

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Nov 08, 2012, 1:18 pm  
BY RONALD R. CARPENTER  
CLERK

SUPREME COURT NO. 87514-6

*bjh*  
RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

---

KING COUNTY, a Washington municipal corporation, JEFFREY L.  
SPENCER, a single man, RONALD A. SHEAR, a single man,

Respondents,

v.

KING COUNTY DEPARTMENT OF DEVELOPMENT AND  
ENVIRONMENTAL SERVICES, an executive agency,

Petitioner.

---

**PETITIONER KING COUNTY DEPARTMENT OF  
DEVELOPMENT AND ENVIRONMENTAL SERVICES'  
SUPPLEMENTAL BRIEF**

---

ON APPEAL FROM THE COURT OF APPEALS, DIVISION ONE  
NO. 66432-8-I, 66433-6-I, 66434-1-I

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

CRISTY J. CRAIG, WSBA #27451  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
King County Courthouse  
516 Third Avenue, Suite W400  
Seattle, Washington 98104  
(206) 296-9015

**TABLE OF CONTENTS**

Table of Authorities ..... iii

I. ISSUES PRESENTED.....1

A. DID THE HEARING EXAMINER COMMIT LEGAL ERROR AND ENGAGE IN AN UNLAWFUL PROCEDURE UNDER RCW 36.70C.130(1)(a) AND (b)? .....1

B. WAS THE EXAMINER’S CONCLUSION THAT SHEARS’ INTENT ESTABLISHED A LEGAL NONCONFORMING USE AN ERROR OF LAW?.....1

1. Is the examiner’s decision error under this Court’s Decision in Anderson v. Island County? .....1

2. Is the examiner’s decision error under the plain language of KCC 21A.06.800 and KCC 21A.08.010?.....1

3. Should this Court follow the reasoning in First Pioneer Trading Co., Inc. v. Pierce County and conclude that Shear may not rely on unlawful grading to support establishment of a legal nonconforming use?.....1

C. DID THE EXAMINER ERR BY CONCLUDING THAT THE KING COUNTY CODE DOES NOT CONTAIN AN ENFORCEABLE FLOOD HAZARD AREA STANDARD? .....1

1. Does the King County Critical Areas Code apply to the code enforcement process?.....1

2. May local jurisdictions require flood hazard review based on regulated activity occurring in the FEMA floodway? .....1

D. DID THE EXAMINER ENGAGE IN AN ILLEGAL PROCEDURE BY LIMITING KCDDDES’ REGULATORY

OPTIONS PRIOR TO ISSUANCE OF A SEPA THRESHOLD DETERMINATION IN VIOLATION OF WAC 197-11-070? .....	1
II. STATEMENT OF THE CASE.....	2
III. ARGUMENT .....	4
A. THE EXAMINER COMMITTED LEGAL ERROR AND ENGAGED IN AN UNLAWFUL PROCEDURE.....	5
B. THE EXAMINER’S DECISION THAT SHEAR ESTABLISHED A NONCOMFORMING USE WAS AN ERROR OF LAW .....	7
1. The examiner’s decision was error under <u>Anderson v.</u> <u>Island County</u> .....	8
2. The examiner’s decision was legal error under the plain language of KCC 21A.06.800 and 21A.08.010. ....	10
3. This Court should conclude that a legal nonconforming use cannot be established based on unlawful site development. ....	13
C. THE EXAMINER ERRED BY FINDING THAT THE KCC LACKS AN ENFORCEABLE FLOOD HAZARD STANDARD ABSENT FORMAL DESIGNATION .....	15
1. The examiner erred requiring flood hazard designation as a prerequisite to the code enforcement process .....	15
2. This Court should conclude that local jurisdictions May require flood hazard review in the permit process based on a parcel’s location on FEMA mapping .....	16
D. THE EXAMINER VIOLATED WAC 197-11-070 BY DIRECTING THE OUTCOME OF PERMIT REVIEW .....	18
IV. CONCLUSION.....	19

## TABLE OF AUTHORITIES

### Washington State Cases

<i>Anderson v. Island County</i> , 81 Wn.2d 312, 501 P.2d 594 .....	1, 7, 8, 9
<i>Biermann v. City of Spokane</i> , 90 Wn.App. 816, 960 P.2d 434 (1998).....	5, 6
<i>Ellensburg Cement Products., Inc v. Kittitas County</i> , slip op # 30381-1-III .....	5, 10, 13, 16
<i>First Pioneer Trading Co., Inc v. Pierce County</i> , 146 Wn.App. 606, 191 P.3d 928 (2008) .....	1, 7, 13, 14
<i>Isla Verde Int'l Holdings, Inc. v. City of Camas</i> , 146 Wn.2d 740, 49 P.3d 867 (2002) .....	5
<i>King County Dep't of Development and Environmental Services v. King County, et al.</i> , 167 Wn.App. 561, 273 P.3d 490 (2012) .....	4, 12
<i>Milestone Homes, Inc. v. City of Bonney Lake</i> , 145 Wn.App. 118, 186 P.3d 357 (2008) .....	10
<i>Olympic Stewardship Foundation v. Western Washington Growth Management Hearings Bd.</i> , 166 Wn.App. 172, 274 P.3d 1040 (2012) .....	6
<i>Rhod-A-Zalea &amp; 35<sup>th</sup>, Inc. v. Snohomish Co.</i> , 136 Wn.2d 1, 959 P.2d 1024 (1988) .....	7
<i>State v. Jacobs</i> , 154 Wn.2d 596, 115 P.3d 281 (2005) .....	11
<i>State ex rel Miller v. Cain</i> , 40 Wn.2d 216, 242 P.2d 508 (1952).....	7
<i>Young v. Pierce County</i> , 120 Wash.App. 175, 84 P.3d 927 (2004).....	17

## Statutes and Rules

### *Washington State:*

RCW 36.70C (LUPA).....	5
RCW 36.70C.130(1).....	5
36.70C.130(1)(a).....	1, 5, 6
36.70C.130(1)(b).....	1, 5, 6, 7
WAC 197-11-070.....	1, 18, 19

## Codes

### *King County:*

KCC 16.82.051(A).....	15
KCC 20.20.040(A)(9).....	18
KCC 20.20.070(A).....	12
KCC Title 21A.....	15
KCC Chapter 21A.06.....	15
KCC 21A.06.800 .....	1, 10, 11, 12, 13
KCC 21A.08.010 .....	1, 10, 11, 12, 13, 14
KCC Chapter 21A.08.....	12
KCC 21A.22.070 .....	18
KCC 21A.24.020(A).....	17
21A.24.020(B).....	16
KCC Chapter 21A.32.....	11

KCC 21A.32.010(A).....	11
KCC 21A.32.025 .....	11
KCC Title 23 .....	15
KCC 23.02.070 .....	16
Ordinance 15032.....	2, 7, 9

***Pierce County:***

PCC 18.140.030 .....	14
----------------------	----

**Other Authorities**

1 Robert M. Anderson, <i>American Law of Zoning</i> , § 6.01 .....	7
---	---

**I. ISSUES PRESENTED**

- A. DID THE EXAMINER COMMIT LEGAL ERROR AND ENGAGE IN AN UNLAWFUL PROCEDURE UNDER RCW 36.70C.130(1)(a) AND (b)?**
- B. WAS THE EXAMINER'S CONCLUSION THAT SHEARS' INTENT ESTABLISHED A LEGAL NONCONFORMING USE AN ERROR OF LAW?**
1. Is the Examiner's decision error under this Court's decision in Anderson v. Island County?
  2. Is the Examiner's decision error under the plain language of KCC 21A.06.800 and 21A.08.010?
  3. Should this Court follow the reasoning in First Pioneer Trading Co., Inc. v. Pierce County and conclude that Shear may not rely on unlawful grading to support establishment of a legal nonconforming use?
- C. DID THE EXAMINER ERR BY CONCLUDING THAT THE KING COUNTY CODE DOES NOT CONTAIN AN ENFORCEABLE FLOOD HAZARD AREA STANDARD?**
1. Does the King County Critical Areas Code apply to the code enforcement process?
  2. May local jurisdictions require flood hazard review based on regulated activity occurring in the FEMA floodway?
- D. DID THE EXAMINER ENGAGE IN AN ILLEGAL PROCEDURE BY LIMITING KCDDDES' REGULATORY OPTIONS PRIOR TO ISSUANCE OF A SEPA THRESHOLD DETERMINATION IN VIOLATION OF WAC 197-11-070?**

## II. STATEMENT OF THE CASE

The King County Department of Development and Environmental Services<sup>1</sup> (KCDDDES) filed this action, seeking Land Use Petition Act review of a Hearing Examiner decision that overturned, in part, a code enforcement notice and order. The facts of this case are straightforward.<sup>2</sup> King County Ordinance 15032<sup>3</sup> governing “materials processing facilities” was adopted in September of 2004. January 28, 2010 Report and Decision, Clerk’s Papers (CP) 30, ¶ 8. Sometime in 2003 or 2004 Ron Shear began grading Jeff Spencer’s agriculturally zoned parcel, intending to move an existing wood recycling business there. CP 18-20, ¶¶ 18-21. On May 13, 2005, KCDDDES posted a Stop Work Order, requiring grading on the parcel to cease because a grading permit was required. CP 634. No grading permit application was submitted.

In late 2004 or 2005 Shear began grinding and screening raw organic materials on Spencer’s site. CP 20, ¶ 21. The grinding process and associated truck traffic impacted a flower farmer to the south, Yee Hang.

Id.

---

<sup>1</sup> Now known as the Department of Permitting and Environmental Review, or Permitting.

<sup>2</sup> In its LUPA appeal KCDDDES did not challenge the substantive facts as found by the Examiner. Thus, the Examiner’s January 28, 2010 Report and Decision is frequently cited here. KCDDDES’ position has consistently been that the facts found by the Examiner do not support his legal conclusions.

<sup>3</sup> The relevant portions of Ordinance 15032 are attached to DDES’ Consolidated Court of Appeals Response Brief at Appendix C.

