



King County

Department of Development and Environmental Services

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FINAL CODE INTERPRETATION L08CI001

Background

By letter of February 7, 2008, CamWest Development requested a Code Interpretation of K.C.C. 21A.24.335C and K.C.C. 21A.24.133A and E. CamWest posed two questions in its request:

1. Is the fee-in-lieu program available pursuant to K.C.C. 21A.24.133E an option for mitigating a wetland altered pursuant to K.C.C. 21A.24.335C?
2. Is mitigation at an offsite location pursuant to K.C.C. 21A.24.133A an option for mitigation of a wetland altered pursuant to K.C.C. 21A.24.335C?

The request does not identify any specific development proposal to which the code interpretation would apply.

Discussion

K.C.C. 21A.24.133¹ provides general guidelines for offsite mitigation. Mitigation for critical area impacts should generally be provided on or contiguous to the development site. K.C.C. 21A.24.133A. When off-site mitigation is authorized, the priority is for sites within the same subbasin that meet specific criteria. K.C.C. 21A.24.133B. An alternative means of providing offsite mitigation is the payment of fee in lieu of providing onsite mitigation through a program that the Department of Development and Environmental Services is authorized to establish. K.C.C. 21A.24.133E.

¹ **21A.24.133 Off-site mitigation.**

A. To the maximum extent practical, an applicant shall mitigate adverse impacts to a wetland, aquatic area, wildlife habitat conservation area or wildlife habitat network on or contiguous to the development site. The department may approve mitigation that is off the development site if an applicant demonstrates that:

1. It is not practical to mitigate on or contiguous to the development proposal site; and
2. The off-site mitigation will achieve equivalent or greater hydrological, water quality and wetland or aquatic area habitat functions.

B. When off-site mitigation is authorized, the department shall give priority to locations within the same drainage subbasin as the development proposal site that meet the following:

1. Mitigation banking sites and resource mitigation reserves as authorized by this chapter;
2. Private mitigation sites that are established in compliance with the requirements of this chapter and approved by the department; and
3. Public mitigation sites that have been ranked in a process that has been supported by ecological assessments, including wetland and aquatic areas established as priorities for mitigation in King County basin plans or other watershed plans.

C. The department may require documentation that the mitigation site has been permanently preserved from future development or alteration that would be inconsistent with the functions of the mitigation. The documentation may include, but is not limited to, a conservation easement or other agreement between the applicant and owner of the mitigation site. King County may enter into agreements or become a party to any easement or other agreement necessary to ensure that the site continues to exist in its mitigated condition.

D. The department shall maintain a list of sites available for use for off-site mitigation projects.

E. The department may develop a program to allow the payment of a fee in lieu of providing mitigation on a development site. The program should address:

1. When the payment of a fee is allowed considering the availability of a site in geographic proximity with comparable hydrologic and biological functions and potential for future habitat fragmentation and degradation; and
2. The use of the fees for mitigation on public or private sites that have been ranked according to ecological criteria through one or more programs that have included a public process.

With respect to wetlands, K.C.C. 21A.24.335² sets forth the development standards that apply to development proposals that propose to alter wetlands and their buffers. Both questions posed by CamWest relate the following limitation: “A category IV wetland less than two-thousand-five-hundred square feet that is not part of a wetland complex may be altered by relocating its functions into a new wetland on the site in accordance with an approved mitigation plan.” K.C.C. 21A.24.335C. K.C.C. 21A.24.335C implements King County Comprehensive Plan Policy E-144³.

K.C.C. 21A.24.335C specifically requires that the functions of the category IV wetland must be moved to another location on the site. Site is a defined term under the zoning code and includes adjacent parcels if they are part of a common plan of development. K.C.C. 21A.06.1170.

K.C.C. 21A.24.133 sets standards for when off-site mitigation is authorized. See K.C.C. 21A.24.133B. K.C.C. 21A.24.335C allows relocation of certain category IV wetlands, but requires that they be relocated on site. As a result, the provisions of K.C.C. 21A.24.133 are not applicable, because they establish standards for off-site mitigation. The fee in lieu of mitigation program authorized by K.C.C. 21A.24.133E is merely one mechanism for providing off-site mitigation and must be considered in the context of that general provisions as they apply to off-site mitigation.

This conclusion is also consistent with general principles of statutory construction, where more specific provisions control more general. Although K.C.C. 21A.24.133 generally allows off-site mitigation and payment of a fee in lieu, K.C.C. 21A.24.335C is a more specific provision that requires mitigation under particular circumstances to occur on site.

Decision

K.C.C. 21A.24.133 sets forth the circumstances under which the adverse impacts to critical areas may be mitigated off-site. K.C.C. 21A.24.335C allows a category IV wetland that is smaller than 2,500 square feet to be relocated, but requires that the functions be moved to another location on the same site. The result of the limitation in K.C.C. 21A.24.335C means that a category IV wetland that is smaller than 2,500 square feet and that is not part of a wetland complex may not be mitigated offsite under the provisions of K.C.C. 21A.24.133A. This also means that the fee-

² **21A.24.335 Wetlands — development standards and alterations.** The following development standards apply to development proposals and alterations on sites containing wetlands or their buffers:

A. Unless allowed as an alteration exception under K.C.C. 21A.24.070, only the alterations identified in K.C.C. 21A.24.045 are allowed in wetlands and wetland buffers;

B. The applicant shall not introduce any plant or wildlife that is not indigenous to the Puget Sound lowland into any wetland or wetland buffer unless authorized by a state or federal permit or approval;

C. A category IV wetland less than two-thousand-five-hundred square feet that is not part of a wetland complex may be altered by relocating its functions into a new wetland on the site in accordance with an approved mitigation plan; and

D. Alterations to category I wetlands containing bogs or fens are limited to K.C.C. 21A.24.045 D.20. and D.52.

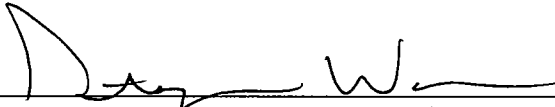
³ **E-144** A small Category IV wetland that is less than 2,500 square feet and that is not part of a wetland complex may be altered to move functions to another wetland on site as part of an approved mitigation plan.

in-lieu program authorized by K.C.C. 21A.24.133E may not be used to mitigate the impacts of relocating these wetlands off-site.

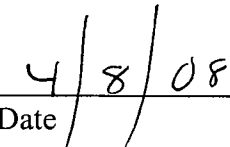
Therefore, the answer to both questions posed by CamWest is no.

Appeal of Code Interpretations

Under K.C.C. 2.100.050, a code interpretation that is not related to permit or code enforcement action that is pending before the Department is final when the Director issues the Code Interpretation. The Director determines that this code interpretation is final on the date it is issued.



Stephanie Warden
Director
Development and Environmental Services



Date