May 1, 2017

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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REPORT AND DECISION

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR160735**

ANNE SYBRANDT
Code Enforcement Appeal

Location: 19322 176th Avenue NE, Woodinville

Appellant: **Anne Sybrandt**
19322 176th Avenue NE
Woodinville, WA 98072
Telephone: (206) 234-3402
Email: asybrandt@sociuslaw.com

Appellants: **Larry and Shan Dragland**
Telephone: (206) 353-9600
Email: shandragland@gmail.com

King County: Department of Permitting and Environmental Review
represented by **LaDonna Whalen**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	January 17, 2017
Hearing Record Closed:	April 25, 2017

FINDINGS/CONCLUSIONS:

Background, Prior Enforcement Case, Revegetation

1. Larry Dragland is the record owner of Parcel 012605-9014 with an address of 19322 176th Avenue NE, Woodinville, Washington (Property).

2. The Property is square in shape with a "flag" running to the north at the northeast corner. All but the flag are mapped in the County's GIS system as aquatic area buffer. Exhibit 5. The entire Property is subject to a Sensitive Areas Notice recorded in 2000. Exhibits 5 and 8.

3. On February 15, 2001, the Department of Permitting and Environmental Review (DPER) confirmed a code violation involving a second mobile home on the Property within the buffer of Daniels Creek. Exhibit 13. The mobile home structure shown in a 2002 aerial photograph (Exhibit 9, page 6 and Exhibit 12.I). That enforcement case resulted in the recording of the Sensitive Areas Notice referred to above. Officer Whalen testimony. Although the agreement itself is not in the record, Exhibit 13 indicates that the Draglands entered into a voluntary compliance agreement with the County on August 12, 2003, and that compliance was achieved on November 30, 2006. Based on DPER's compilation of all comments for record number E010068 (Exhibit 13) and Officer Whalen's testimony, it appears that the resolution was to remove the mobile home and allow the stream buffer to naturally revegetate.

4. Importantly, year 2007, 2012, 2013, and 2015 aerial photographs show significant revegetation of the area cleared for the mobile home structure and the cleared area immediately to the north of it. Exhibit 9.

5. As shown on Exhibit 9, page 6, a driveway historically existed near the southwest corner of the Property extending easterly into the Property. The state of the driveway in 2011 is depicted in Exhibit 7, page 3.

6. In 2015, Anne Sybrandt entered into a contract to purchase the Property. Exhibit 3.

Notice and Order

7. Based on a complaint, Officer Whalen conducted a site visit of the Property on August 25, 2016, observing clearing in the southwest portion of the property in an area shown as a required buffer to Daniels Creek, an aquatic area, on King County GIS overlays.[1] The observed clearing was generally in the area subject to the prior enforcement case, which had substantially revegetated over the years 2007-2015.

8. Daniels Creek is currently classified as a Type F aquatic area pursuant to KCC 21A.24.355 requiring a 165-foot buffer. Exhibit 10.

9. On August 26, 2016, Officer Whalen sent a letter to the Draglands explaining the observed violations and referring to the provisions of the code alleged to have been violated. Exhibit 1. In a telephone conversation of that same day, Ms. Sybrandt conceded

[1] Officer Whalen also observed a recreational vehicle (RV) being used for habitation in the cleared area. Exhibit 1. The RV has since been removed and is not the subject of the Notice and Order or this case.

that she had cut down "three small trees." Exhibit 1 and Sybrandt testimony on cross examination of Officer Whalen.

10. On November 8, 2016, DPER issued a Notice and Violation to Larry and Shan Dragland and Ann Sibor (an apparent misspelling of Sybrandt) for clearing without required permits, inspections, and approvals within environmentally critical areas, i. e. an aquatic area and/or its buffer. Exhibit 2.

11. Ms. Sybrandt "Appellant) timely filed an appeal arguing that: (1) "no specific violation has been identified;" (2) she had not cleared or graded the property in violation of KCC 16.82.050 and 16.82.051; and (3) removal of blackberries is permitted by KCC 21A.24.020. Exhibit 3. She further contended that she removed only blackberries and garbage that had been dumped. Exhibit 3.

Burden of Proof

12. DPER bears the burden of presenting a *prima facie* case based on competent evidence demonstrating that the alleged violation existed as of the date of hearing in this matter. If DPER presents a *prima facie* case, the burden shifts to the Appellant to demonstrate that her actions did not violate the King County Code. Hearing Examiner Rules of Procedure XI.B.8.

13. KCC 16.82.050.B provides:

"Unless specifically excepted under K.C.C. 16.82.051, a person shall not do any clearing or grading without first of having obtained a clearing and grading permit issued by the department or having all clearing and grading reviewed and approved by the department as part of another development proposal.…"

14. Photographs taken by Officer Whalen on August 25, 2016 demonstrate that the clearing for the driveway and the surrounding area were expanded. Exhibit 6 and Exhibit 7, pages 1-2.