Hang suffered water, dust and odor impacts, Verbatim Report of Proceedings (RP), June 23, 2009 Testimony of Yee Hang 177:7-178:13, 188:6-13 and hearing exhibits, CP 105-107. Hang complained that Shear's wood grinders and sifters sent clouds of dust and large wood chunks flying onto his farm, destroying his crops. CP 115-116, 119-120, hearing exhibits 17, 18, 26, 27. Hang also provided photographs of Shear's wood waste piles blocking drainage ditches, causing his property to flood. CP 117-118, hearing exhibits 20-21.

In 2006 KCDDDES issued a notice and order citing Shear and Spencer for grading without required permits and for operation of a materials processing facility without required permits in a critical area. CP 113-114. The notice and order required all equipment to be removed and the site to be restored to its previous condition. *Id.* Shear and Spencer appealed.

During the prehearing process, Shear's original attorney "... adopted a strategy of delay and aggressive obstructionism ..." Report and Decision, CP 16-17, ¶ 6. Ultimately the attorney was sanctioned. CP 636-638. Because of the sanction order the attorney moved for Examiner James O'Connor to recuse himself. Decision and Order, CP 640-662. Examiner O'Connor granted the motion.

Further proceedings in Shear's administrative appeal were conducted before Examiner Stafford Smith. Examiner Smith's Report and Decision

was filed on January 28, 2010. CP 14. The Examiner granted Shear's appeal with respect to critical areas allegations and legal nonconforming uses and denied it with respect to permit requirements. CP 39.

Expressing concern that the remedy sought in the notice and order was too aggressive, the Examiner directed the scope and outcome of permit review. Id. KCDDDES appealed.

The superior court granted KCDDDES' appeal, finding that the Examiner's decisions were legal error and that the conditions placed on DDES permit review exceeded his authority. CP 679-681. Respondents appealed. On April 2, 2012, Division One issued its decision reinstating the Examiner's ruling. King County Dep't of Development and Environmental Services v. King County, et al., 167 Wn.App. 561, 273 P.3d 490 (2012).

### III. ARGUMENT

By this LUPA appeal, KCDDDES urges this Court to reaffirm long-established principles of Washington common law by holding that a use must exist lawfully prior to an applicable zoning change in order to be legal nonconforming. The Court should conclude that the Examiner engaged in an unlawful procedure by predetermining the outcome of Shear's future permit applications prior to SEPA review.

**A. THE EXAMINER COMMITTED LEGAL  
ERROR AND ENGAGED IN AN UNLAWFUL  
PROCEDURE.**

This case comes before the Court for review pursuant to the Land Use Petition Act (LUPA), RCW 36.70C *et seq.* In conducting review under LUPA, appellate courts stand in the shoes of the superior court and review the ruling below on the administrative record. Ellensburg Cement Prod., Inc v. Kittitas County, slip op # 30381-1-III (Div. III, Oct. 30, 2012), citing Isla Verde Int'l Holdings, Inc. v. City of Camas, 146 Wn.2d 740, 49 P.3d 867 (2002). Issues of law are reviewed de novo. Ellensburg Cement Prod., Inc v. Kittitas County, slip op # 30381-1-III, at 13. The court grants relief where the appealing party, here KCDDDES, has established one of the standards set forth in RCW 36.70C.130(1). This Court should conclude that King County met the standards described in RCW 36.70C.130(1)(a) and (b).

Under RCW 36.70C.130(1)(a) a petitioner is entitled to relief if “the body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless.” A local jurisdiction’s approval of a permit application without requiring compliance with applicable regulations meets the standard described in RCW 36.70C.130(1)(a). See Biermann v. City of Spokane, 90 Wn.App. 816, 960 P.2d 434 (1998).

In Biermann, Spokane approved final construction of a garage, despite the fact that the building permit had expired, based on informal procedures and in violation of the city code. Id. at 819. The examiner approved the city's action. Id. Noting conflicting city code provisions regarding building permit extension, the Bierman court reversed. The court concluded "[t]he 'unwritten policy' is an invalid delegation of power and the hearing examiner's reliance upon it was improper." Id. As further discussed below, this Court should likewise conclude, that because the Examiner limited KCDDDES' environmental review contrary to the requirements of the King County Code (KCC) and the Washington Administrative Code (WAC) KCDDDES met the standard set forth in RCW 36.70C.130(1)(a).

Under RCW 36.70C.130(1)(b) a court may provide relief if "the land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise." Courts do not defer to an agency's interpretation of a statute if the interpretation conflicts with the statute. Olympic Stewardship Foundation v. Western Washington Growth Management Hearings Bd., 166 Wn.App. 172, 189, 274 P.3d 1040, 1048 (2012). As further discussed below, this Court should decide that because the Examiner's legal nonconforming use and flood hazard decisions were

erroneous interpretations of law KCDDDES meets the standard for relief under RCW 36.70C.130(1)(b).

**B. THE EXAMINER'S DECISION THAT SHEAR ESTABLISHED A NONCONFORMING USE WAS AN ERROR OF LAW.**

Legal nonconforming uses have long been disfavored in Washington State, and for good reasons. “[A] nonconforming use is in fact detrimental to some one or more of those public interests (health, safety, morals or welfare) which justify the invoking of the police power . . .”. Anderson v. Island County, 81 Wn.2d 312, 323-324, 501 P.2d 594, 600 - 601 (1972), quoting State ex rel Miller v. Cain, 40 Wn.2d 216, 220-221, 242 P.2d 508 (1952).

A legal nonconforming use is “a use which lawfully existed prior to the enactment of a zoning ordinance, although it does not comply with the zoning restrictions applicable to the district in which it is situated.” Rhod-A-Zalea & 35<sup>th</sup>, Inc. v. Snohomish Co., 136 Wn.2d 1, 959 P.2d 1024 (1988), citing 1 Robert M. Anderson, American Law of Zoning, § 6.01. Shear has the burden to prove that his use existed before Ordinance 15032 was enacted, and that his use was lawful at the time. First Pioneer Trading Co., Inc. v. Pierce County, 146 Wn.App. 606, 614, 191 P.3d 928, 932 (2008). In this case, the Court should conclude as a matter of law that no

material processing use existed prior to the zoning change, and that Shear's grading activities were not lawful.

**1. The Examiner's decision was error under Anderson v. Island County.**

In Anderson v. Island County, Island Sand and Gravel, Inc. had purchased land intending to operate a cement plant before a residential zoning ordinance was adopted. 81 Wn.2d at 322, 501 P.2d 594, 600. When the ordinance was adopted, the plant had not been built and no cement batching operations were occurring, although materials were being stored on site. Id. at 322-23.

In its reasoning, the Anderson Court noted "[i]t is almost universally held that the mere purchase of property and occupation thereof are not sufficient factors, either severally or jointly, to establish an existing nonconforming use . . ." The Court concluded

[b]efore a supposed non-conforming use may be protected, it must exist somewhere outside the property owner's mind. **Therefore, mere intention or contemplation of an eventual use of land is insufficient to establish an existing use for protection as a nonconforming use following passage of a zoning ordinance.**

Id. at 321-22. (Emphasis added, internal citations omitted.)

The operative facts of this case are virtually identical to those in Anderson. In Anderson, at the time of the code change Island Sand and Gravel had purchased the property at issue and had begun to store

materials and equipment there, but had not begun the intended cement batching. In this case, at the time of the code change Shear had leased Spencer's property, and was storing materials and equipment there, but the processing operation had not begun. Report and Decision, CP 31 ¶10.

The Examiner concluded that

[t]he core element of the materials processing facilities definition focuses on the transformation of raw materials through a crushing, grinding, or pulverizing operation. While preparatory activities certainly occurred before September of 2004, there is no conclusive evidence that actual crushing operations and grinding began before the winter or spring of 2005.

Id. Ordinance 15032 was enacted in September of 2004.<sup>4</sup>

Despite finding that actual crushing and grinding did not occur until "winter or spring of 2005," the Examiner concluded that Shear established a materials processing facility because he formed a "prospective purpose" prior to September of 2004. Id. at 32, ¶14.

The Examiner's decision that Shear's prospective purpose established his use was directly contrary to Anderson. This Court should reverse the Examiner's decision and hold that Shear failed to meet his burden of proof.

---

<sup>4</sup> Ordinance 15032 defined a "materials processing facility," imposed grading permit requirements, and reduced the scope of such facilities within the agricultural zone. Relevant portions are attached to Respondent KCDD's Consolidated Court of Appeals Response Brief at Appendix C.

**2. The Examiner's decision was legal error under the plain language of KCC 21A.06.800 and 21A.08.010.**

The rules of statutory construction apply to local ordinances.

Ellensburg Cement Products, Inc. v. Kittitas County, et al., slip op #30381-1-III. Courts look for the meaning of a statute in its wording, the context in which the statute is found, and the entire statutory scheme. Id. at 13. Courts apply an unambiguous ordinance according to its plain meaning. Milestone Homes, Inc. v. City of Bonney Lake, 145 Wn.App. 118, 126-127, 186 P.3d 357, 361 (2008).

In Ellensburg Cement, Division Three recently applied the rules of statutory construction to the Kittitas County Code. At issue was whether a conditional use permit (CUP) allowing rock crushing in an agricultural zone was erroneously granted. Ellensburg Cement Products, slip op #30381-1-III at page 2. The Kittitas Board of Appeals denied Ellensburg Cement's (ECP) CUP appeal based on language allowing "processing of products produced on the premises" in agricultural zones. Id. at 9-10.

On appeal ECP argued that "rock crushing" was listed as a permitted use in other zones, but was unambiguously excluded from the agricultural zone. The Court of Appeals considered the plain language and purpose of the agricultural zone and reversed. The court reasoned "[c]ourts look for the meaning of a statute in its wording, the context in which the statute is

found, and the entire statutory scheme. Id. at 14, citing State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005).

In this case, in contrast, the Examiner and the Court of Appeals erred by failing to consider the regulations at issue in light of their plain meaning and purpose. Nonconforming uses are regulated by KCC Chapter 21A.32. One of the purposes of Chapter 21A.32 is to “establish the legal status of a nonconformance by creating provisions through which a nonconformance may be maintained, altered, reconstructed, expanded or terminated.” KCC 21A.32.010(A).<sup>5</sup> A nonconformance may only continue if created pursuant to KCC 21A.06.800, KCC 21A.32.025. KCC 21A.06.800 requires a nonconformance to be “. . . established in conformance with King County rules and regulations in effect at the time of establishment . . .” .

