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Regulatory Review Committee (RRC) **- Minutes -**

Meeting Date: May 28, 2020

Minutes finalized: June 23, 2020

TO: Jim Chan, Director
Mark Rowe, Assistant Director
Devon Shannon, Prosecuting Attorney's Office
Ramon Locsin, Urban Product Line Manager
Doug Dobkins, Residential Product Line Manager
Ty Peterson, Commercial Product Line Manager
Sheryl Lux, Code Enforcement Product Line Manager
Chris Ricketts, Building Official and Fire Marshal

FM: Christine Jensen, Legislative/Policy Analyst and RRC Co-Chair
Kevin LeClair, Principal Subarea Planner and RRC Co-Chair

Present: Kevin LeClair, Sheryl Lux, Ty Peterson, Doug Dobkins, Devon Shannon, Ramon Locsin, Scott Smith, Greg Goforth, Laura Casey, and Christine Jensen.

1. Request concerning:

- **Whether a trail that is designated as a “transportation facility” under King County Code (K.C.C.)¹ 21A.25.100 can be designated as a “trail” under K.C.C. 21A.24.045;**
- **Whether a retaining wall can be located within a public right-of-way (ROW) setback and can be higher than the limitations in K.C.C. 21A.12.170.F.; and**
- **Whether abutment(s) can be allowed within a Severe Channel Migration Zone (SCMZ).**

Indexes

Subjects: transportation facility, trail, retaining wall, channel migration zone
Code: 21A.12.170, 21A.24.045, 21A.25.100

¹ https://www.kingcounty.gov/council/legislation/kc_code.aspx

Background

The King County Department of Natural Resources and Parks (DNRP) is proposing to construct the final section of the Foothills Trail in rural, unincorporated King County (Phase II Segment B - the White River Crossing). The trail segment includes a proposed bridge spanning the White River, which will provide an alternative emergency route for pedestrians and vehicles in the event that the current State Route (SR)-410 bridge becomes impassible. The trail is designed to generally follow the former SR-410 alignment and associated river crossing.

The proposed trail crosses shoreline areas, including lands designated as Resource, Conservancy, and Aquatic shorelines under the King County Shoreline Master Program (SMP). The trail also crosses critical areas and/or associated buffers for the following: SCMZ, steep slope hazard area (SSHA), Wildlife Network Area (WNA), wetlands, and aquatic areas.

In 2020, DNRP participated in a preapplication conference (PREA20-0036) to review the proposed design for the trail and the associated permitting requirements for construction. The conference highlighted some areas of the critical areas code that need clarification in order to proceed with permitting and construction. The issues are as follows.

I. Trails in Critical Areas

Per K.C.C. 21A.25.100 and as outlined in Table 1 below, recreational uses are not allowed in Resource shoreline areas, but transportation facilities are allowed.

Table 1 - Allowed shoreline uses by applicable Shoreline Environment Designation

Use	Conservancy	Resource	Aquatic
Recreational/cultural except for marinas and docks and piers (K.C.C. 21A.08.040)	Permitted ²	Prohibited	Conditional
Transportation facilities ³	Conditional	Permitted	Conditional

In 2016, the RRC determined that the Foothills Trail was a “transportation facility” as allowed in K.C.C. 21A.25.100 and as prescribed in K.C.C. 21A.25.280.⁴ In 2019, a

² Subject to K.C.C. 21A.25.100.C.20.

³ Subject to K.C.C. 21A.25.280.

⁴ August 28, 2016, RRC Minutes: https://www.kingcounty.gov/~media/depts/permitting-environmental-review/dper/documents/codes/rrc/RRC_minutes_2016_08_18.ashx?la=en

Shoreline Substantial Development Permit (SHOR-17-0032) was approved for the trail based on this determination that the trail was a transportation facility.

However, this determination has caused some lack of clarity regarding whether such a “transportation facility” would be allowed in critical areas. Per K.C.C. 21A.24.045 and as outlined in Table 2 below, public road ROW structures and bridges are prohibited in the applicable critical areas and buffers, but trails are allowed.

