

August 8, 2023

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Local Services file no. **ENFR220402 (SWO)**

**PATRICK ROTH**

Code Enforcement Appeal

Location: [REDACTED] Maple Valley

Appellant: Patrick Roth  
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RECOMMENDATIONS/DECISION:

Hearing Opened:	July 25, 2023
Hearing Closed:	July 25, 2023
Department's Recommendation:	Deny Appeal
Examiner's Decision:	Grant Appeal in Part; Deny in Part

## FINDINGS OF FACT:

Overview

1. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, the Examiner grants the appeal on the question of whether the deck constitutes an impervious surface and on the alleged placement of fill. The Examiner otherwise denies the appeal.

Stop Work Order, Notice Order and Appeals

2. Patrick Roth is the record owner of property located at 23628 266<sup>th</sup> Ave. SE in the Maple Valley area of unincorporated King County (Property). The Property is zoned RA-4. Exs. D1 – 001 – 002, D3 – 008.
3. The Department of Permitting and Environmental Review (Permitting) opened this case on April 25, 2022, based on an April 2 complaint that clearing, grading, new impervious surfaces and construction of decks and structures had taken place without permits and within critical areas. Ex. D1 – 001; testimony of Ofc. Sawin and Patrick Roth.
4. On March 8, 2023, Permitting posted a Stop Work Order on the Property for clearing/grading without permits and construction/grading in violation of permit requirements. Exs. D1 – 001, – 003 – 004, D2.
5. Mr. Roth (Appellant) timely appealed the Stop Work Order, asserting that *Citizens Alliance for Property Rights v. Sims*, 145 Wn. App. 649, 187 P.3d 786 (2008), *pet. for rev. denied* (2009) (*Citizens Alliance*) voided enforcement of the entire Clearing and Grading Code for rural zoned property and that the Stop Work Order did not provide specificity as to which provisions of Chapter 21A.24 King County Code (KCC) are at issue. Exs. D1 – 001, D2.
6. Permitting generally issues a Notice and Order when it receives an appeal of a Stop Work Order. Testimony of Ofc. Sawin.
7. Permitting issued a Notice and Order on March 16, 2023, alleging: (1) clearing of vegetation over a cumulative 7000 ft.<sup>2</sup>, new impervious surfaces over 2000 ft.<sup>2</sup>, and placement of fill without required permits inspections and approvals and within aquatic and wetland critical areas and/or buffers and within a Drainage and Native Growth Protection Easement in violation of identified sections of Chapters 16.82 and 21A.24 KCC; and (2) construction of decks and accessory structures without required permits, inspections, and approvals and within aquatic and wetland critical areas and/or buffers and within a Drainage and Native Growth Protection Easement in violation of identified sections of Chapters 16.82 and 21A.24 KCC. Exs. D1 – 001, D3 – 001 through – 006.

8. Appellant timely appealed the Notice and Order, alleging variously that: (1) Permitting did not follow the procedures set forth in Ordinance 14309, the relevant portions of which are codified in KCC 23.020.070, did not promptly notify him that it had determined a violation had occurred, and denied him a “reasonable period of time” to make any required corrections; (2) the alleged clearing violation is vague; (3) *Citizens Alliance* voided enforcement of the entire Clearing and Grading Code for rural-zoned property; and (4) he did not commit any of the alleged violations. Exs. D1 – 001, D3 – 008 through – 009.

### Maplewood Plat

9. The Staff Report, Exhibit D1, provides a history of relevant permitting and enforcement actions relating to the Property. The Examiner reviews the most pertinent facts in this Background section.
10. The Property is Lot 29 of the Amended Maplewood Estates Division Plat II (Maplewood Plat). The northern approximately two thirds of Lot 29 is subject to a Drainage Easement and Native Growth Protection Easement. The southern approximately one third of Lot 29 requires 20-foot building setbacks from the front, side, and rear yards. As a result, the buildable area for this parcel, depicted on the Maplewood Plat map, has dimensions of approximately 84’ on the west, 11’ on the east, 364’ on the north, and 471’ on the south. Appellant’s description of the buildable area fails to reflect the required 20-foot building setbacks on each side of Lot 29. Exs. D1 – 002, D5 – 002, D5 – 004, D6 – 002, A7 – 001.
11. The face of the Maplewood Plat clearly states:

“BUILDING SETBACKS AND NATIVE GROWTH PROTECTION EASEMENTS

Structures, fill and obstructions (*including but not limited to decks, patios, outbuildings, or overhangs beyond 18 inches*) *are prohibited* beyond the building setback line... *and within the Native Growth Protection Easement(s) as shown.*”

...

*Before beginning and during the course of any grading, building construction, or other development activity on a lot subject to the NGPE, the common boundary between the easement and the area of development activity must be fenced or otherwise marked to the satisfaction of King County.*” Ex. D5 – 001 (emphasis added in *italics*).

### Restoration Permit L08CG369

12. Permitting opened Code Enforcement Case E07G0042 on the Property in January 2008 for clearing and grading in critical areas. This prior enforcement case, as well as this case, were assigned to Officer Sawin. This prior violation was resolved by the issuance of a restoration permit, L08CG369, requiring the restoration of 6,681 ft.<sup>2</sup> of wetland and stream buffers (Restoration Permit) and the recording of a Critical Area Notice on Title (CANT) indicating the presence

of a Type N Aquatic Area and Category II and IV wetlands. Appellant completed the restoration on January 17, 2012. Exs. D1 – 002, D7 – 002, D8; testimony of Patrick Roth.