The Examiner relied upon the first sentence of KCC 21A.08.010 to support his conclusion that a prospective intent can establish a nonconforming use, but ignored the second. KCC 21A.08.010 states:

The use of a parcel is **defined** by the activity for which the building or lot is intended, designed, arranged, occupied, or maintained. **The use is considered permanently established when that use will or has been in operation for a period exceeding sixty days.** A use which will operate for less than sixty days is considered a temporary use, and subject to section 21A.32 of this title. All

---

<sup>5</sup> King County Code sections cited here are attached as Appendix A.

applicable requirements of this code, or other applicable state or federal requirements, shall govern a use located in unincorporated King County.

KCC 21A.08.010 (emphasis added).

Here the Examiner narrowly focused on the definition language in KCC 21A.08.010, and concluded that because Shear's activities "evinced an intent, design, and purpose" to establish his use that it existed more than sixty days prior to the zoning change. CP 31-32, ¶¶ 14-15. Division One split the hair even more finely. Division One rejected KCDDDES' argument that a use must be in operation to be established, reasoning that "the code explicitly includes the prospective word 'will' in the definition of 'established.'" King County, 167 Wash.App. at 569, 273 P.3d at 494 (emphasis in original). Based on that single word, Division One failed to give proper effect to KCC 21A.08.010's requirement that a use must be "in operation" to be "permanently established." Id. at 570.

The Examiner and the Court of Appeals erred by failing to consider the context of chapter 21A.08. That chapter contains the KCC's permitted use tables, which impose permit requirements. Because a complete permit application vests a use (see KCC 20.20.070(A)), it is not surprising that KCC 21A.08.010 defines the use of a parcel prospectively. KCC 21A.08.010 also discusses establishment of uses, using the same regulatory language as KCC 21A.06.800.

This Court should follow the reasoning in Ellensburg Cement and consider KCC 21A.08.010 within its regulatory context, and in light of KCC 21A.06.800. KCC 21A.08.010 distinguishes the definition of a use from the establishment of a use. The Examiner and the Court of Appeals committed legal error by ignoring that distinction.

**3. This Court should conclude that a legal nonconforming use cannot be established based on unlawful site development.**

This Court should conclude that the Examiner erred when he relied on unlawful grading to support his conclusion that Shear established a nonconforming use. In its 2005 stop work order and its 2006 notice and order KCDDDES alleged that Shear's grading activities required permits. CP 113-114, 634. The Examiner relied on those unlawful activities to support his factual conclusions regarding Shear's intended use. Report and Decision, CP 31, ¶ 11. That decision was error under First Pioneer Trading Company v. Pierce County. 146 Wn.App. 606, 191 P.3d 928 (2008).

The First Pioneer court found that an industrial use of a rural property was not lawfully established in part because First Pioneer did not obtain a conditional use permit. Id. at 616-617. Citing PCC regulations requiring "acquisition of permits or approvals before certain activity may be performed" and stating that "[i]t shall be unlawful to conduct these

regulated activities without first obtaining a written permit or approval . . .”, the court concluded that the examiner had properly considered First Pioneer's failure to obtain permits. Id. citing PCC 18.140.030.

The Court should apply the First Pioneer rule here, and conclude that the Examiner improperly relied on unpermitted grading to support his conclusions regarding Shear's intentions. The Examiner relied on an April 25, 2004 aerial photograph, showing “. . .the access driveway having been extended to and along the northern site boundary, new grading in the eastern one-third of the property and a cluster of some seven or eight mounds near the property's northwest corner.” CP 31, ¶11.

Like the PCC, the KCC provides that “[a]ll applicable requirements of this code or other applicable state or federal requirements, shall govern a use located in unincorporated King County.” KCC 21A.08.010. The Examiner specifically found that the grading on Spencer's parcel required permits, CP 37, ¶35, therefore it was not “in conformance with King County rules and regulations.” Under First Pioneer this Court should conclude that the Examiner erred by relying on it.

**C. THE EXAMINER ERRED BY FINDING THAT THE KCC LACKS AN ENFORCEABLE FLOOD HAZARD STANDARD ABSENT FORMAL DESIGNATION.**

The Examiner erred when he applied KCC Title 21A permit review requirements to Title 23 permit enforcement. The Examiner erred by concluding that no standard exists without a flood hazard designation.

**1. The Examiner erred by requiring flood hazard designation as a prerequisite to the code enforcement process.**

In this case KCDDDES alleged that Shear unlawfully operated a materials processing facility in flood hazard area without required permits and that he graded in a flood hazard area without required permits. CP 113-114. KCDDDES cited all of the flood hazard area-related Chapter 21A.06 flood hazard definitions in its Statement to Make More Definite and Certain. CP 570-575. The Examiner erred when he failed to give effect to the definitions contained in chapter 21A.06 and found instead that the KCC lacked a flood hazard standard absent a designation.

The King County grading code provides that “for the purposes of this section, the definitions in KCC Chapter 21A.06 apply to the activities described in this section.” KCC 16.82.051(A). Code compliance is described under KCC Title 23, which directs staff to “determine, based on information derived from sources such as field observations, the statements of witnesses, **relevant documents** and data systems for

tracking violations and applicable county codes, whether a violation has occurred.” KCC 23.02.070 (emphasis added).

In contrast, under the critical areas code, “King County shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation or to construct or alter any structure without first ensuring compliance with this chapter.” KCC 21A.24.020(B). Thus, flood hazard designation is part of the permit process, and is not a condition precedent to code enforcement.

The Examiner cited no authority beyond the KCC itself in support of his conclusion that its flood hazard provisions do not contain an enforceable standard. CP 29, ¶ 2. This Court should conclude, as in Ellensburg Cement, discussed above, that the Examiner erred when he failed to consider the plain language and regulatory structure of King County’s grading, code compliance and critical areas codes. The Examiner’s conclusion that the KCC lacks an enforceable flood hazard standard is legal error.

**2. This Court should conclude that local jurisdictions may require flood hazard review in the permit process based on a parcel’s location on FEMA mapping.**

The Examiner precluded further flood hazard area review because of his conclusion that the critical areas code required a formal designation

process. CP 39, ¶ 5. The Court should reverse the Examiner and find, like the Court of Appeals in Young v. Pierce County, that flood hazard area review may be required in the permit process when regulated activity occurs in an area identified as subject to inundation by FEMA.

In Young Pierce County alleged clearing in a potential wetland based upon the county's wetland atlas. Young v. Pierce County, 120 Wash.App. 175, 178, 84 P.3d 927, 928 (2004). The Youngs argued that because the county had not proved that their property was a wetland they should not have to perform a wetland analysis. Id. at 184. The Court of Appeals disagreed. The Young court concluded that because the Youngs engaged in a regulated activity that the wetland analysis was within the regulatory scheme. Id. at 186.

Like the PCC, the KCC critical areas ordinance "applies to all land uses in King County and all persons within the county" are required to comply with it. KCC 21A.24.020(A). This Court should conclude that Shear engaged in a regulated activity, and therefore identification of Spencer's parcel within the FEMA flood plain was sufficient to trigger flood hazard review. The Examiner's decision to the contrary should be overturned.

**D. THE EXAMINER VIOLATED WAC 197-11-070 BY DIRECTING THE OUTCOME OF PERMIT REVIEW.**

The Examiner committed an unlawful procedure when he limited DDES' regulatory options prior to SEPA review. The Examiner limited permit review as follows:

- B. The conditional use and grading permit review procedures shall not be used to prohibit, directly or indirectly, continued operation of a viable materials processing facility use at the site.
- C. DDES shall not require further studies or review of whether the Spencer property is within a flood hazard area or contains a jurisdictional wetland, except that:
  - i. a code-mandated buffer may be required to protect the offsite open-water wetland feature on the parcel adjacent to the north; and
  - ii. requirements for the location and configuration of storage piles may take into account potential floodwater patterns.
- D. Compatibility with adjacent uses shall be achieved through the buffer and screening requirements provided by KCC 21A.22.070. . . .

CP 40. By design, the Examiner's order improperly limits options in the permit review process prior to SEPA review. See KCC 20.20.040(A)(9).

The imposition of those limitations conflicts with WAC 197-11-070.<sup>6</sup>

That provision states:

---

<sup>6</sup> Attached as Appendix B.

(1) Until the responsible official issues a final determination of nonsignificance or final environmental impact statement, no action concerning the proposal shall be taken by a governmental agency that would:

(a) have an adverse environmental impact; or

(b) Limit the choice of reasonable alternatives.

WAC 197-11-070. Here the Examiner's conditions improperly limit the scope and nature of future KCDDDES permit review of Shear's proposal prior to any final determination of nonsignificance or final environmental impact statement. That action was an illegal procedure and should be reversed.

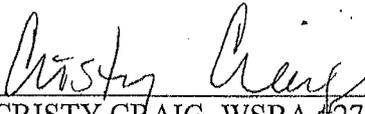
#### IV. CONCLUSION

All of the issues presented here are driven by the fact that Shear and Spencer engaged in regulated activities without required permits. This Court should conclude that Shear's unauthorized activities did not establish a legal nonconforming use, nor exempt him from required environmental review. KCDDDES respectfully requests that this Court reverse the Court of Appeals decision and the Examiner's conditions and his decisions that Shear established a legal nonconforming use and that the King County Code does not contain an enforceable flood hazard standard.

DATED this 8<sup>th</sup> day of November, 2012.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG  
Prosecuting Attorney

By:   
CRISTY CRAIG, WSBA #27451  
Senior Deputy Prosecuting Attorney  
Attorneys for the Petitioner

# Appendix A

**16.82.040 Hazards.** Whenever the director determines that an existing site, as a result of clearing or grading, excavation, embankment, or fill has become a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of a public way or drainage channel, the owner of the property upon which the clearing, grading, excavation or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the director, shall within the period specified therein restore the site affected by such clearing or grading or repair or eliminate such excavation or embankment or fill so as to eliminate the hazard and be in conformance with the requirements of this chapter. (Ord. 9614 § 99, 1990; Ord. 3108 § 3, 1977; Ord. 1488 § 4, 1973).