Table 2 – Allowed alterations within applicable critical areas

Use	Steep Slope Hazards Area and Buffer	Aquatic Area and Buffer and Sever Chanel Migration Area	Wildlife Habitat Conservation Area/ Wildlife Network Area
Construction of new public road ROW structure on unimproved ROW	Prohibited	Allowed ⁵	Prohibited
Construction of a new bridge	Allowed ⁶	Allowed ⁶	Allowed ^{6,7}
Construction of a new trail	Allowed ⁸	Allowed ⁹	Allowed ^{7,9}

DNRP has requested clarification of whether this trail, as designated as a “transportation facility” under K.C.C. 21A.25.100, can be designated as a “trail” under K.C.C. 21A.24.045.

II. Retaining Walls in Setbacks

The trail design proposes to construct retaining walls to reduce impacts to SSHAs, wetlands, aquatic areas, and associated buffers. The retaining walls would be located within the public ROW setback and would be more than six feet in height.

K.C.C. 21A.12.170.F allows retaining walls to be located within required setbacks but limits the wall to no more than six feet in height in rural and resource zones, with some exceptions.

K.C.C. 21A.12.170.F Setbacks - projections and structures allowed

“ ...

F. Rockeries, retaining walls and curbs may project into or be located in any setback. Except for structures that cross the setback perpendicularly to property lines or that abut a critical area, these structures:

⁵ Subject to K.C.C. 21A.24.045.D.26.

⁶ Subject to K.C.C. 21A.24.045.D.16 and 21A.24.045.D.39

⁷ Subject to K.C.C. 21A.24.045.D.4

⁸ Subject to K.C.C. 21A.24.045.D.46.

⁹ Subject to K.C.C. 21A.24.045.D.47.

1. Shall not exceed a height of six feet in the R-1 through R-18, UR, RA and resource zones;
 2. Shall not exceed a height of eight feet in the R-24 and R-48 zones; and
 3. Shall not exceed the building height for the zone in commercial/industrial zones, measured in accordance with the standards established in the King County Building Code, Title 16;
- ...”

Due to the presence of critical areas in the vicinity of the trail, DNRP has requested clarification of whether a retaining wall can be located within the ROW setback and can be higher than the limitations in K.C.C. 21A.12.170.F.

III. Abutments in Channel Migration Zones (CMZs)

In 2019, a channel migration study¹⁰ identified areas of the White River in the vicinity of the proposed trail bridge as a SCMZ.

For new bridges constructed in SCMZs, K.C.C. 21A..24.045.D.39.e. prohibits the placement of piers or abutments. DNRP has stated that the designation of this area as a SCMZ is not accurate. Due to existing piers and associated placed rock groins from the former SR-410 bridge, DNRP argues that the area should be mapped as a Disconnected Migration Area (DMA)¹¹ and thus should not be subject to the limitations of SCMZs for placement of piers or abutments.

DNRP has requested clarification of whether new pier(s) or abutment(s) can be allowed within the SCMZ.

Discussion

The committee reviewed the requests as follows.

I. Trails in Critical Areas

In K.C.C. Chapter 21A.25, the types of transportation facilities that are allowed in shoreline areas is rather broad.

¹⁰ Middle White River Channel Migration Study RM 27.4 to 20.3, December 2019: <https://your.kingcounty.gov/dnrp/library/water-and-land/flooding/CMZs/middle-white-river/middle-white-cmz-wmaps-dec-2019.pdf>

¹¹ As defined in King County Department of Local Services (DLS) [Public Rule LUD-17-1-3-PR](#), Chapter 21A-24 Critical Areas: Designation, Classification, and Mapping of Channel Migration Zones, Appendix A, a DMA is an “area located landward of man-made structures that restrict channel migration ...”

21A.25.280 Transportation facilities

“A. Transportation facilities, including, but not limited to, streets, alleys, highways, railroads and regional light rail transit may be located in all shoreline environments.

B. Within street or alley rights-of-way, uses shall be limited to street purposes as defined by law.

C. Within railroad and regional light rail transit rights-of-way, allowed uses shall be limited to: tracks, signals or other operating devices; movement of rolling stock; utility lines and equipment; and facilities accessory to and used directly for the delivery and distribution of services to abutting property.

D. New transportation facilities shall, to the maximum extent practical:

1. Be located outside of the shoreline jurisdiction;
2. Avoid disturbance of unique and fragile areas;
3. Avoid disturbance of wildlife spawning, nesting and rearing areas;
4. Avoid changing groundwater patterns and hyporheic flows that support streams and wetlands;
5. Not create a need for shoreline protection; and
6. Use natural screening.”

