March 29, 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. **ENFR160883**

GREGORY AND JENNIFER GILLIG-BOGARD
Code Enforcement Appeal

Location: 32032 SE Lake Walker Road, Enumclaw

Appellants: **Gregory Bogard and Jennifer Gillig-Bogard**
37405 323rd Avenue SE
Enumclaw, WA 98022
Telephone: (206) 595-3197
Email: bogardg@q.com

King County: Department of Permitting and Environmental Review
represented by **David Bond**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-3654
Email: david.bond@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal in part, grant in part

EXAMINER PROCEEDINGS:

Hearing Opened:	March 28, 2017
Hearing Closed:	March 28, 2017

FINDINGS AND CONCLUSIONS:

1. Gregory Bogard and Jennifer Gillig-Bogard (Appellants) are the record owners of parcel 3321079001, at 32032 SE Lake Walker Road in unincorporated King County (Property).

2. In response to a complaint, Officer David Bond conducted a site visit of the Property on October 12, 2016, observing a large cleared area approximately 12,000 feet in size and a structure in dilapidated condition. Exhibits 1 and 5.

3. On October 13, 2016, Officer Bond sent a violation letter describing the alleged violations and steps to resolve them to the owners of the Property. Exhibit 1. That letter is not in the record before the Examiner.

4. On December 29, 2016, Officer Bond reviewed County records and found no record of corrective steps taken in response to the violation letter. Exhibit 1.

5. The Department of Permitting and Environmental Review (DPER) issued a Notice and Order on January 13, 2017, alleging: (1) clearing of vegetation which exceeds a cumulative area of 7,000 square feet in violation of KCC 16.82.050, 16.82.051, and 16.82.150 and within the environmentally critical areas (steep slope and aquatic areas and/or their buffers) in violation of Chapter 21A.24 KCC and KCC 9.04.030 (Violation 1); and (2) a vacant residence that is open to entry and constitutes an attractive nuisance and/or a hazard in violation of Chapter 16.14 KCC (Violation 2). Exhibit 2.

6. Appellants filed an appeal of the Notice and Order on the day after the expiration of the appeal period. DPER accepted the appeal due to snow accumulations which had made travel by Appellants difficult.

Alleged Violation 1

7. At the hearing in this matter, DPER withdrew the allegation that Appellants had cleared within an aquatic area or its buffer. Therefore, the testimony and exhibits for Violation 1 focused on the allegation of clearing on a steep slope and/or its buffer.

8. Appellants argue that the area cleared was comprised of an existing parking area and driveway; they cleared these areas only to remove noxious vegetation (blackberries); and the clearing was "within the square footage of allowed clearing limits." Exhibit 3.

9. KCC 16.82.051 does not require a permit for clearing *outside* of a critical area and its buffer so long as Conditions 3 and 24 are satisfied. Exhibit 9 is a King County iMap of critical areas likely located on the Property and surrounding area. It maps the entire Property as critical areas. Therefore, the provisions in KCC 16.82.051 relating the clearing *outside* of a critical area and its buffer do not pertain.

10. KCC 16.82.051 requires a clearing and grading permit for *any* clearing on a steep slope hazard or its buffer. Exhibit 14 is a copy of Exhibit 9 on which Appellant Bogard hand-drew the areas he had cleared. These areas include areas mapped as potential steep slope hazards. Thus, unless the activities undertaken by Appellants fall within one of the other

activities listed in KCC 16.82.051 for which no clearing and grading permit is required or no permit is required if certain conditions are satisfied, the clearing required a clearing and grading permit.

11. Both the clearing and grading and the critical areas codes contain provisions allowing the removal of noxious weeds without a permit under certain conditions. 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.

12. KCC 16.82.051 provides that no clearing and grading permit is required for removal of noxious weeds on a steep slope hazard or its buffer. Appellant Bogard contends that he cleared only blackberries. However, a number of the photographs in Exhibit 5 is evidence clearing of other vegetation including, among others, tree limbs, downed trees, stumps, and earth.

13. KCC 21A.24.045 allows removal of noxious weeds or invasive species subject to Condition 23 which allows removal without an approved forest management plan, farm management plan or rural stewardship plan, only if:

(1) *removal is undertaken with hand labor*, including hand-held mechanical tools…;
(2) the area is stabilized to avoid regrowth or regeneration of noxious weeds;
(3) the cleared area is revegetated with native vegetation and stabilized against erosion; and
(4) herbicide use is in accordance with federal and state law.

14. Appellant Bogard testified that this contractor used a bobcat for three to four hours to clear the blackberries. The clearing activity does not satisfy Condition 23.

15. The clearing the Appellants had conducted exceeded the scope of provisions in both the clearing and grading and the critical areas codes which allow removal of noxious weeds without a permit.

16. Both the clearing and grading and the critical areas codes contain provisions allowing maintenance of a driveway or private access road without a permit if certain conditions are met. KCC 16.82.051 Condition 13 authorizes maintenance of a driveway or private access road:

In conjunction *with normal and routine maintenance activities*, if:

a. there is no alteration of a ditch or aquatic area that issues by salmonids;
b. the structure, condition or site maintained was constructed or created in accordance with law; and
c. the maintenance does not expand the roadway, lawn, landscaping, ditch, culvert or other improved area being maintained.