**16.82.050 Clearing and grading permit required - exceptions.**

A. An activity physically altering a site, including clearing or grading activities and forest practices, shall be consistent with and meet the standards in this chapter unless preempted under chapter 76.09 RCW.

B. Unless specifically excepted under K.C.C. 16.82.051, a person shall not do any clearing or grading without first having obtained a clearing and grading permit issued by the department or having all clearing and grading reviewed and approved by the department as part of another development proposal. A separate permit shall be required for each site unless the activity is approved to occur on multiple sites under a programmatic permit issued in accordance with K.C.C. 16.82.053.

C. The permits or approvals issued under this chapter shall be required regardless of permits or approvals issued by the county or any other governmental agency and do not preclude the requirement to obtain all other permits or approvals or to comply with the operating standards in sections K.C.C. 16.82.095, 16.82.100, 16.82.105 and 16.82.130. Exceptions from permits under this chapter do not preclude the requirement to obtain other permits or approvals or to comply with the operating standards in K.C.C. 16.82.095, 16.82.100, 16.82.105 and 16.82.130. (Ord. 15053 §2, 2004; Ord. 14259 § 3, 2001; Ord. 12878 § 3, 1997; Ord. 12822 § 2, 1997; Ord. 12020 § 51, 1995; Ord. 12016 § 2, 1995; Ord. 12015 § 2, 1995; Ord. 11896 § 2, 1995; Ord. 11886 § 2, 1995; Ord. 11618 § 4, 1994; 11536 § 1, 1994; 11393 § 1, 1994; Ord. 11016 § 14, 1993; Ord. 10152 § 1, 1991; Ord. 9614 § 100, 1990; Ord. 7990 § 20, 1987; Ord. 3108 § 4, 1977; Ord. 1488 § 6, 1973).

**16.82.051 Clearing and grading permit exceptions.**

A. For the purposes of this section, the definitions in K.C.C. chapter 21A.06 apply to the activities described in this section.

B. The following activities are excepted from the requirement of obtaining a clearing or grading permit before undertaking forest practices or clearing or grading activities, as long as those activities conducted in critical areas are in compliance with the standards in this chapter and in K.C.C. chapter 21A.24. In cases where an activity may be included in more than one activity category, the most-specific description of the activity shall govern whether a permit is required. For activities involving more than one critical area, compliance with the conditions applicable to each critical area is required. Clearing and grading permits are required when a cell in this table is empty and for activities not listed on the table.

**KEY**  
 "NP" in a cell means no permit required if conditions are met.  
 A number in a cell means the Numbered condition in subsection C. applies.  
 "Wildlife area and network" column applies to both Wildlife Habitat Conservation Area and Wildlife Habitat Network

	OUTER CRITICAL AREA AND BUFFER	COAL MINE HAZARD	EROSION HAZARD	FLOOD HAZARD	CHANNEL MIGRATION	LANDSLIDE HAZARD	SEISMIC HAZARD	VOLCANIC HAZARD	STEEP SLOPE	HAZARD AND BUFFER	CRITICAL AREA	WETLANDS AND BUFFER	AQUATIC AREA	AND BUFFER	WILDLIFE AREA	AND NETWORK
<b>ACTIVITY</b>																
<b>Grading and Clearing</b>																
Grading	NP 1, 2	NP 1, 2	NP 1, 2				NP 1, 2	NP 1, 2			NP 1, 2					
Clearing	NP 3 NP 24	NP 3	NP 3	NP 3			NP 3	NP 3			NP 3	NP 4 NP 23	NP 4 NP 23			
Covering of garbage	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5
Emergency tree removal	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6
Removal of noxious weeds	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Removal of Invasive vegetation	NP 7	NP 7	NP 7	NP 7	NP 7		NP 7	NP 7			NP 7	NP 8	NP 8	NP 8	NP 8	NP 8
Non conversion Class I, II, III, IV-S forest practice	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9
Emergency action	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10
<b>Roads</b>																
Grading within the roadway	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11					NP 11
Clearing within the roadway	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12
Maintenance of driveway or private access road	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13
Maintenance of bridge or culvert	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15	NP 13, 14, 15
Construction of farm field access drive	NP 16	NP 16	NP 16	NP 16	NP 16	NP 16	NP 16	NP 16	NP 16	NP 16	NP 16	NP 16	NP 16	NP 16	NP 16	NP 16
Maintenance of farm field access drive	NP 17	NP 17	NP 17	NP 17	NP 17	NP 17	NP 17	NP 17	NP 17	NP 17	NP 17	NP 17	NP 17	NP 17	NP 17	NP 17

(King County 12-2008)

<b>Utilities</b>														
Construction or maintenance of utility corridors or facility within the right-of-way	NP 18	NP 19	NP 19	NP 19	NP 19	NP 19	NP 19	NP 19	NP 19	NP 19	NP 18	NP 19	NP 19	NP 19
Construction or maintenance of utility corridors or facility outside of the right-of-way	NP 1, 2, 3		NP 1, 2, 3				NP 1, 2, 3	NP 1, 2, 3			NP 1, 2, 3			
Maintenance of existing surface water conveyance system	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11
Maintenance of existing surface water flow control and surface water quality treatment facility	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11
Maintenance or repair of flood protection facility	NP 20	NP 20	NP 20	NP 20	NP 20	NP 20	NP 20	NP 20	NP 20	NP 20	NP 20	NP 20	NP 20	NP 20
Maintenance or repair of existing instream structure	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP 11	NP 11	NP
<b>Recreation areas</b>														
Maintenance of outdoor public park facility, trail or publicly improved recreation area	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13
<b>Habitat and science projects</b>														
Habitat restoration or enhancement project	NP	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21	NP	NP 21	NP 21	NP 21
Drilling and testing for critical areas report	NP 1, 2	NP 1, 2	NP 1, 2	NP 22	NP 22	NP 22	NP 22	NP 1, 2	NP 1, 2	NP 22	NP 1, 2	NP 22	NP 22	NP 22
<b>Agriculture</b>														
Horticulture activity including tilling, discing, planting, seeding, harvesting, preparing soil, rotating crops and related activity	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Grazing livestock	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Construction and maintenance of livestock manure storage facility	NP 16	NP 16	NP 16	NP 16	NP 16		NP 16	NP 16		NP 16	NP 16	NP 16		
Maintenance of agricultural drainage	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15
Maintenance of farm pond, fish pond, livestock watering pond	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15

Other													
Excavation of cemetery grave in established and approved cemetery	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Maintenance of cemetery grave	NP	NP 13	NP 13	NP	NP 13	NP 13	NP	NP	NP 13	NP	NP 13	NP 13	NP 13
Maintenance of lawn, landscaping and gardening for personal consumption	NP	NP 13	NP 13	NP	NP 13	NP 13	NP	NP	NP 13	NP	NP 13	NP 13	NP 13
Maintenance of golf course	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP	NP	NP 13	NP 13	NP 13	NP 13	NP 13

C. The following conditions apply:

1. Excavation less than five feet in vertical depth, or fill less than three feet in vertical depth that, cumulatively over time, does not involve more than one hundred cubic yards on a single site.

2. Grading that produces less than two thousand square feet of new impervious surface on a single site added after January 1, 2005, or that produces less than two thousand square feet of replaced impervious surface or less than two thousand square feet of new plus replaced impervious surface after October 30, 2008. For purposes of this subsection C.2., "new impervious surface" and "replaced impervious surface" are defined in K.C.C. 9.04.020.

3. Cumulative clearing of less than seven thousand square feet including, but not limited to, collection of firewood and removal of vegetation for fire safety. This exception shall not apply to development proposals:

a. regulated as a Class IV forest practice under chapter 76.09 RCW;

b. in a critical drainage areas established by administrative rules;

c. subject to clearing limits included in property-specific development standards and special district overlays under K.C.C. chapter 21A.38; or

d. subject to urban growth area significant tree retention standards under K.C.C. 16.82.156 and 21A.38.230.

4. Cutting firewood for personal use in accordance with a forest management plan or rural stewardship plan approved under K.C.C. Title 21A. For the purpose of this condition, personal use shall not include the sale or other commercial use of the firewood.

5. Limited to material at any solid waste facility operated by King County.

6. Allowed to prevent imminent danger to persons or structures.

7. Cumulative clearing of less than seven thousand square feet annually or conducted in accordance with an approved farm management plan, forest management plan or rural stewardship plan.

8. Cumulative clearing of less than seven thousand square feet and either:

a. conducted in accordance with a farm management plan, forest management plan or a rural stewardship plan; or

b. limited to removal with hand labor.

9. Class I, II, III or IV forest practices as defined in chapter 76.09 RCW and Title 222 WAC.

10. If done in compliance with K.C.C. 16.82.065.

11. Only when conducted by or at the direction of a government agency in accordance with the regional road maintenance guidelines and K.C.C. 9.04.050, creates less than two thousand square feet of new impervious surface on a single site added after January 1, 2005, and is not within or does not directly discharge to an aquatic area or wetland. For purposes of this subsection C.11., "new impervious surface" is defined in K.C.C. 9.04.020.

12. Limited to clearing conducted by or at the direction of a government agency or by a private utility that does not involve:

a. slope stabilization or vegetation removal on slopes; or

b. ditches that are used by salmonids.

13. In conjunction with normal and routine maintenance activities, if:

a. there is no alteration of a ditch or aquatic area that is used by salmonids;

b. the structure, condition or site maintained was constructed or created in accordance with law; and

c. the maintenance does not expand the roadway, lawn, landscaping, ditch, culvert or other improved area being maintained.

14. If a culvert is used by salmonids or conveys water used by salmonids and there is no adopted farm management plan, the maintenance is limited to removal of sediment and debris from the culvert and its inlet, invert and outlet and the stabilization of the area within three feet of the culvert where the maintenance disturbed or damaged the bank or bed and does not involve the excavation of a new sediment trap adjacent to the inlet.