(Ord. 16985 § 56, 2010).

The “including, but not limited to” language in K.C.C. 21A.25.280 means that transportation facilities can encompass other types of facilities beyond just roadways, such as trails. Given this, the committee concurred with the previous RCC determination that the trail constitutes a “transportation facility” for the purposes of the SMP in K.C.C. Chapter 21A.25.

The committee then evaluated whether the trail should be considered a public ROW, bridge, or trail for the purposes of the critical areas regulations in K.C.C. Chapter 21A.24.

The term “public ROW” is not defined in the Code. However, the term “roadway” is defined in K.C.C. 21A.06.1011C, and a “road ROW” is included in this definition. This definition includes “pathways” *as part of* a road ROW, but not necessarily a pathway on its own. This definition does not expressly address bridges. The term “bridge” is not defined in the Code. The term “trails” is defined in K.C.C. 21A.06.1285, which includes “bridges” as part of a trail.

21A.06.1011C Roadway

“Roadway: the maintained areas cleared and graded within a road right-of-way or railroad prism. For a road right-of-way, "roadway" includes all maintained and traveled areas, shoulders, pathways, sidewalks, ditches and cut and fill slopes. For a railroad prism, "roadway" includes the maintained railbed, shoulders, and cut and fill slopes. "Roadway" is equivalent to the "existing, maintained, improved road right-of-way or railroad prism" as defined in the regional road maintenance guidelines.”
(Ord. 15051 § 93, 2004).

21A.06.1285 Trails

“Trails: human-made pathways, including elevated boardwalks, bridges and stairs, designed and intended for use by pedestrians, bicyclists, equestrians and other nonmotorized recreational users.”

(Ord. 18767 § 5, 2018: Ord. 18683 § 52, 2018: Ord. 16267 § 18, 2008: Ord. 10870 § 297, 1993).

For allowed alterations in critical areas, K.C.C. 21A.24.045.C. states that “where an activity is included in more than one activity category, the numbered conditions applicable to the most specific description of the activity governs.” The Foothills Trail is intended for multimodal, nonmotorized recreational uses. While the trail and associated bridge is designed to also accommodate vehicular traffic, such use is only intended for emergency purposes. Given this, the committee determined that the most specific description of this facility is a “trail” for the purposes of critical areas regulations in K.C.C. Chapter 21A.24, and thus would be allowed within the applicable critical areas.

II. Retaining Walls in ROW Setbacks

As noted above, K.C.C. 21A.12.170.F allows retaining walls to be located within required ROW setbacks but limits the wall to no more than six feet in height in rural and resource zones, with some exceptions. The exceptions are for structures that cross the setback perpendicularly to property lines and for structures that abut a critical area. The committee determined that these exceptions only apply to the height limitations in the code section and not to the allowance of retaining walls in setbacks.

The committee also determined that, because the retaining walls will be constructed to reduce impacts to SSHAs, wetlands, aquatic areas, and associated buffers, the retaining walls do abut critical areas. Given this, the proposed retaining walls for the trail are allowed in the ROW setback and have no height limitations.

III. Abutments in Channel Migration Zones

DNRP has stated that the designation of this area as a SCMZ is not accurate and that the area should be designated and/or regulated as a DMA instead.

King County has a public rule that outlines the process for adopting and amending mapped CMZs and associated studies.¹² Per the requirements in this public rule, the committee determined that they do not have the authority to independently change the mapped CMZ designations in this vicinity. Such a request would need to be evaluated through an amendment to the adopted public rule, which must follow the process outlined in K.C.C. Chapter 2.98 and associated rules. The area cannot be regulated as a DMA without such a change.

¹² [LUD-17-1-3-PR](#)

The committee will forward the mapping concern to management in DLS and DNRP for consideration of possible amendment of the public rule.

Conclusion

The Foothills Trail facility is a “trail” for the purposes of critical areas regulations in K.C.C. Chapter 21A.24. The proposed retaining walls for the trail are allowed in the ROW setback and have no height limitations. The area cannot be regulated as a DMA without an amendment to the mapping in the CMZ public rule.