

# Summary of Proposed Ordinance Relating to Clearing and Grading

# 2004-124

## K.C.C. Chapter 16.82, "Clearing and Grading"

### Section 1 – Definitions. (K.C.C. 16.82.020)

- Adds a new definition for "change of use" which includes subdivisions, short subdivisions, building on an undeveloped lot, and changing from one use to another. The definition is used in determining when certain clearing restrictions apply.
- The definition of "clearing" is clarified.
- The definition of "cutting" is modified to include the topping of a tree.
- The definition of "reclamation" is further explained.
- The definition of "site" is modified to be consistent with the definition in Title 21A.
- Some definitions are deleted, since they are not used.

**Section 2 – Clearing and Grading Permit Required.** (K.C.C. 16.82.050) A clearing and grading permit is required whenever there is a physical alteration to a site. There is an exception for forest practices. Additional exceptions are deleted from this section and included in section 3 of the ordinance.

**Section 3 – Clearing and Grading Permit Exceptions.** (New) Lists exceptions from the requirement to obtain a clearing and grading permit. Whether or not an exception applies depends on a variety of circumstances, including whether the activity is inside or outside a critical area or critical area buffer and the type of critical area. In many cases, the exception from the permit requirement has conditions. For example, a clearing and grading permit is not required for grading outside of a critical area, but only if the grading moves less than 100 cubic yards and involves excavation of less than five feet or fill of less than three feet.

The following activities do not require a clearing and grading permit:

Where activity occurs	Clearing and Grading Permit Exceptions
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Where activity occurs	Clearing and Grading Permit Exceptions
Outside of critical areas	<ul style="list-style-type: none"> <li>• Excavation less than 5 feet in vertical depth and no more than 100 cubic yards total on a single site</li> <li>• Fill less than three feet in vertical depth, no more than 100 cubic yards total on a single site</li> <li>• Grading that cumulatively produces less than 5,000 square feet of impervious surface on a single site, not including road resurfacing</li> <li>• Clearing of less than one acre (unless a Class IV forest practice or a development proposal site subject to clearing restrictions)</li> <li>• Removal of noxious weeds, Himalayan blackberry and evergreen blackberry</li> <li>• Use of herbicides or other hazardous substances except on a development proposal site which is subject to clearing restrictions</li> <li>• Clearing or grading within a public road right-of-way or rail right-of-way.</li> </ul>
Within critical areas and their buffers	<ul style="list-style-type: none"> <li>• Within coal mine, volcanic, seismic or flood hazard areas, clearing of less than one acre</li> <li>• Within most critical areas, clearing in a roadway, subject to specific criteria</li> <li>• Within most critical areas, removal of noxious weeds, subject to specific criteria</li> <li>• Within volcanic, seismic, coal mine or erosion hazard areas or in channel migration areas, grading: <ul style="list-style-type: none"> <li>o within a public road right-of-way except for installation of gas, water, sewer or other pipelines within a coal mine hazard area</li> <li>o out of a public road right-of-way if: <ul style="list-style-type: none"> <li>▪ the excavation is less than five feet in vertical depth, no more than 100 cumulative cubic yards on a single site</li> <li>▪ the fill is less than three feet in vertical depth, no more than 100 cumulative cubic yards on a single site</li> <li>▪ grading cumulatively produces less than 5,000 square feet of impervious surface</li> </ul> </li> </ul> </li> <li>• grading in a roadway located in a landslide hazard area, except for excavation for roadway surface replacement or excavation for underground utility work</li> <li>• grading in a roadway located in a steep slope hazard area, wildlife corridor or in the buffer of a steep slope hazard area, wetland or stream</li> <li>• fish habitat enhancement projects meeting the criteria of RCW 75.20.350</li> <li>• minor stream or wetland restoration by or sponsored by a public agency or tribe, subject to specific criteria</li> <li>• scientific sampling for salmonids pursuant to an approved sampling permit.</li> </ul>