15. If used by salmonids, only in compliance with an adopted farm plan in accordance with K.C.C. Title 21A and only if the maintenance activity is inspected by:

- a. The King Conservation District;
- b. King County department of natural resources and parks;
- c. King County department of development and environmental services; or
- d. Washington state Department of Fish and Wildlife.

16. Only if consistent with an adopted farm plan in accordance with K.C.C. Title 21A.

17. Only if:

a. consistent with a farm plan in accordance with K.C.C. Title 21A; or  
 b. conducted in accordance with best management practices in the Natural Resource Conservation Service Field Office Technical Guide.

18. In accordance with a franchise permit.

19. Only within the roadway in accordance with a franchise permit.

20. When:

- a. conducted by a public agency;
- b. the height of the facility is not increased;
- c. the linear length of the facility is not increased;
- d. the footprint of the facility is not expanded waterward;
- e. done in accordance with the Regional Road Maintenance Guidelines;
- f. done in accordance with the adopted King County Flood Hazard Management Plan and the Integrated Streambank Protection Guidelines (Washington State Aquatic Habitat Guidelines Program, 2002); and

g. monitoring is conducted for three years following maintenance or repair and an annual report is submitted to the department.

21. Only if:

a. the activity is not part of a mitigation plan associated with another development proposal or is not corrective action associated with a violation; and

b. the activity is sponsored or co-sponsored by a public agency that has natural resource management as its primary function or a federally-recognized tribe, and the activity is limited to:

(1) revegetation of the critical area and its buffer with native vegetation or the removal of noxious weeds or invasive vegetation;

(2) placement of weirs, log controls, spawning gravel, woody debris and other specific salmonid habitat improvements;

(3) hand labor except:

(a) the use of riding mower or light mechanical cultivating equipment and herbicides or biological control methods when prescribed by the King County noxious weed control board for the removal of noxious weeds or invasive vegetation; or

(b) the use of helicopters or cranes if they have no contact with or otherwise disturb the critical area or its buffer.

22. If done with hand equipment and does not involve any clearing.

23. Limited to removal of vegetation for forest fire prevention purposes in accordance with best management practices approved by the King County fire marshal.

24. Limited to the removal of downed trees.

(Ord. 16267 § 3, 2008; Ord. 15053 § 3, 2004).

project manager following the preapplication conference. The director may waive the requirement for a preapplication conference if the director determines the preapplication conference is unnecessary for review of an application. Nothing in this section shall be interpreted to require more than one preapplication conference or to prohibit the applicant from filing an application if the department is unable to schedule a preapplication conference within thirty days following the applicant's request.

C. Information presented at or required as a result of the preapplication conference shall be valid for a period of one year following the preapplication conference. An applicant wishing to submit a permit application more than one year following a preapplication for the same permit application shall be required to schedule another preapplication conference.

D. At or subsequent to a preapplication conference, the department may issue a preliminary determination that a proposed development is not permissible under applicable county policies or regulatory enactments. In that event, the applicant shall have the option to appeal the preliminary determination to the hearing examiner in the manner provided for a Type 2 permit, as an alternative to proceeding with a complete application. Mailed and published notice of the appeal shall be provided for as in K.C.C. 20.20.060 H. and I. (Ord. 16950 § 7, 2010; Ord. 16552 § 2, 2009; Ord. 13332 § 65, 1998; Ord. 12196 § 10, 1996).

**20.20.035 Notice of community meeting required under K.C.C. chapter 21A.08 before filing application.** When an applicant is required by K.C.C. chapter 21A.08 to conduct a community meeting, under this section, before filing of an application, notice of the meeting shall be given and the meeting shall be conducted as follows:

A. At least two weeks in advance, the applicant shall:

1. Publish notice of the meeting in the local paper and mail and email to the department; and
2. Mail notice of the meeting to all property owners within five hundred feet or at least twenty of the nearest property owners, whichever is greater, as provided in K.C.C. 21A.26.170 of any potential sites, identified by the applicant for possible development, to be discussed at the community meeting. The mailed notice shall, at a minimum, contain a brief description and purpose of the proposal, approximate location noted on an assessor map with address and parcel number, photograph or sketch of any existing or proposed structures, a statement that alternative sites proposed by citizens can be presented at the meeting that will be considered by the applicant, a contact name and telephone number to obtain additional information and other information deemed necessary by the department of permitting and environmental review. Because the purpose of the community meeting is to promote early discussion, applicants shall to note any changes to the conceptual information presented in the mailed notice when they submit an application;

B. At the community meeting at which at least one employee of the department of permitting and environmental review, assigned by the director of the department, shall be in attendance, the applicant shall provide information relative to the proposal and any modifications proposed to existing structures or any new structures and how the proposal is compatible with the character of the surrounding neighborhood. An applicant shall also provide with the applicant's application a list of meeting attendees, those receiving mailed notice of the meeting and a record of the published meeting notice; and

C. The applicant shall, in the notice required under subsection A.2. of this section, and at the community meeting required under subsection B. of this section, advise that persons interested in the applicant's proposal may monitor the progress of the permitting of that proposal by contacting the department or by viewing the department's website, the address of which will be provided in the notice and at the community meeting. (Ord. 17420 § 88, 2012; 17416 § 13, 2012; Ord. 16950 § 10, 2010).

**20.20.040 Application requirements.**

A. The department shall not commence review of any application as provided in this chapter until the applicant has submitted the materials and fees specified for complete applications. Applications for land use permits requiring Type 1, 2, 3 or 4 decisions shall be considered complete as of the date of submittal upon determination by the department that the materials submitted meet the requirements of this section. Except as provided in K.C.C. 20.20.040.B, all land use permit applications described in K.C.C. 20.20.020 Exhibit A shall include the following:

1. An application form provided by the department and completed by the applicant that allows the applicant to file a single application form for all land use permits requested by the applicant for the development proposal at the time the application is filed;

2. Designation of who the applicant is, except that this designation shall not be required as part of a complete application for purposes of this section when a public agency or public or private utility is applying for a permit for property on which the agency or utility does not own an easement or right-of-way and the following three requirements are met:

a. the name of the agency or private or public utility is shown on the application as the applicant;

b. the agency or private or public utility includes in the complete application an affidavit declaring that notice of the pending application has been given to all owners of property to which the application applies, on a form provided by the department; and

c. the form designating who the applicant is submitted to the department before permit approval;

3.a. A certificate of sewer availability or site design approval for an on-site sewage system by the Seattle-King County department of public health, as required by the King County board of health code title 13; or

b. for public schools and public schools facilities located in rural areas, a finding by King County that no cost-effective alternative technologies are feasible, a certificate of sewer availability, and a letter from the sewer utility indicating compliance with the tightline sewer provisions in the zoning code, as required by K.C.C. chapter 13.24;

4. If the development proposal requires a source of potable water, a current certificate of water availability consistent with K.C.C. chapter 13.24 or documentation of an approved well by the Seattle-King County department of public health;

5. A fire district receipt pursuant to K.C.C. Title 17, if required by K.C.C. chapter 21A.40;

6. A site plan, prepared in a form prescribed by the director;

7. Proof that the lot or lots to be developed are recognized as a lot under K.C.C. Title 19A;

8. A critical areas affidavit, if required by K.C.C. chapter 21A.24;

9. A completed environmental checklist, if required by K.C.C. chapter 20.44;

10. Payment of any development permit review fees, excluding impact fees collectible pursuant to K.C.C. Title 27;

11. A list of any permits or decisions applicable to the development proposal that have been obtained before filing the application or that are pending before the county or any other governmental entity;

12. Certificate of transportation concurrency from the department of transportation if required by K.C.C. chapter 14.70. The certificate of transportation concurrency may be for less than the total number of lots proposed by a preliminary plat application only if:

a. at least seventy-five percent of the lots proposed have a certificate of transportation concurrency at the time of application for the preliminary plat;

b. a certificate of transportation concurrency is provided for any remaining lots proposed for the preliminary plat application before the expiration of the preliminary plat and final recording of the additional lots; and

c. the applicant signs a statement that the applicant assumes the risk that the remaining lots proposed might not be granted.

13. Certificate of future connection from the appropriate purveyor for lots located within the urban growth area that are proposed to be served by on-site or community sewage system and group B water systems or private well, if required by K.C.C. 13.24.136 through 13.24.140;

14. A determination if drainage review applies to the project pursuant to K.C.C. chapter 9.04 and, if applicable, all drainage plans and documentation required by the Surface Water Design Manual adopted pursuant to K.C.C. chapter 9.04;

15. Current assessor's maps and a list of tax parcels to which public notice must be given as provided in this chapter, for land use permits requiring a Type 2, 3 or 4 decision;

16. Legal description of the site;

17. Variances obtained or required under K.C.C. Title 21A to the extent known at the date of application; and

18. For site development permits only, a phasing plan and a time schedule, if the site is intended to be developed in phases or if all building permits will not be submitted within three years.

B. A permit application is complete for purposes of this section when it meets the procedural submission requirements of the department and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the department from requesting additional information or studies either at the time of notice of completeness or subsequently if new or additional information is required or substantial changes in the proposed action occur, as determined by the department.

C. Additional complete application requirements for the following land use permits are in the following sections of the King County Code:

1. Clearing and grading permits, K.C.C. 16.82.060.

2. Construction permits, K.C.C. 16.04.052.

3. Mobile home permits, K.C.C. 16.04.093.

4. Subdivision applications, short subdivision applications and binding site plan applications, K.C.C. 19A.08.150.

J. Posted notice for approved formal subdivision engineering plans, clearing or grading permits subject to SEPA or building permits subject to SEPA shall be a condition of the plan or permit approval and shall consist of a single notice board posted by the applicant at the project site, before construction as follows:

1. Notice boards shall comport with the size and placement provisions identified for construction signs in K.C.C. 21A.20.120B;
2. Notice boards shall include the following information:
  - a. permit number and description of the project;
  - b. projected completion date of the project;
  - c. a contact name and phone number for both the department and the applicant;
  - d. a department contact number for complaints after business hours; and
  - e. hours of construction, if limited as a condition of the permit;
3. Notice boards shall be maintained in the same manner as identified above, in subsection F of this section; and
4. Notice boards shall remain in place until final construction approval is granted. Early removal of the notice board may preclude authorization of final construction approval.

