



**King County**  
**Department of Permitting**  
**and Environmental Review**  
35030 SE Douglas St., Ste. 210  
Snoqualmie, WA 98065-9266  
**206-296-6600** TTY Relay: 711  
www.kingcounty.gov

## **REGULATORY REVIEW COMMITTEE**

**- MINUTES -**

**MEETING DATE: October 11, 2012**

**TO:** Jim Chan                      Randy Sandin  
Chris Ricketts                  Steve Bottheim  
Jarrod Lewis                   Molly Johnson  
Sheryl Lux                      Kimberly Claussen

John Starbard, Director  
Harry Reinert, Special Projects Manager and RRC Chair  
Devon Shannon, Prosecuting Attorney's Office

**FM:** Harry Reinert, Chair

Present: Devon Shannon, Randy Sandin, and Harry Reinert

### **1. Is a permit required for the stockpiling of fill material when it is to be used in conjunction with an approved retail nursery?**

#### Background

In 2008, Thor's Native Plant Nursery was established on an eight acre site zoned RA-5. The plans for the Nursery identified a 1.2 acre portion of the site for the nursery operations. The remaining 6.8 acres of the site was not reviewed under the permit application at that time.

The department received a code enforcement complaint that 500 cubic yards of fill was brought on to the 6.8 acre portion of the site without a permit. The property owner, who is not the owner of the nursery, claims the material is for use by the nursery in its operations, including use for repotting plants on site and for use offsite. The property owner provided a statement from the company that delivered the material to the site, claiming that the material complied with Washington State Department of Transportation (WSDOT) requirement for Topsoil Type C.

Discussion

K.C.C. 16.82.050 states that a clearing and grading permit is required before doing any clearing and grading, unless an activity is exempt from the permit requirement or the activity has been reviewed and approved by the department as part of another development proposal. K.C.C. 16.82.051C.1. exempts from the permit requirement “fill that is less than three feet in vertical depth that, cumulatively over time, does not involve more than one hundred cubic yards on a single site.”

Pursuant to K.C.C. 16.82.051C.1, therefore, the property owner may stockpile up to 100 cubic yards of fill on the 8 acre site before a permit is required. In this case, however, the owner brought 500 cubic yards of fill onto the site.

The property owner argues that because the fill material was “landscaping material” to support a retail nursery, no permit was required for the fill. A retail nursery is defined as an

establishment primarily engaged in retailing to the general public:

A. Trees, shrubs, other plants, seeds, bulbs, mulches, soil conditioners, fertilizers, pesticides, garden tools, landscaping materials and other garden supplies; and

B. Animal feeds, fertilizers, agricultural chemicals, pesticides, seeds and other farm supplies.

K.C.C. 21A.06.10105.

The retail nursery at issue here was permitted on 1.2 acres of the 8 acre site. Because the fill was placed outside the 1.2 acre area permitted for retail nursery use, we do not consider the fill “landscaping materials” under K.C.C. 21A.06.10105. The type or quality of fill brought onto the site is therefore irrelevant.

Even if the topsoil were imported onto the 1.2 acre nursery, the 100 cubic yard limitation found in K.C.C. 16.82.051C.1, would apply. There is no exception to the clearing and grading permit requirement for fill material in excess of 100 cubic yards if it is of a particular type or quality. On the contrary, the 100 cubic yard limitation serves as a guide for what amount of landscaping material could be reasonably used in the nursery’s retail operations. Fill that amounts to more than 100 cubic yards over time suggests that the material is being used as fill rather than for retail purposes. If the amount of topsoil stored on site is in excess of 100 cubic yards, the presumption is that the material is not being used only for retail purposes and a clearing and grading permit will be required.

The property owner also suggests that because of the retail nursery operation, the site may be used to accept, process, and store organic and mineral products without the need to obtain additional permits. This misconstrues what is allowed for a retail nursery. A retail nursery may accept soil and organic materials for subsequent retail sale or use in retail products. This may include compost, topsoil, sand, and other similar materials. In some cases, the material may require some mixing in order to make it usable. However, when it is necessary to process

organic and mineral products in order to prepare material that is suitable as topsoil for retail sale, this activity is subject to additional permitting requirements.

A “materials processing facility” is defined as “a site or establishment, not accessory to a mineral extraction or sawmill use, that is primarily engaged in crushing, grinding, pulverizing or otherwise preparing earth materials, vegetation, organic waste, construction and demolition materials or source separated organic materials and that is not the final disposal site.” K.C.C. 21A.06.742. Materials processing operations are approved through a grading permit. K.C.C. 21A.22.030.

#### Conclusion

Importing fill material, regardless of its quality or use in conjunction with the permitted retail nursery, in excess of 100 cubic yards requires a clearing and grading permit. The 100 cubic yard limit applies to the 8 acre site as a whole. If the imported material requires processing to make it usable for landscaping purposes, a grading permit for a materials processing facility may be required.