Where activity occurs	Clearing and Grading Permit Exceptions
<p>The following activities wherever they occur, with certain qualifications and restrictions for salmonid streams and critical areas and buffers:</p>	<ul style="list-style-type: none"> <li>• depositing or covering garbage at a county solid waste facility</li> <li>• excavation of cemetery graves</li> <li>• emergency tree removal, subject to specific criteria</li> <li>• grading for construction or removal of livestock manure storage facilities or associated facilities (allowed in the flood fringe only if the facility is flood-proofed), subject to specific criteria</li> <li>• maintenance of: <ul style="list-style-type: none"> <li>o cemetery graves,</li> <li>o lawns and landscaping,</li> <li>o driveways or private access roads,</li> <li>o outdoor public park areas, facilities and trails,</li> <li>o golf courses,</li> <li>o roadside ditches (unless used by salmonids),</li> <li>o cut or engineered slopes,</li> <li>o flood control or drainage facilities maintained by a public agency,</li> <li>o maintenance of activities associated with agriculture or horticulture in continuous existence since at least November 27, 1990</li> </ul> </li> <li>• culvert maintenance</li> <li>• maintenance of farm ponds, fish ponds, livestock watering ponds and manure storage facilities not connected or draining to a stream.</li> </ul>

**Section 4 – Programmatic permits. (New)** Authorizes the department to issue programmatic permits for any clearing or grading activity except mineral extraction, and for forest practices conducted under a county-approved forest management plan. Activities eligible for a programmatic permit include clearing and grading activities that are subject to repetition as part of an ongoing program and have the same or similar identifiable impacts for each activity, and for which permit conditions can be developed that will apply to all sites covered by the permit. Activities are subject to inspection by the department. The programmatic permit is subject to the same application, review and renewal requirements as a regular clearing and grading permit. Programmatic permit conditions apply uniformly to each activity authorized and at all locations covered by the permit. The department may require permit revision or take other action if necessary to ensure adequate regulation and impact protection.

**Section 5 – Permit application requirements. (K.C.C. 16.82.060)** In addition to permit application requirements set forth in K.C.C. 20.20.040, a clearing and grading permit application must include:

- a description of the proposed work
- an estimate of work by volume and total area cleared as a percentage of total site area
- property boundaries, easements and setbacks, identification of critical areas, clearing restrictions, critical drainage area requirements, and special district overlays
- plans and specifications to include:
  - a scale vicinity map

- size and location of existing improvements within 50 feet of project, indicating which will remain and which will be removed;
- location of proposed cleared areas;
- existing and proposed contours at maximum 5-foot intervals, and extending 100 feet beyond the project edge;
- two cross sections;
- location of open space tracts or conservation easements;
- proposed erosion and sediment control plan.

The department may require additional information, which may include:

- higher accuracy in contours and more details in plans;
- calculations of the total proposed cleared area as a percentage of total site area;
- a determination of whether drainage review applies and, if applicable, all drainage plans and documentation consistent with the King County Surface Water Design Manual;
- a restoration plan;
- additional studies to substantiate submitted materials or compliance with this the clearing and grading regulations, especially in relation to critical areas.

Plans and specifications must be prepared and signed by a civil engineer if they are prepared in conjunction with a proposed structure, include permanent drainage facilities, or propose alterations in steep slope or landslide hazard areas. The reference to procedure for granting clearing and grading permits was moved from this section to section 7.

**Section 6** – Emergency actions. *(New)* If activities requiring a clearing or grading permit are undertaken as an emergency action, it shall not be counted as a violation provided that the department is notified within 48 hours after the action is taken. A pre-application meeting and tribal notification are also required. The department shall establish a date by which required permit applications and information, including a critical areas report, shall be submitted. The department shall identify corrective action or mitigation, and shall confirm that the alteration was an emergency action based upon:

- imminent danger or risk to the public health, safety and welfare or to persons and property
- the emergency was unanticipated and not caused by the applicant's action or inaction
- immediate emergency action was necessary
- the emergency action was in direct response to and did not exceed the dangers and risks posed by the emergency.

**Section 7** – Permit review and final decision. *(New)* Permit review and decision conditions formerly found in K.C.C. 16.82.060 are moved into a new section. The department shall review permit applications and may impose conditions upon permit approval as needed to mitigate identified project impacts and shall deny applications that are inconsistent with the provisions of this title or other applicable regulations. Shoreline development permit requirements shall be incorporated into the permit conditions as required. Any decision to approve, condition or deny a permit may be appealed as part of the underlying permit or approval, as provided in K.C.C. 20.20.20.