K. Posted and mailed notice consistent with this section shall be provided to property owners of record and to the council district representative in which it is located, for any proposed single-family residence in a higher density urban single family residential zone (R-4 through R-8) exceeding a size of ten thousand square feet of floor area as defined in the Washington State Uniform Building Code.

L. Posted and mailed notice consistent with this section shall be provided to any property owner of record and to the council district representative in which is locating any application for building permits or other necessary land use approvals for the establishment of the social service facilities classified by SIC 8322 and 8361 and listed below, unless the proposed use is protected under the Fair Housing Act:

1. Offender self-help agencies;
2. Parole offices;
3. Settlement houses;
4. Halfway home for delinquents and offenders; and
5. Homes for destitute men and women. (Ord. 16950 § 8, 2010; Ord. 16552 § 3, 2009; Ord. 13694 § 86, 1999; Ord. 13573 § 1, 1999; Ord. 13555 § 2, 1999; Ord. 13131 § 2, 1998; Ord. 13097 § 1, 1998; Ord. 12884 § 1, 1997; Ord. 12196 § 13, 1996).

**20.20.062 Notice of Type I decisions.** Not later than January 1, 2012, the department shall provide public notice of Type I decisions for which a notice of application is not otherwise required under K.C.C. 20.20.060. The public notice may be provided electronically. The notice provided under this section shall be considered supplementary to any other notice requirements and shall be deemed satisfactory despite the failure of one or more individuals to receive notice. (Ord. 16950 § 9, 2010).

**20.20.070 Vesting.**

A. Applications for Type 1, 2, and 3 land use decisions, except those which seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all of the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

B. Supplemental information required after vesting of a complete application shall not affect the validity of the vesting for such application.

C. Vesting of an application does not vest any subsequently required permits, nor does it affect the requirements for vesting of subsequent permits or approvals. (Ord. 12196 § 14, 1996).

**20.20.080 Applications - modifications to proposal.**

A. Modifications required by the county to a pending application shall not be deemed a new application.

**21A.06.785 Municipal water production.** Municipal water production: the collection and processing of surface water through means of dams or other methods of impoundment for municipal water systems. (Ord. 11157 § 7, 1993; Ord. 10870 § 197, 1993).

**21A.06.790 Native vegetation.** Native vegetation: plant species indigenous to the Puget Sound region that reasonably could be expected to naturally occur on the site. (Ord. 15051 § 79, 2004; Ord. 10870 § 198, 1993).

**21A.06.795 Naturalized species.** Naturalized species: non-native species of vegetation that are adaptable to the climatic conditions of the coastal region of the Pacific Northwest. (Ord. 10870 § 199, 1993).

**21A.06.796 Navigability or navigable.** Navigability or navigable: the capability of susceptibility of a body of water of having been or being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court. (Ord. 16985 § 81, 2010).

**21A.06.796A Nearshore.** Nearshore: the area beginning at the crest of coastal bluffs and extending seaward through the marine photic zone, and to the head of tide in coastal rivers and streams. Nearshore includes estuaries. (Ord. 16985 § 82, 2010).

**21A.06.797 Net buildable area.** Net buildable area: the "site area" less the following areas:

- A. Areas within a project site that are required to be dedicated for public rights-of-way in excess of sixty feet in width;
- B. Critical areas and their buffers to the extent they are required by K.C.C. chapter 21A.24 to remain undeveloped;
- C. Areas required for storm water control facilities other than facilities that are completely underground, including, but not limited to, retention or detention ponds, biofiltration swales and setbacks from such ponds and swales;
- D. Areas required to be dedicated or reserved as on-site recreation areas;
- E. Regional utility corridors; and
- F. Other areas, excluding setbacks, required to remain undeveloped. (Ord. 15051 § 80, 2004; Ord. 11798 § 3, 1995; Ord. 11555 § 2, 1994).

**21A.06.799 No net loss of shoreline ecological function.** No net loss of shoreline ecological function: the maintenance of the aggregate total of King County shoreline ecological functions over time. The no net loss standard in WAC 173-26-186 requires that the impacts of shoreline use or development, whether permitted or exempt from permit requirements, be identified and mitigated such that there are no resulting adverse impacts on ecological functions or processes. (Ord. 16985 § 127, 2010).

**21A.06.800 Nonconformance.** Nonconformance: any use, improvement or structure established in conformance with King County rules and regulations in effect at the time of establishment that no longer conforms to the range of uses permitted in the site's current zone or to the current development standards of the code due to changes in the code or its application to the subject property. (Ord. 10870 § 200, 1993).

**21A.06.805 Nonhydro-electric generation facility.** Nonhydro-electric generation facility: an establishment for the generation of electricity by nuclear reaction, burning fossil fuels, or other electricity generation methods. (Ord. 10870 § 201, 1993).

**21A.06.810 Non-ionizing electromagnetic radiation ("NIER").** Non-ionizing electromagnetic radiation ("NIER"): electromagnetic radiation of low photon energy unable to cause ionization. (Ord. 10870 § 202, 1993).

**21A.06.815 Noxious weed.** Noxious weed: a plant species that is highly destructive, competitive or difficult to control by cultural or chemical practices, limited to any plant species listed on the state noxious weed list in chapter 16-750 WAC, regardless of the list's regional designation or classification of the species. (Ord. 15051 § 81, 2004; Ord. 10870 § 203, 1993).

**21A.08.010 Establishment of uses.** The use of a property is defined by the activity for which the building or lot is intended, designed, arranged, occupied, or maintained. The use is considered permanently established when that use will or has been in continuous operation for a period exceeding sixty days. A use which will operate for less than sixty days is considered a temporary use, and subject to the requirements of K.C.C. 21A.32 of this title. All applicable requirements of this code, or other applicable state or federal requirements, shall govern a use located in unincorporated King County. (Ord. 10870 § 328, 1993).

**21A.08.020 Interpretation of land use tables.**

A. The land use tables in this chapter determine whether a specific use is allowed in a zone district. The zone district is located on the vertical column and the specific use is located on the horizontal row of these tables.

B. If no symbol appears in the box at the intersection of the column and the row, the use is not allowed in that district, except for certain temporary uses.

C. If the letter "P" appears in the box at the intersection of the column and the row, the use is allowed in that district subject to the review procedures specified in K.C.C. 21A.42 and the general requirements of the code.

D. If the letter "C" appears in the box at the intersection of the column and the row, the use is allowed subject to the conditional use review procedures specified in K.C.C. 21A.42 and the general requirements of the code.

E. If the letter "S" appears in the box at the intersection of the column and the row, the regional use is permitted subject to the special use permit review procedures specified in K.C.C. 21A.42 and the general requirements of the code.

F. If a number appears in the box at the intersection of the column and the row, the use may be allowed subject to the appropriate review process indicated above, the general requirements of the code and the specific conditions indicated in the development condition with the corresponding number immediately following the land use table.

G. If more than one letter-number combination appears in the box at the intersection of the column and the row, the use is allowed in that zone subject to different sets of limitation or conditions depending on the review process indicated by the letter, the general requirements of the code and the specific conditions indicated in the development condition with the corresponding number immediately following the table.

H. All applicable requirements shall govern a use whether or not they are cross-referenced in a section, (Ord. 10870 § 329, 1993).

G. Landscaping consistent with type 1 screening K.C.C. chapter 21A.16, except using only plantings native to the surrounding area, shall be provided along any portion of the site perimeter where disturbances such as site clearing and grading, or mineral extraction or materials processing is performed, except where adjacent to another mineral extraction, materials processing or forestry operation or M or F-zoned property;

H. Relevant clearing and grading operating standards from K.C.C. chapter 16.82 shall be applied; and

I. Lighting shall:

1. Be limited to that required for security, lighting of structures and equipment, and vehicle operations; and

2. Not directly glare onto surrounding properties. (Ord. 15032 § 29, 2004; Ord. 11621 § 67, 1994; 11157 § 22, 1993; Ord. 10870 § 444, 1993).

**21A.22.070 Operating conditions and performance standards.** Operating conditions and performance standards shall be as specified in K.C.C. chapter 16.82 except:

A. Noise levels produced by a mineral extraction or materials processing operation shall not exceed levels specified by K.C.C. chapters 12.86, 12.87, 12.88, 12.90, 12.91, 12.92, 12.94, 12.96, 12.98, 12.99 and 12.100;

B. Blasting shall be conducted under an approved blasting plan:

1. Consistent with the methods specified in the office of surface mining, 1987 Blasting Guidance Manual in a manner that protects from damage all structures, excluding those owned and directly used by the operator, and persons in the vicinity of the blasting area, including, but not limited to, adherence to the following:

a. Airblast levels shall not exceed one hundred thirty-three dBL measured by a two Hz or lower flat response system at the nearest residential property or place of public assembly;

b. Flyrock shall not be cast one-half the distance to the nearest residential property, place of public assembly or the property boundary, whichever is less; and

c. Ground motion shall not exceed ground vibration levels damaging to structures using one of the four accepted methods in the Blasting Guidance Manual;

2. During daylight hours; and

3. According to a time schedule, provided to residents within one-half mile of the site, that features regular or predictable times, except in the case of an emergency. If requested by a resident, the operator shall provide notice of changes in the time schedule at least twenty four hours before the changes take effect;

C.1. Dust and smoke produced by mineral extraction and materials processing operations shall be controlled by best management practices to comply with relevant regulations of the Puget Sound Clean Air Agency.

2. Dust and smoke from process facilities shall be controlled in accordance with a valid operating permit from the Puget Sound Clean Air Agency. Copies of the permit shall be kept onsite and available for department and public inspection. Copies of the Puget Sound Clean Air Agency monitoring results shall be provided to the department on permit monitoring data submittal dates.

