



King County  
Department of Development  
and Environmental Services  
3600 - 136th Place Southeast  
Bellevue, Washington 98006-1400

## REGULATORY REVIEW COMMITTEE

### - MINUTES -

MEETING DATE: February 3, 1995

TO: Bob Derrick  
Greg Kipp  
Terry Brunner  
Harold Vandergriff  
Mike Sinsky

Gary Kohler  
Lisa Pringle  
Anna Nelson  
Ken Dinsmore  
Ikuno Masterson

FM: Jerry Balcom

JB 2/23/95

Present: Terry Brunner, Greg Kipp, Harold Vandergriff, Anna Nelson, Betty Salvati, Laura Casey, Henryk Hiller

1. KCC 21A.24.075 permits the director to modify or waive zoning code requirements on urban lots under certain circumstances. Does this provision only permit the modification or waiver of zoning code requirements that pertain to Class 3 wetlands, Class 3 streams and their associated buffers and setbacks? Or does it permit the modification or waiver of requirements pertaining to any sensitive area, buffer or setback?

KCC 21A.24.075 authorizes the director "to modify or waive some or all of the requirements of this title, including mitigation requirements, *pertaining to Class 3 wetlands, Class 3 streams, and their associated buffer or building setback areas,*" when done in accordance with that section (KCC 21A.24.075, emphasis added). It is clear from the italicized language that the director can only modify or waive those requirements that pertain to Class 3 wetlands, Class 3 streams, and their associated buffers and setbacks. (The phrase "including mitigation requirements" is set off by from the italicized phrase by a comma, and must be read simply as emphasizing that mitigation requirements are among the provisions that can be modified or waived.)



It was noted that the Council amended this section to refer to "the requirements of this title" (emphasis added) in order to give the director authority to waive or modify any zoning code provision to permit development on small urban lots with Class 3 wetlands, Class 3 streams, and their buffers or setbacks. However, the wording of the section does not accomplish that purpose: it only allows the modification or waiver of requirements that specifically pertain to those sensitive areas, buffers and setbacks. A code amendment will be proposed to ensure that the director has the full authority intended by the Council.

2. "Sensitive area" is defined in part as those areas "which support unique, fragile or valuable natural resources . . . and such resources which carry, hold or purify water in their natural state" (KCC 21A.06.1065) The definition then states that sensitive areas "include" certain specific areas, including "streams." Is a watercourse that meets the definition of a "stream" always considered a sensitive area?

Yes. The areas specifically listed in the second sentence of KCC 21A.06.1065 constitute sensitive areas by definition. There is no basis for staff to make a determination that any of these listed areas meet the criteria in the definition's first sentence; a legislative determination that they do so has already been made. As a result, if a watercourse meets the definition of "stream" (KCC 21A.06.1240), it is a sensitive area. (A similar analysis was made of the "alteration" definition in the June 5, 1992 Minutes.)

To avoid the application of sensitive area requirements for streams, the applicant must seek a variance (which may be secured only for buffer widths) (KCC 21A.44.030) or a modification or waiver of the sensitive area requirements (which may be secured only on small urban lots with Class 3 streams, their buffers or setbacks) (KCC 21A.24.075).

JB:HH

cc: Laura Casey  
Betty Salvati  
Henryk Hiller