates or enhances soil life. It consists of the leaves, twigs, stems, etc. that drop and naturally compost to create new or enhanced soil.

Organic material or organic matter, in contrast to plant material or organic plant material, has generally the same meaning, universally. It is anything in the soil or on top of the soil that when left alone will slowly bio-degrade to create humus. Wikipedia defines organic matter or organic material as matter that has come from a recently living organism, is capable of decay, or the product of decay, or is composed of organic compounds. It goes on to say, “The term is used largely by soil science, where the organic matter content of soil is an important indicator of the health of the soil.” Whether you use the clearing code definition or the zoning code definition, it appears that “other organic matter” or “other organic plant matter” are both referring to the litter that creates humus.

This interpretation is also consistent with the general purpose of these regulations. The critical areas ordinance was adopted at the same time as changes to King County’ stormwater regulations and clearing and grading regulations. This was in part based on a recognition stated in the critical areas ordinance that these regulations were all part of an overall strategy to protect the functions and values of critical areas. See, e.g., Ordinance 15051, Statement of Facts. In addition, the stormwater regulations were developed to bring King County into compliance with the federal Clean Water Act and Ecology guidance and the Phase II Municipal NPDES permit requirements. Rural vegetation retention standards and the post-construction soil standards were important elements of the proposal. The latter specifically looks at maintaining or restoring

organic matter content in soils disturbed during development. In this context, it is clear then that the intent of these definitions and regulations was to maintain the integrity of natural soil regimes and processes.

At the same time, the critical areas ordinance also had as a primary purpose the protection of wildlife habitat. Both down and standing dead wood, whether in a critical area or not, provides valuable habitat for many varieties of wildlife. For this reason, the removal of down and standing timber in its natural setting is regulated by the critical areas ordinance. The King County Council understood this. A last minute amendment to the critical areas ordinance exempted the removal of downed timber from the requirement to obtain a clearing permit when conducted outside of critical areas. K.C.C. 16.82.050C.24.

In the circumstances presented here, the question is whether driftwood meets the definition of downed wood, since it is obviously not standing timber. Because of its transient nature, driftwood is not a natural component of the normal soil vegetation regime, particularly in a marine environment.. The cutting of driftwood in a marine nearshore environment would not constitute clearing as that term is defined in K.C.C. Chapter 16.82 or K.C.C. Chapter 21A.06, since it does not meet the definition of vegetation and it is not “other organic material” as that term is intended to be used. Therefore, a permit is not required to remove driftwood from these environments.

A second issue is whether removal of driftwood is an alteration as that term is defined in K.C.C. Chapter 21A.06. 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.” K.C.C. 21A.06.056. The term includes any activity that is likely to result in an “impact to ... fish or wildlife or their habitats.” Driftwood is a part of the natural process of marine, river, and lake shorelines and provides habitat for a variety of species and affects the natural processes of these environments. In these circumstances, removing driftwood would result in an impact to a critical area and would be an alteration.

K.C.C. 21A.24.045 establishes the allowed alterations for critical areas. Following the analysis above, removal of driftwood in a shoreline environment is not covered by any of the allowed alterations, since the activity does not meet the definition of clearing and the driftwood is not considered to be vegetation. As such, removal of driftwood is not an allowed alteration. See, K.C.C. 21A.24.045B.

Conclusion

Removal of downed wood in non-critical areas is specifically exempt from the requirement to obtain a clearing permit. Standing or downed dead wood within critical areas is not specifically exempt from permits the removal of which would constitute clearing. The removal may be regulated as an alteration to an aquatic area if it is demonstrated the removal has an adverse affect upon the aquatic area.

2. Does the set-aside of 6 acres of native vegetation satisfy the clearing restrictions of NS-P23 or does the clearing apply to 'each individual lot'?

Background

At the Dec. 8, 2004 RRC meeting, the committee discussed this issue and concluded that each individual lot was not required to satisfy the clearing restrictions under the circumstances described in the meeting summary. The Denny Creek Neighborhood Alliance (DCNA) recently met with the DDES Director and DDES staff with respect to several issues relating to Holmes Point. They raised concerns about the RRC conclusion and noted that NS-P23 does not appear to provide any exceptions like that identified by the RRC.

Discussion

NS-P23 provides in relevant part:

B.6. In addition to the maximum area allowed for buildings and other impervious surfaces under subsection B.5, up to 50 percent of the total lot area may be used for garden, lawn or landscaping, provided:

a. all significant trees, as defined in K.C.C. chapter 21A.06, must be retained. The limits set forth in this subsection are to be measured at grade level; the area of allowable garden, lawn or landscaping may intrude into the drip line of a significant tree required to be retained under this subsection if it is demonstrated not to cause root damage or otherwise imperil the tree's health;

b. total site alteration, including impervious surfaces and other alterations, shall not exceed 75 percent of the total lot area; and

c. if development on the lot is to be served by an on-site sewage disposal system, any areas required by the department of public health to be set aside for on-site sewage disposal systems shall be contained as much as possible within the portion of the lot altered for garden, lawn or landscaping as provided by this subsection. If elements of the on-site sewage disposal system must be installed outside the landscaped area, the elements must be installed so as not to damage any significant trees required to be retained under subsection B.6.a, and any plants that are damaged must be replaced with similar native plants.

7. Subdivisions, short subdivisions and conditional use permits for more than one dwelling unit shall be subject to the following requirements:

a. New public or private road improvements shall be the minimum necessary to serve the development on the site in accordance with King County Road Standards. King County shall consider granting variances to the road standards to further minimize site disturbance, consistent with pedestrian and traffic safety, and the other purposes of the road standards; and

b. Impervious surfaces and other alterations within each lot shall be limited as provided in subsections 5 and 6. In townhouse or multifamily developments, total impervious surfaces and other alterations shall be limited to two thousand six hundred square feet per lot or dwelling unit in the R-6 and R-8

zones, and three thousand three hundred square feet per lot or dwelling unit in the R-4 zone. (Emphasis added.)

Thus, in the case of a subdivision or short-subdivision, NS-P23 requires the standards of B.6 to be applied to each lot. This means that there is no ability under the condition to cluster significant trees or to move them to a critical areas tract, even though this may have a better environmental result.

Conclusion

The Regulatory Review Committee decision concerning NS-P23 reflected in its minutes of December 8, 2004 is rescinded. NS-P23 does not allow clustering or averaging of vegetation as a means of achieving the requirements of the condition. Vegetation retention requirements apply to each individual lot and significant trees required to be protected cannot be relocated to another lot or a critical areas tract.

The Regulatory Review Committee, however, believes that that there are circumstances where clustering of vegetation or locating significant trees in a critical areas tract may result in greater protection of the environment and result in less impact on downstream property owners. The Committee recommends that the Department work with the Denny Creek Neighborhood Alliance to develop proposed amendments to NS-P23 that will establish appropriate standards to allow flexibility in application of the requirements when that flexibility will result in improved protection of downstream property owners and of the environment.