3. Dust and smoke from process facilities shall not significantly increase the existing levels of suspended particulates at the perimeter of the site;

D. The applicant shall prevent rocks, dirt, mud and any raw or processed material from spilling from or being tracked by trucks onto public roadways and shall be responsible for cleaning debris or repairing damage to roadways caused by the operation;

E. The applicant shall provide traffic control measures such as flaggers or warning signs as determined by the department during all hours of operation;

F. The operator shall control surface water and site discharges to comply with K.C.C. chapter 9.04 and the surface water design manual and K.C.C. chapter 9.12 and the stormwater pollution prevention manual. For the life of the mineral resource operation and until site reclamation is complete, the operator shall maintain a valid Washington state department of ecology National Pollutant Discharge Elimination System Individual permit or maintain coverage under the sand and gravel general permit. The operator shall keep onsite and available for department review copies of the erosion and sediment control plan, the applicable National Pollution Discharge Elimination System Individual or general permit and the Stormwater Pollution Prevention Plan. The operator shall make the plans and permit available for public inspection upon request. The operator shall provide to the department copies of the monitoring results on permit monitoring data submittal dates. The department shall make the monitoring results available for public inspection. If the department determines that National Pollution Discharge Elimination System monitoring frequency or type is not adequate to meet the demands of the site and the requirements of this subsection, the department may require more frequent and detailed monitoring and may require a program designed to bring the site into compliance;

G. The operator shall not excavate below the contours determined through hydrologic studies necessary to protect groundwater and the upper surface of the saturated groundwater that could be used for potable water supply;

H. If contamination of surface or ground water by herbicides is possible, to the maximum extent practicable, mechanical means shall be used to control noxious weeds on the site;

I. Upon depletion of mineral resources or abandonment of the site, the operator shall remove all structures, equipment and appurtenances accessory to operations; and

J. If the operator fail to comply with this section, the department shall require modifications to operations, procedures or equipment until compliance is demonstrated to the satisfaction of the department. If the modifications are inconsistent with the approved permit conditions, the department shall revise the permit accordingly. (Ord. 15032 § 30, 2004; Ord. 11621 § 68, 1994; Ord. 10870 § 445, 1993).

#### **21A.22.081 Reclamation**

A. A valid clearing and grading permit shall be maintained on a mineral extraction site until the reclamation of the site required under chapter 78.44 RCW is completed.

B. A reclamation plan approved in accordance with chapter 78.44 RCW shall be submitted before the effective date of a zone reclassification in Mineral-zoned properties or the acceptance of any development proposal for a subsequent use in Forest-zoned properties. The zone reclassification shall grant potential zoning that is only to be actualized, under K.C.C. chapter 20.24, upon demonstration of successful completion of all requirements of the reclamation plan. Development proposals in the Forest zone for uses subsequent to mineral extraction operations shall not be approved until demonstration of successful completion of all requirements of the reclamation plan except that forestry activities may be permitted on portions of the site already fully reclaimed.

C. Mineral extraction operations that are not required to have an approved reclamation plan under chapter 78.44 RCW shall meet the following requirements:

1. Upon the exhaustion of minerals or materials or upon the permanent abandonment of the quarrying or mining operation, all nonconforming buildings, structures, apparatus or appurtenances accessory to the quarrying and mining operation shall be removed or otherwise dismantled to the satisfaction of the director;

2. Final grades shall:

a. be such so as to encourage the uses permitted within the primarily surrounding zone or, if applicable, the underlying or potential zone classification; and

b. result in drainage patterns that reestablish natural conditions of water velocity, volume, and turbidity within six months of reclamation and that precludes water from collecting or becoming stagnant. Suitable drainage systems approved by the department shall be constructed or installed where natural drainage conditions are not possible or where necessary to control erosion. All constructed drainage systems shall be designed consistent with the Surface Water Design Manual;

I. Alerting members of the public including, but not limited to, appraisers, owners, potential buyers or lessees to the development limitations of critical areas; and

J. Providing county officials with sufficient information to protect critical areas. (Ord. 15051 § 131, 2004; Ord. 11621 § 69, 1994; 10870 § 448, 1993).

**21A.24.020 Applicability.**

A. This chapter applies to all land uses in King County, and all persons within the county shall comply with this chapter.

B. King County shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water or vegetation or to construct or alter any structure or improvement without first ensuring compliance with this chapter.

C. Approval of a development proposal in accordance with this chapter does not discharge the obligation of the applicant to comply with this chapter.

D. When any other chapter of the King County Code conflicts with this chapter or when the provisions of this chapter are in conflict, the provision that provides more protection to environmentally critical areas apply unless specifically provided otherwise in this chapter or unless the provision conflicts with federal or state laws or regulations.

E. This chapter applies to all forest practices over which the county has jurisdiction under chapter 76.09 RCW and Title 222 WAC. (Ord. 15051 § 132, 2004; Ord. 10870 § 449, 1993).

**21A.24.030 Appeals.** An applicant may appeal a decision to approve, condition or deny a development proposal based on K.C.C. chapter 21A.24 according to and as part of the appeal procedure for the permit or approval involved as provided in K.C.C. 20.20.020. (Ord. 15051 § 133, 2004; Ord. 10870 § 450, 1993).

**21A.24.040 Rules.** Applicable departments within King County are authorized to adopt, in accordance with K.C.C. chapter 2.98, such public rules and regulations as are necessary and appropriate to implement K.C.C. chapter 21A.24 and to prepare and require the use of such forms as are necessary to its administration. (Ord. 15051 § 134, 2004; Ord. 10870 § 451, 1993).

**21A.24.045 Allowed alterations.**

A. Within the following seven critical areas and their buffers all alterations are allowed if the alteration complies with the development standards, impact avoidance and mitigation requirements and other applicable requirements established in this chapter:

1. Critical aquifer recharge area,
2. Coal mine hazard area;
3. Erosion hazard area;
4. Flood hazard area except in the severe channel migration hazard area;
5. Landslide hazard area under forty percent slope;
6. Seismic hazard area; and
7. Volcanic hazard areas.

B. Within the following seven critical areas and their buffers, unless allowed as an alteration exception under K.C.C. 21A.24.070, only the alterations on the table in subsection C. of this section are allowed if the alteration complies with conditions in subsection D. of this section and the development standards, impact avoidance and mitigation requirements and other applicable requirements established in this chapter:

1. Severe channel migration hazard area;
2. Landslide hazard area over forty percent slope;
3. Steep slope hazard area;
4. Wetland;
5. Aquatic area;
6. Wildlife habitat conservation area; and
7. Wildlife habitat network.

C. In the following table where an activity is included in more than one activity category, the numbered conditions applicable to the most specific description of the activity governs. Where more than one numbered condition appears for a listed activity, each of the relevant conditions specified for that activity within the given critical area applies. For alterations involving more than one critical area, compliance with the conditions applicable to each critical area is required.

<b>KEY</b> Letter "A" in a cell means alteration is allowed
---

L	O	S	A	W	B	A	B	C	W	A
---	---	---	---	---	---	---	---	---	---	---

- 21A.32.055 Nonconformance - modifications to nonconforming use, structure or site improvement.
- 21A.32.065 Nonconformance - expansions of nonconforming uses, structures, or site improvements.
- 21A.32.075 Nonconformance - required findings.
- 21A.32.085 Nonconformance - residences.
- 21A.32.100 Temporary use permits - uses requiring permits.
- 21A.32.110 Temporary use permits - exemptions to permit requirement.
- 21A.32.120 Temporary use permits - duration and frequency.
- 21A.32.130 Temporary use permits - parking.
- 21A.32.140 Temporary use permits - traffic control.
- 21A.32.145 Homeless encampments - prohibited. (Effective January 1, 2015, and thereafter.)
- 21A.32.150 Temporary construction buildings.
- 21A.32.160 Temporary construction residence.
- 21A.32.170 Temporary mobile home for medical hardship.
- 21A.32.180 Temporary real estate offices.
- 21A.32.190 Temporary school facilities.
- 21A.32.200 Re-use of facilities - general standards.
- 21A.32.210 Re-use of facilities - reestablishment of closed public school facilities.
- 21A.32.220 Re-use of facilities - standards for conversion of historic buildings.
- 21A.32.230 Public nuisance - prohibited activities.

**21A.32.010 Purpose.** The purposes of this chapter are to:

- A. Establish the legal status of a nonconformance by creating provisions through which a nonconformance may be maintained, altered, reconstructed, expanded or terminated;
- B. Provide for the temporary establishment of uses that are not otherwise permitted in a zone and to regulate such uses by their scope and period of use; and
- C. Encourage the adaptive re-use of existing public facilities which will continue to serve the community, and to ensure public review of redevelopment plans by allowing:
  - 1. Temporary re-use of closed public school facilities retained in school district ownership, and the reconversion of a temporary re-use back to a school use;
  - 2. Permanent re-use of surplus nonresidential facilities (e.g. schools, fire stations, government facilities) not retained in school district ownership; or
  - 3. Permanent re-use of historic structures listed on the National Register or designated as county landmarks. (Ord. 10870 § 538, 1993).

**21A.32.020 Nonconformance - applicability.**

- A. With the exception of nonconforming extractive operations identified in K.C.C. 21A.22, all nonconformances shall be subject to the provisions of this chapter.
- B. The provisions of this chapter do not supersede or relieve a property owner from compliance with:
  - 1. The requirements of the Uniform Building and Fire Codes; or
  - 2. The provisions of this code beyond the specific nonconformance addressed by this chapter. (Ord. 10870 § 539, 1993).

**21A.32.025 Nonconformance - creation, continuation, and forfeiture of nonconformance status.** Once created pursuant to K.C.C. 21A.06.800, a nonconformance may be continued in a manner consistent with the provisions of this chapter. However, nonconformance status is forfeited if the nonconformance is discontinued beyond the provisions of K.C.C. 21A.32.045. Once nonconformance status is forfeited, the nonconformance shall not be re-established. (Ord. 13130 § 2, 1998).

**21A.32.040 Nonconformance - abatement of illegal use, structure or development.** Any use, structure or other site improvement not established in compliance with use and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal pursuant to the provisions of K.C.C. Title 23. (Ord. 10870 § 541, 1993).