**Section 8** – Permit duration and renewal. (*New*) Provisions concerning permit duration are moved from K.C.C. 16.82.060. Permits are valid for no more than two years and may be renewed in two year intervals. The department may require periodic review of mineral extraction permits if activities are not in compliance with permit requirements.

**Section 9** – Erosion and sediment control standards – seasonal limitation period. (*New*) Provisions concerning erosion and sediment control are moved from K.C.C. 16.82.100. To the maximum extent practicable, a person who clears, grades or otherwise disturbs a site shall provide erosion and sediment control that prevents the transport of sediment from the site to drainage facilities, water resources and adjacent properties. Performance criteria and implementation requirements are provided in the King County Surface Water Design Manual.

Additional restrictions are in place from October 1 through April 30. The director may expand or restrict the seasonal limitation period based on information provided by an applicant. If silt-laden water violating water quality standards enters into King County waters during a seasonal limitation period, the department shall issue a citation and stop work order and may take other code compliance measures. Several activities are exempt from the seasonal limitation period, including certain kinds of routine maintenance, residential landscaping, forest practices, mineral extraction, and emergency response.

**Section 10** – Grading standards. (*K.C.C. 16.82.100*) Existing provisions relating to grading standards have been reorganized and provisions relating to erosion control requirements, hours of operations have been moved to new sections. A number of redundant requirements have been deleted. A number of other standards have been modified and some new requirements have been added. The changes from the existing standards include the following:

- Cut and fill:
  - the slope of cut and fill surfaces shall not exceed what is safe for the soil type
  - recycled materials may be used but shall not contain dangerous waste
  - recycled concrete may not contain rebar or other materials that pose safety hazards
  - recycled asphalt shall be allowed with limitations on location
  - any drainage measures and benches shall be designed consistent with the King County Surface Water Design Manual
  - tops and toes of cut and fill slopes shall be set back as far as necessary to not have any affect on the use of neighboring property
  - fill greater than three feet in depth shall either be engineered and compacted to accommodate the proposed use or have its location recorded on title
  - fill in the floodplain shall meet compaction requirements for pond embankments in the Surface Water Design Manual
- Access roads must be located at the proposed permanent site access location
- Where required, fencing height is increased to six feet
- Rocks, dirt, mud, vegetation or other materials shall not be spilled onto public roadways and only placed on off-site property with a valid permit
- Soil retention and soil quality:
  - the duff layer and native topsoil shall be retained in an undisturbed state to the maximum extent possible. Any duff layer or topsoil removed during grading shall be stockpiled to be reapplied to other portions of the site to the maximum extent practicable

- all areas subject to clearing and grading that have not been covered by impervious surface, incorporated into a drainage facility or engineered as structural fill or slope, at project completion, shall have the soil moisture holding capacity of the original undisturbed soil native to the site
- any area that has been compacted or that has had some or all of the duff layer or underlying topsoil removed shall amend the soil to mitigate for lost moisture holding capacity. The amendment shall take place between May 1 and October 1
- replacement topsoil shall have an organic matter content of between eight to thirteen percent dry weight and a pH equivalent to the original undisturbed soil.

**Section 11** – Hours of operation. *(New)* Moved from K.C.C. 16.82.100 to its own section. Maintained the same hours of operation (between 7 a.m. and 7 p.m.) but limited Sunday hours between 10 a.m. and 5 p.m. The department may approve a variation to the standard hours of operation after consultation with the department of health to ensure compliance with nighttime noise standards. The decision and all mitigation requirements shall be documented and compiled with all similar decisions for public inspection.

**Section 12** – Clearing and grading violations - corrective work required. *(K.C.C. 16.82.130)* The current requirement that permits cannot be granted until all corrective work is done is modified to provide an exception for permits needed to conduct the corrective work and to allow the approval of the work and posting of financial guarantees in lieu of the completed project.

