



## King County

### Department of Development and Environmental Services

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## REGULATORY REVIEW COMMITTEE

- MINUTES -

**MEETING DATE: January 24, 2008**

**TO:** Building Services Division Staff  
Jim Chan, Manager  
Chris Ricketts  
Mark Bergam  
Jarrod Lewis

Land Use Services Division Staff  
Joe Miles, Manager  
Lisa Dinsmore  
Randy Sandin  
Deidre Andrus  
Steve Bottheim

Fire Marshal Division Staff  
John Klopfenstein, Fire Marshal  
Stephanie Warden, Director  
Harry Reinert, Special Projects Manager and RRC Co-Chair  
Cass Newell, Prosecuting Attorney's Office

**FM:** Harry Reinert, Co-Chair

Present: Randy Sandin, Mark Bergam, Deidre Andrus, Joelyn Higgins, Lisa Dinsmore, Ray Florent, Hillary Jones, Cass Newell, Steve Hobbs (via telephone), and Harry Reinert

### **1. What is an "approved road" for purposes of K.C.C. 19A.08.070? (Code Interpretation L08CI002)**

Background. The Department has received several inquiries concerning the circumstances under which a lot has been provided with an approved road in order to be recognized under K.C.C. 19A.08.070A.1. In order to provide a consistent standard for evaluating these request, the Director decided to issue a code interpretation as provided in K.C.C. 2.100.030.

Discussion. K.C.C. Title 19A is King County's implementation of RCW Chapter 58.17. Effective January 1, 2000, K.C.C. Title 19A was amended to include a specific provision establishing standards for when King County will recognize lots established under different

regulatory schemes. Prior to January 1, 2000, the King County Code did not include standards for legal lot recognition.

Legal lot recognition standards are divided into three different periods: One period covers years prior to 1937, before the adoption of state subdivision standards and consideration of public health, safety, and welfare. The second period covers the years between 1937 and 1972, when state law governed creation of more than four lots and King County regulations governed the creation of four or fewer lots. The third period covers the years since 1972, when King County adopted its regulations implementing the 1969 state subdivision statute.

With respect to recognition of pre-1937 lots, K.C.C. 19A.08.070A.1 provides:

A. A property owner may request that the department determine whether a lot was legally segregated. The property owner shall demonstrate to the satisfaction of the department that, [sic] a lot was created, [sic] in compliance with applicable state and local land segregation statutes or codes in effect at the time the lot was created, including, but not limited to, demonstrating that the lot was created:

1. Prior to June 9, 1937, and has been:

a. provided with approved sewage disposal or water systems or roads;

and

b.(1) conveyed as an individually described parcel to separate, noncontiguous ownerships through a fee simple transfer or purchase prior to October 1, 1972; or

(2) recognized prior to October 1, 1972, as a separate tax lot by the county assessor;

In a prior consideration of a related issue, DDES concluded that in order for a pre-1937 lot to be recognized, the approved infrastructure must have been provided to the lot prior to January 1, 2000, the effective date of K.C.C. Title 19A. See, *Regulatory Review Committee Meeting Minutes, September 28, 2006*. However, that discussion did not consider the question of when infrastructure has been provided or whether a logging or forest road is considered to be a road for purposes of lot recognition.

On the effective date of K.C.C. 19A.08.060, the 1993 King County Road and Construction Standards were in effect. The Regulatory Review Committee concluded that the analysis in its prior discussion of this issue is applicable in the present circumstances. This would mean that the definitions and standards used to approve infrastructure in effect on January 1, 2000 would be used to determine whether an approved road had been provided applicable.

This approach implements the intent of K.C.C. 19A.08.060A.1 to limit lot recognition to those circumstances where approved infrastructure has been provided, but it does not place the impossible burden on property owners to demonstrate that the infrastructure meets current standards. Requiring that the infrastructure criteria must have to be approved prior to 1937

would impose too stringent a burden on applicants. As noted above, very few lots had any approved infrastructure prior to 1937.

Applying the definition of “road” in effect at the time of the *application* for lot recognition would also unnecessarily limit the recognition of lots. Road standards are updated on an ongoing basis. The most recent King County Road Standards were adopted in 2007. Limiting lot recognition by holding applicants to ever-evolving criteria could potentially prohibit future lot recognition.

On January 1, 2000, the 1993 King County Road Standards (1993 Road Standards) were in effect. The 1993 Road Standards defined several terms that are relevant to an interpretation of K.C.C. 19A.08.060A.1.

The first question in determining whether a road has been provided is to determine whether it is a “road” as that term was defined in the 1993 Road Standards. The 1993 Road Standards define a “road” as “A facility providing public or private access including the roadway and all other improvements inside the right-of-way.” The “right-of-way” is defined as “Land, property, or property interest (e.g., an easement), usually in a strip, acquired for or devoted to transportation purposes.” A “roadway” is defined as “Pavement width plus any non-paved shoulders.” By way of contrast, a “driveway” is “a privately maintained access to residential, commercial, or industrial properties.” *1993 Roads Standards*.