**21A.32.045 Nonconformance - reestablishment of discontinued nonconforming use, or damaged or destroyed nonconforming structure or site improvement.** A nonconforming use that has been discontinued or a nonconforming structure or site improvement that has been damaged or destroyed, may be reestablished or reconstructed if:

21A.32.055	Nonconformance - modifications to nonconforming use, structure or site improvement.
21A.32.065	Nonconformance - expansions of nonconforming uses, structures, or site improvements.
21A.32.075	Nonconformance - required findings.
21A.32.085	Nonconformance - residences.
21A.32.100	Temporary use permits - uses requiring permits.
21A.32.110	Temporary use permits - exemptions to permit requirement.
21A.32.120	Temporary use permits - duration and frequency.
21A.32.130	Temporary use permits - parking.
21A.32.140	Temporary use permits - traffic control.
21A.32.145	Homeless encampments - prohibited. (Effective January 1, 2015, and thereafter.)
21A.32.150	Temporary construction buildings.
21A.32.160	Temporary construction residence.
21A.32.170	Temporary mobile home for medical hardship.
21A.32.180	Temporary real estate offices.
21A.32.190	Temporary school facilities.
21A.32.200	Re-use of facilities - general standards.
21A.32.210	Re-use of facilities - reestablishment of closed public school facilities.
21A.32.220	Re-use of facilities - standards for conversion of historic buildings.
21A.32.230	Public nuisance - prohibited activities.

**21A.32.010 Purpose.** The purposes of this chapter are to:

- A. Establish the legal status of a nonconformance by creating provisions through which a nonconformance may be maintained, altered, reconstructed, expanded or terminated;
- B. Provide for the temporary establishment of uses that are not otherwise permitted in a zone and to regulate such uses by their scope and period of use; and
- C. Encourage the adaptive re-use of existing public facilities which will continue to serve the community, and to ensure public review of redevelopment plans by allowing:
  1. Temporary re-use of closed public school facilities retained in school district ownership, and the reconversion of a temporary re-use back to a school use;
  2. Permanent re-use of surplus nonresidential facilities (e.g. schools, fire stations, government facilities) not retained in school district ownership; or
  3. Permanent re-use of historic structures listed on the National Register or designated as county landmarks. (Ord. 10870 § 538, 1993).

**21A.32.020 Nonconformance - applicability.**

- A. With the exception of nonconforming extractive operations identified in K.C.C. 21A.22, all nonconformances shall be subject to the provisions of this chapter.
- B. The provisions of this chapter do not supersede or relieve a property owner from compliance with:
  1. The requirements of the Uniform Building and Fire Codes; or
  2. The provisions of this code beyond the specific nonconformance addressed by this chapter. (Ord. 10870 § 539, 1993).

**21A.32.025 Nonconformance - creation, continuation, and forfeiture of nonconformance status.** Once created pursuant to K.C.C. 21A.06.800, a nonconformance may be continued in a manner consistent with the provisions of this chapter. However, nonconformance status is forfeited if the nonconformance is discontinued beyond the provisions of K.C.C. 21A.32.045. Once nonconformance status is forfeited, the nonconformance shall not be re-established. (Ord. 13130 § 2, 1998).

**21A.32.040 Nonconformance - abatement of illegal use, structure or development.** Any use, structure or other site improvement not established in compliance with use and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal pursuant to the provisions of K.C.C. Title 23. (Ord. 10870 § 541, 1993).

**21A.32.045 Nonconformance - reestablishment of discontinued nonconforming use, or damaged or destroyed nonconforming structure or site improvement.** A nonconforming use that has been discontinued or a nonconforming structure or site improvement that has been damaged or destroyed, may be reestablished or reconstructed if:

1. The owner, occupant and person responsible for code compliance, if not an owner or occupant, shall be advised by personal contact, phone, posting or mail of any complaint; and
2. The complainant should be contacted by phone and, if possible, in person during the field visit.

C. To the extent possible, all departments with compliance requirement authority shall record land-based violations in a database system, which should be accessible to all other departments.

D. To the extent possible, the department shall check its own records and the records of other agencies for previous violations on the site of the alleged violation or by the owner or occupant of the site or such other person as may be responsible for code compliance. Each department shall develop and maintain a database system for tracking violations of its codes that is designed, to the extent possible, to be used in coordination with other departments.

E. Staff undertaking field investigations shall comply with the provisions of this title regarding right of entry. This information shall be made available pursuant to subsection C. of this section. (Ord. 16278 § 5, 2008; Ord. 15969 § 3, 2007; Ord. 13263 § 7, 1998).

#### **23.02.070 Procedures when probable violation identified.**

A. The department shall determine, based on information derived from sources such as field observations, the statements of witnesses, relevant documents and data systems for tracking violations and applicable county codes, whether or not a violation has occurred. As soon as a department has reasonable cause to determine that a violation has occurred, it shall document the violation and promptly notify the owner, occupant or other person responsible for code compliance.

B. Except as provided in subsection D. of this section, a warning shall be issued verbally or in writing promptly when a field inspection reveals a violation, or as soon as the department otherwise determines that a violation has occurred. The warning shall inform the person determined to be responsible for code compliance of the violation and shall include a reference to the applicable permit or zoning condition, ordinance or code related to the violation. The warning shall also allow the person an opportunity to correct the violation or enter into a voluntary compliance agreement as provided for by this title. Verbal warnings shall be logged and followed up with a written warning within two weeks, and the site shall be reinspected within thirty days.

C. The guidelines in this section for warnings, notifications and reinspections are not jurisdictional, and failure to meet them in any particular case shall not affect the county's authority to enforce county code provisions with regard to that case.

D. No warning need be issued in cases involving emergencies that pose an imminent threat to environmental health or to the public safety.

E. A department may issue a citation if it determines that the violation is likely to be a one-time occurrence or is likely to be fully corrected in a reasonable period of time.

F. A department may issue notice and orders in cases where it determines that the violation is unlikely to be fully corrected in a reasonable period of time.

G. The department shall use all reasonable means to determine and cite the person or persons actually responsible for the violation occurring when the owner has not directly or indirectly caused the violation.

H. If the violation is not corrected or a voluntary compliance agreement is not achieved within a reasonable time period, a citation, notice and order or stop work order should be issued. As a guideline, citations should be issued within sixty days from receipt of a complaint, and notice and orders should be issued within one hundred twenty days from receipt of a complaint. Stop work orders should be issued promptly upon discovery of a violation in progress.

I. Any complainant who provides a mailing address and requests to be kept advised of enforcement efforts should be mailed a copy of all written warnings, voluntary compliance agreements, citations, notice and orders, stop work orders and notices of settlement conferences issued by a department with regard to the alleged violation. Any complainant who is an aggrieved person and who alleges a violation of K.C.C. chapter 9.12, 16.82 or 21A.24 may appeal a citation, notice and order, stop work order or a determination not to issue a citation or order under K.C.C. chapter 20.24. The appeal under this subsection shall be considered a civil proceeding, and any decision to pursue criminal sanctions shall remain the obligation of the prosecuting attorney, as set out in K.C.C. 23.02.030. (Ord. 16950 § 31, 2010; Ord. 16278 § 6, 2008; Ord. 15969 § 4, 2007; Ord. 14309 § 2, 2002; Ord. 13263 § 8, 1998).

#### **23.02.080 Service - citation, notice of noncompliance, notice and order - stop work order.**

A. Service of a citation, notice of compliance or notice and order shall be made on a person responsible for code compliance by one or more of the following methods:

# Appendix B

WAC 197-11-070

Limitations on actions during SEPA process.

(1) Until the responsible official issues a final determination of nonsignificance or final environmental impact statement, no action concerning the proposal shall be taken by a governmental agency that would:

- (a) Have an adverse environmental impact; or
- (b) Limit the choice of reasonable alternatives.

(2) In addition, certain DNSs require a fourteen-day period prior to agency action (WAC 197-11-340(2)), and FEISs require a seven-day period prior to agency action (WAC 197-11-460(4)).

(3) In preparing environmental documents, there may be a need to conduct studies that may cause nonsignificant environmental impacts. If such activity is not exempt under WAC 197-11-800(17), the activity may nonetheless proceed if a checklist is prepared and appropriate mitigation measures taken.

(4) This section does not preclude developing plans or designs, issuing requests for proposals (RFPs), securing options, or performing other work necessary to develop an application for a proposal, as long as such activities are consistent with subsection (1).

[Statutory Authority: RCW 43.21A.090, chapter 43.21C RCW, RCW 43.21C.035, 43.21C.037, 43.21C.038, 43.21C.0381, 43.21C.0382, 43.21C.0383, 43.21C.110, 43.21C.222, 03-16-067 (Order 02-12), § 197-11-070, filed 8/1/03, effective 9/1/03. Statutory Authority: 1995 c 347 (ESHB.1724) and RCW 43.21C.110, 97-21-030 (Order 95-16), § 197-11-070, filed 10/10/97, effective 11/10/97. Statutory Authority: RCW 43.21C.110, 84-06-020 (Order DE 83-39), § 197-11-070, filed 2/10/84, effective 4/4/84.]

## OFFICE RECEPTIONIST, CLERK

---

**To:** Cherberg, Diana  
**Cc:** Craig, Cristy  
**Subject:** RE: Documents to be Filed in Supreme Case #87514-6 King County, et al. v. King County DDES

Received 11/8/12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

---

**From:** Cherberg, Diana [<mailto:Diana.Cherberg@kingcounty.gov>]  
**Sent:** Thursday, November 08, 2012 1:14 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Craig, Cristy  
**Subject:** Documents to be Filed in Supreme Case #87514-6 King County, et al. v. King County DDES

Case Name: King County et al., v. King County Department of Development and Environmental Services  
Case Number: 87514-6  
Filed By: Cristy J. Craig, WSBA #27451  
Phone Number: (206) 296-9015  
Email Address: [cristy.craig@kingcounty.gov](mailto:cristy.craig@kingcounty.gov)

Dear Supreme Court,

Please find attached the following 2 documents to be filed with your office today:

1. Petitioner King County Department of Development and Environmental Services Supplemental Brief
2. Certificate of Service

Thank you,

Diana Cherberg

Email: [diana.cherberg@kingcounty.gov](mailto:diana.cherberg@kingcounty.gov)  
(206) 296-9042  
Legal Secretary to Cristy Craig  
Land Use Section, Civil Division  
King County Prosecuting Attorneys Office