17. KCC 21A.24.045 allows maintenance of a driveway, private access road or parking lot on a steep slope or its buffer.

18. KCC 21A.06.731 defines maintenance as:

> the usual acts to prevent a decline, lapse or cessation from a lawfully established condition without any expansion of or significant change from that originally established condition. Activities within landscaped areas within areas subject to native vegetation retention requirements may be considered "maintenance" only if they maintain or enhance the canopy and understory cover. "Maintenance" includes repair work but does not include replacement work. …

19. Appellant Bogard contends that he was simply maintaining a pre-existing parking area and driveway that had been installed to reach the residence on the property. He did not provide any evidence demonstrating when the parking area and driveway were constructed or of their maintenance history. The residence itself clearly has not been maintained. Rather, it is dilapidated and uninhabitable in its current condition. Exhibit 5.

20. Appellant Bogard contended that the County pushed materials from an approximately 2009 landslide onto the Property blocking access with the result that blackberries overgrew the parking area and driveway. However, aerial photographs from 2007 and 2009 available on King County Parcel Viewer provide no indication of the parking area Appellant contends existed prior to the landslide.

21. Appellant Bogard testified that gravel had been placed on the driveway as much as 30 years ago and that it was overgrown by blackberries as much as 10-12 feet tall. Based on the evidence before the Examiner and Appellant Bogard's description of the state of the Property before the work undertaken, the Examiner is unable to find that the work constitutes normal and routine maintenance.

22. DPER has made a *primae facie* showing that Appellants cleared a steep slope or its buffer without the required permits. Appellants have not shown by a preponderance of the evidence that the clearing they had conducted did not require a permit.

Alleged Violation 2

23. Based on evidence presented at the hearing by Appellant Bogard the residence has been boarded up, DPER withdrew Violation 2.

DECISION:

1. DPER withdrew allegations that Appellants cleared aquatic areas and/or their buffers (a portion of Violation 1) and that a vacant residence was open to entry (Violation 2). Therefore, the appeal is **GRANTED** as to those allegations.

2. The appeal of clearing on a steep slope without a permit is **DENIED.**

3. No penalties shall be assessed against the Appellant or the subject property if the following actions are completed by the following schedule:

A. Apply for and obtain the required permits, inspections and approvals with complete application to be submitted by the following schedule:

i. Submit a pre-screening meeting request to DPER by **April 30, 2017**.

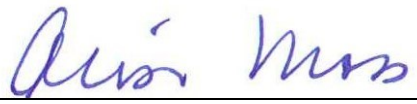
ii. Submit a complete clearing permit application **within 30 days of the pre-screening meeting**.

NOTE: Application for a permit does not ensure that a permit will be issued. The applicant should be aware that permit fees can be expensive and zoning or critical area restrictions may require a variance or reasonable use exception to county regulations in order to legalize work done without permits. Application for a variance or reasonable use exception can be an expensive and time consuming option and there is no guarantee that approval will be obtained. The alternative is to obtain a clearing/grading permit to restore the site to its original condition or as close to that condition as possible.

iii. If a permit to allow the work that was completed is denied, submit a complete restoration permit application **within 30 days of final denial** of any of the permits or approvals listed above.

iv. 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 March 29, 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 GREGORY AND JENNIFER GILLIG-BOGARD, DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. ENFR160883.

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were David Bond, Jeri Breazeal, and Gregory Bogard.

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. ENFR160883
Exhibit no. 2	Notice and order, issued January 13, 2017
Exhibit no. 3	Notice and statement of appeal, received February 7, 2017
Exhibit no. 4	Codes cited in the notice and order
Exhibit no. 5	Photographs of subject property
Exhibit no. 6	Critical areas designations
Exhibit no. 7	Violation letters, dated October 7, 2016 and October 13, 2016
Exhibit no. 8	Topography map of subject property
Exhibit no. 9	Critical areas map of subject property, dated March 8, 2017
Exhibit no. 10	Gregory Bogard illustration on DPER exhibit 5, page 1
Exhibit no. 11	Gregory Bogard illustration on DPER exhibit 5, page 2
Exhibit no. 12	Photographs of subject property
Exhibit no. 13	Gregory Bogard illustration on DPER exhibit 5, page 9
Exhibit no. 14	Gregory Bogard illustration on DPER exhibit 9

AM/ed

March 29, 2017

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CERTIFICATE OF SERVICE

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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 March 29, 2017.

Elizabeth Dop
Legislative Secretary

All Parties of Record

Bond, David
Department of Permitting and Environmental Review

Breazeal, Jeri
Department of Permitting and Environmental Review

Deraitus, Elizabeth
Department of Permitting and Environmental Review

Jennifer Gillig-Bogard, Gregory Bogard mailed paper copy

Lux, Sheryl
Department of Permitting and Environmental Review

Williams, Toya
Department of Permitting and Environmental Review