**Section 13** – Clearing standards. *(K.C.C. 16.82.150)* Reorganized this section, moving seasonal disturbance standards to section 9. The changes from the existing standards include the following:

- In addition to the provisions of this section, clearing restrictions may apply from special district overlays and native vegetation retention areas under the Surface Water Design Manual
- Clearing restrictions that apply only to a few specific RA (Rural Residential) zoned areas will apply to all RA zoned areas. Changes to the clearing restrictions include:
  - clearing is limited to 35 percent of the property area, or the amount legally cleared before the effective date of clearing regulations in effect at the time of clearing
  - clearing required to relocate equestrian community trails is counted toward the 35 percent maximum clearing standard
  - the maximum amount of clearing may be increased to up to 50 percent of a parcel if the applicant protects the following habitats that are not part of a critical area or buffer. The additional area that may be cleared is equal to the habitat area that is protected:
    - caves
    - habitat corridors (including amphibian migration)
    - old-growth forests
    - mature forest
    - snag-rich areas
    - talus slopes

- if 90 percent or more of a lot has been legally cleared prior to the effective date of the ordinance, the property owner develop up to 50 percent of the property if the remaining area is managed for forestry under a county approved forest stewardship plan
- portions of individual lots that are to be retained in native vegetation must be placed in a setback area to ensure long-term protection
- notice of the open space requirements must be recorded to identify areas required on individual lots to be retained in native vegetation
- restoration of parcels cleared in violation shall include restoration of the soil
- The director may modify the requirements of the rural residential clearing restrictions for some types of development proposals. The development proposals for which a waiver is possible include:
  - government and educational services and libraries
  - parks when located adjacent to an existing or proposed school and
  - road projects that are not part of a larger development proposal.
- To be eligible for a waiver, a development proposal may not be located within a designated regionally significant resource area, except for some utility or road corridor projects. To the maximum extent practical, new structures must be located within existing cleared areas and clearing must be the minimum necessary.
- Within the portion of the site required to be retained in native vegetation, the following activities may be permitted under a clearing and grading permit:
  - forest practices in accordance with a county-approved forest management plan;
  - activities that enhance and restore mature forest cover.
  - passive recreation uses and related facilities, including pedestrian, equestrian and bicycle trails, nature viewing areas, fishing and camping areas, and other similar uses that do not require permanent structures. Within wildlife habitat networks, trail widths shall be the minimum allowed and no other recreation uses shall be permitted in the 150-foot minimum width of the network.
  - utilities and utility easements, including surface water facilities, if within or adjacent to existing road or utility easements. Within wildlife habitat networks, utility uses within established easements shall be allowed within the 150-foot minimum width of the corridor. Development of new utility corridors shall be allowed within wildlife habitat networks only if necessary and if county-approved best management practices are used to minimize disturbance.
  - the minimum necessary pruning or removal of hazard trees to eliminate the hazard.
- The clearing restrictions do no apply to a property that is covered by an approved rural residential stewardship plan.
- The requirements for retention of significant trees currently found in Special District Overlay 220 (SO-220) are moved to this section and modified as follows:
  - The requirements only apply in the urban area. SO-220 applies in some urban and some rural areas.
  - The requirements do not apply to sites with twenty-five percent or more of the area in critical areas and buffers or other undisturbed areas.
  - In cases where retaining significant trees on a site is impractical or contrary to the overall objectives of the zone classification, alternative off-site locations may be used.

**Section 14 – Transfer of Clearing Credits. (New)** A property owner of a RA zoned site may clear up to fifty percent of his or her property by purchasing clearing credits. Clearing credits must be purchased from properties within the same subbasin or immediately adjacent to the subbasin. A property owner may sell credits based on the type of existing vegetation and soils. A site must have at least 75% open space or native vegetation to sell credits. A notice on title is required. Credits may not be sold from areas that are in a critical area or critical area buffer. The department will maintain a list of property owners willing to sell clearing credits.

**Section 15 – Hazard and damage. (New)** Provides that all adjacent property, public resources including surface and groundwaters, set-aside areas, rights-of-way and drainage systems shall be protected from hazards and damage resulting from activities allowed under this title.

**Section 17 – Agricultural Production Districts standards. (K.C.C. 16.82.160)** Makes clarifying changes to existing requirements for utilities and other public facilities crossing a portion of an agricultural production district.