Based on these definitions, one important characteristic of a road is that it must be located within a right-of-way, easement or similar instrument that was dedicated for transportation purposes prior to 2000. The road must also be used or devoted to transportation purposes. For example, a driveway does not meet this test because it is not devoted to transportation purposes – it only provides access to the property. In this respect, a logging road that only provides private access to forest lands for hauling timber on a temporary basis is not devoted to transportation purposes.

A second important characteristic for a road is that the road must have a defined form and must be surfaced. For example, an unimproved track that follows a right-of-way is not a roadway.

Assuming that a road meets these standards, K.C.C. 19A.08.060A.1 also requires that the road must have been “approved.” To meet this element of the test, the road must have been constructed to the standards in effect at the time the road was approved by King County or other public agency with authority to approve the road.

Under this requirement, a public road or highway constructed to county or state highway standards at the time would be considered approved. However, even if it meets the standard for a road, a logging road or forest service road would generally not meet the test for approval. The Washington State Forest Practice Rules establish standards for logging roads. These standards (see Chapter 222.24 WAC and Forest Practice Board Manual Chapter 3) are intended to promote forest management, protect water quality and riparian habitats and prevent potential or actual damage to public resources. These standards are not intended to promote or protect the public

health, safety and general welfare, the standards that apply under the subdivision statutes. As a result, logging roads will generally not meet this test.

Conclusion. Roads built for the primary use of providing safe access to local residences and businesses or to provide safe transportation within urban and rural areas are approved roads within the meaning of K.C.C. 19A.08.060A.1. These roads are built within a right-of-way and consist of a smooth, durable surface.

In contrast, “logging roads,” “forest service roads,” and other similar rudimentary access roads are not approved roads for purposes of K.C.C. 19A.06.060A.1. These roads are built for the purposes of the logging industry for logging and forest management purposes and do not provide the transportation purposes and were not subject to an appropriate approval process. In a similar manner, temporary construction access or dozer bladed access do not qualify.

**2. Is a motorcycle racing track allowed in the RA zone? Is personal use of a motorcycle track in the RA zone consistent with the land uses in K.C.C. 21A.08.060?**

Background. The Department has an active code enforcement case involving a motorcycle track on a RA zoned property. A neighbor filed a complaint that the property owner has been conducting motorcycle races on the property. The races are claimed to involve members of a club and involve more than just occasional use of the track by the property owner. There are several issues involved in the code enforcement case, including grading without a permit and altering a critical area approval.

In a previous code interpretation (L04CI004), the Director determined that a motorcycle racing track was not an allowed use in the A zone. Part of the rationale for that decision was that the purpose of the A zone was incompatible with a motocross track. The Regulatory Review Committee discussed a similar issue at its March 28, 2001 meeting. The question at that meeting was whether a dirt track used by a property owner’s son and friends for all-terrain vehicles was an allowed use in the RA zone. The committee concluded that the use fell most closely under the definition of trail, which is an allowed use in the RA zones. This was in part based on the fact that the public was not invited and that there was no advertising.

Discussion. The purpose of the RA zone is set forth in K.C.C. 21A.04.060:

A. The purpose of the rural zone (RA) is to provide for an area-wide long-term rural character and to minimize land use conflicts with nearby agricultural or forest production districts or mineral extraction sites. These purposes are accomplished by:

1. Limiting residential densities and permitted uses to those that are compatible with rural character and nearby resource production districts and sites and are able to be adequately supported by rural service levels;
2. Allowing small scale farming and forestry activities and tourism and recreation uses that can be supported by rural service levels and that are compatible with rural character;

3. Increasing required setbacks to minimize conflicts with adjacent agriculture, forest or mineral zones; and
4. Requiring tracts created through cluster development to be designated as permanent open space or as permanent resource use.

In the RA zone, compatibility of a use with rural character, minimizing conflicts with adjacent natural resource uses, and not requiring urban services are key elements of the zone. The Agriculture zone, by contrast, includes a specific statement that one purpose of the zone is to limit non-agricultural uses to those that are compatible with farming. K.C.C. 21A.04.030A.2.

A motorcycle track is not necessarily incompatible with rural character or with use of adjacent agricultural or other resource lands.

The complaint alleges that the property owner has invited a significant number of unrelated people to race their motorcycles. This is a level of activity beyond the type addressed by the Regulatory Review Committee in its March 28, 2001 minutes. Code Interpretation L04CI004 includes a discussion of the factors to be considered in evaluating whether a motorcycle track should be considered as a racetrack under SIC 7948. The use as described in the complaint is similar to the type of use addressed in L04CI004. Racetracks are an allowed use in the RA zone only for non-motorized vehicles and requires a special use permit. K.C.C. 21A.08.100. Therefore, this use would not be allowed in the RA zone.

Conclusion. Motorcycle racetracks, or any other type of motorized racing, is not a permitted use in the RA zone. K.C.C. 21A.08.100. Code Interpretation L04CI004 sets forth factors that are relevant in evaluating whether a track used for motorcycle riding is a motorcycle racing track. These factors include the number of users, whether they include others beyond members of the property owners family, the frequency of use, and the public or private nature of the use. In the present case, the complaint includes sufficient information to suggest that the use would qualify as motorcycle racing. As such, it would not be a permitted use in the RA zone.