15. If certain conditions are met, removal of noxious weeds in an aquatic area buffer does not require a clearing and grading permit. If conducted without an approved forest management plan, farm management plan, or rural stewardship plan, removal must be undertaken with hand labor; the area must be stabilized to avoid regrowth or regeneration of noxious weeds; the cleared area must be revegetated with native vegetation and stabilized against erosion; and herbicides must be used in accordance with federal and state law. KCC 21A.24.045.C 23.

16. Noxious weeds are those listed in Chapter 16-750 WAC. KCC 21A.06.815. Himalayan blackberry and Evergreen Blackberry are Class C noxious weeds. WAC 16-750-050.

17. There is no evidence in the record that Appellant stabilized the cleared area to avoid regrowth of noxious or invasive plants or that she instituted erosion control methods in the cleared areas. Exhibit 6, page 2. Nor did Appellant testify that she had taken these required actions. Further, continued use as a "camping area" prevents re-vegetation of native growth. Exhibit 6, page 2.

18. Matt Maynard, Environmental Scientist III, conducted a site visit on January 3, 2017, observing clearing of native vegetation (red alder, black cottonwood, and salmonberry) within the Daniels Creek buffer. Exhibit 10; Maynard testimony. While he did not determine when the stumps were cut, he did testify that they would not have been cut during the years in which the sawmill discussed below was operational.

19. DPER made a *prima facie* case that Appellant conducted clearing in the buffer of Daniels Creek without the required permits.

20. Appellant's case focused on whether the area in question was historically treed. She presented evidence that a sawmill and accompanying logging pond had been operated on the property. Exhibit 12. However, that use long preceded the former Sensitive Areas Ordinance and the current critical areas regulations. Moreover, clearing is not limited to the removal of trees. Her own exhibits, aerial photographs from 2007 and 2015, show that a substantial portion of the area occupied by that use has revegetated.

21. While Appellant's Exhibits 12.E and 12.F demonstrates that there is a narrow band of property which is not treed (as is evident by the shadows), they do not demonstrate that the area of the historic driveway has not been enlarged and extended.

22. As explained in Finding/Conclusion 9, Appellant concedes that she cut down "three small trees." She also testified and presented exhibits demonstrating that she cut trunks of multi-trunk trees and cut off branches. Exhibit 12.M.

23. Appellant has not shown by a preponderance of evidence that the clearing she they conducted did not require a permit.

DECISION:

1. The appeal is **DENIED,**

2. No penalties shall be assessed against the Appellant or the subject property if the following actions are completed by the deadlines set forth below:

   A. Submit a pre-screening meeting request to DPER by **June 1, 2017**.

   B. Submit a complete restoration permit application **within 30 days of the pre-screening meeting**.

   C. Meet all deadlines for requested information associated with the permit(s) and pick up the permit(s) within the required deadlines. Request an inspection at the time of permit issuance, make any required corrections and obtain final inspection approval within one year of permit issuance.

ORDERED May 1, 2017.

Alison Moss
Hearing Examiner pro tem

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

MINUTES OF THE MARCH 28, 2017, HEARING IN THE APPEAL OF ANNE SYBRANDT, DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. ENFR160735.

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were LaDonna Whalen, Jeri Breazeal, and Anne Sybrandt.

The following exhibits were offered and entered into the record:

Exhibit no. 1	Department of Permitting and Environmental Review staff report to the Hearing Examiner for file no. ENFR160735
Exhibit no. 2	Notice and order, issued November 8, 2016
Exhibit no. 3	Notice and statement of appeal, received December 2, 2016
Exhibit no. 4	Codes cited in the notice and order
Exhibit no. 5	GIS overlay of subject property
Exhibit no. 6	Photographs of subject property, dated August 25, 2016
Exhibit no. 7	Google street view photographs
Exhibit no. 8	Sensitive Area Notice on title, dated October 23, 2000
Exhibit no. 9	Aerial photographs of subject property
Exhibit no. 10	Site investigation report by Matt Maynard, dated January 5, 2017
Exhibit no. 11	Edited aerial photograph of subject property
Exhibit no. 12	Appellant's response to DPER's staff report, dated March 27, 2018
Exhibit no. 13	Compilation or prior code enforcement actions on subject property
Exhibit no. 14	Appellant's response to prior code enforcement actions, dated April 25, 2017

AM/ed

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR160735**

ANNE SYBRANDT
Code Enforcement Appeal

I, Elizabeth Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

☒ EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

☒ caused to be placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED May 1, 2017.

Elizabeth Dop
Legislative Secretary

All Parties of Record

Breazeal, Jeri
Department of Permitting and Environmental Review

Deraitus, Elizabeth
Department of Permitting and Environmental Review

Dragland, Larry and Shan

Lux, Sheryl
Department of Permitting and Environmental Review

Sybrandt, Anne mailed paper copy

Whalen, LaDonna
Department of Permitting and Environmental Review

Williams, Toya
Department of Permitting and Environmental Review