

REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: November 21, 1997

TO: Building Services Division Staff Land Use Services
Division Staff

Lynn Baugh	Mark Carey
Chris Ricketts	Lisa Pringle
Pam Dhanapal	Marilyn Cox
Terry Brunner	Lanny Henoch
Ken Dinsmore	Gordon Thomson
Priscilla Kaufmann	

Greg Kipp, Deputy Director
Michael Sinsky, Prosecuting Attorney's Office

FM: Sophia Byrd, Code Development Coordinator

Present: Sophia Byrd, Laura Casey, Pam Dhanapal, Jamie Hartley, Priscilla Kaufmann,
Joe Miles, Harold Vandergriff

- 1. Presentation of new evidence and request to reconsider the RRC's previously stated position on whether a surface water conveyance and outfall are allowed to be constructed in a stream buffer under K.C.C. 21A.24.370 E 1.
(Joe Miles, Laura Casey)**

K.C.C. 21A.24.370 E 1 states, in part: E. "The following surface water management activities and facilities may be allowed in stream buffers as follows: 1. surface water discharge to a stream from a detention facility, pre-settlement pond or other surface water management activity or facility may be allowed if the discharge is in compliance with the Surface Water Design Manual..."

The Manual defines discharge as "runoff...leaving the proposed development through overland flow, built conveyance systems, or infiltration facilities." Thus discharge may be overland flow or conveyances. Therefore, based on this new evidence the Committee unanimously finds that a surface water conveyance and outfall are allowed within a stream buffer to the extent they are "in compliance with the Surface Water

Design Manual,” as required by 21A.24.370 E 1. The Committee reasons further that the phrase “discharge to a stream” (21A.24.370 E 1) clearly implies conveyance through the buffer to the stream.

When previously presented with this question, the RRC found such construction was not allowed. (See minutes of October 24, 1997.) That decision was based on the lack of a definition for “discharge” in 21A and on a 1994 Hearing Examiner’s decision which merely looked to the dictionary to define “discharge.” The new evidence presented (Design Manual definition) is sufficient to override any precedential value of the Examiner’s decision.

While this matter was resolved by looking to all applicable regulations (zoning code and design manual), the Committee agreed that it would like to see a more user-friendly approach self-contained in 21A. The RRC recommends that the Department pursue a stream buffer code amendment mirroring the wetland buffer provisions in 21A.24.330 H 4, which specifically allow for the location of conveyance systems within the buffer.

SB:sm