13. Comments in the Restoration Permit record indicate that Permitting required the Appellant to move large rocks (5-man size) out of the wetland buffer and leave them on site or take them off-site to a recycling center, and that Appellant indicated that some of the rocks would be used for landscape rocks and the rest hauled away.

This requirement is reflected in Condition 7:

“Rocks to be removed and any sediment disposed of such that it cannot re-enter critical areas and critical areas buffers. Rocks in wetland restoration area to be removed and placed out of critical areas on the property or taken to a licensed recycling center.” Ex. D8 – 003 – 004, – 009.

14. A comment in the Restoration Permit record states:

“Nick [Gillen] discussed with applicant placement location of the required buffer border which is to be either a 3 – 4 foot split rail fence or placement of the large rocks (2'+) at the buffer line. *Determined that the buffer line is at the top of the bank at the edge of the existing lawn areas.*

Ex. D8 – 005.

15. The May 12, 2011, Connectexplorer aerial photograph depicts the parcel footprint at the time of the L08CG369 permit approval. The line of boulders at the top of the bank at the edge of the existing lawn is visible in exhibits D1 – 002, D9 – 001 – 002, D12, and D13.
16. Appellant contends that the statement in the Restoration Permit record is incorrect, that the boulders are simply landscape rocks, and that he and Critical Areas Specialist Nick Gillen (now retired) specifically negotiated that the buffer would be the silt fence which was installed in connection with the 1992 building permit for the residence. The silt fence was located approximately 5 feet from the stream. Appellant offered no evidence to support his contention other than his own testimony. Testimony of Patrick Roth.
17. Appellant’s position is not credible. At the time of the enforcement action resulting in the Restoration Permit, the King County Code required a 65-foot buffer for Type N aquatic areas located in the rural area. It required 50 – 150 foot buffers for Category II wetlands and 25 – 50 foot buffers for category IV wetlands. King County Ordinance §185 (wetland buffers) and §193 (aquatic area buffers).

18. The Examiner finds that the large rocks are both landscaping features as testified to by Appellant and the demarcation of the critical areas buffer as described in the Restoration Permit record.

19. The Restoration Permit also required:

5560 – The wetland buffer shall be identified using permanent Critical Area Boundary signs installed between the sensitive area buffer, setback area, or the 15 foot BSBL. One sign shall be posted for every 150 feet of sensitive area buffer and shall be stationed in a prominent location, i.e. at the closest point to the proposed development.

Appellant did not install the required signs, testifying that he believed King County would install the signs. The King County Code at the time clearly placed this responsibility on the Appellant. Ex. D8 – 008; testimony of Patrick Roth; King County Ordinance 15051 § 154.

20. Condition 1 the Restoration Permit Conditions of Approval provides:

*This parcel contains wetlands and aquatic areas classified under the Critical Areas Code.* Those portions of the wetlands/aquatic buffers that have been maintained as a lawn, landscaping, driveway and/or structures are allowed to continue to be maintained. The remainder of the wetlands, aquatic area shall be restored as native vegetation as shown on the approved plans.

Ex. D8 – 008 (emphasis added in *italics*).

21. Condition 5 requires a 15-foot building setback (BSBL) between the existing residence and the wetland buffers. This setback was apparently based on the King County Code rather than the Maplewood Plat. Ex. D8 – 009; testimony of Ofc. Sawin.

22. King County iMAP Hillshade image depicts the general location of the stream as a blue line. It is located in a ravine which rises to the north and south. Ex. D10; testimony of Ofc. Sawin.

23. Type N streams currently require 65-foot buffers. KCC 21A.24.358.C.2.

#### Presence of Critical Areas

24. At the hearing, Appellant contended that steep slopes are the only type of critical area King County has designated on the Property. His own appeal statement, which observes that critical areas encompass 75% of his parcel and that the Property is subject to a CANT, demonstrate the contrary. Ex. D3 – 011 – 012; testimony of Patrick Roth and Ofc. Sawin.

Clearing

25. KCC 16.82.051.C.3 exempts from the requirement for a clearing and grading permit the cumulative clearing of less than 7000 ft.<sup>2</sup> including, but not limited to, collection of firewood and removal of vegetation for fire safety. Clearing and grading permit exemptions within wetlands or aquatic areas or their buffers are limited to cutting of firewood for personal use in accordance with a forest management plan or rural stewardship plan and the removal of vegetation for forest fire prevention purposes in accordance with best management practices approved by the King County fire marshal. KCC 16.82.051.C.4, C.23.
26. KCC 16.82.020.D defines “clearing” as “the cutting, killing, growing or removing of vegetation or other organic material by physical, mechanical, chemical or any other similar means.”
27. Exhibit A2.1 – 002 indicates that, as of July 7, 2007, the residence and driveway constituted approximately 10,000 ft.<sup>2</sup> of impervious surface. Ex. A2.1 – 002.
28. Exhibit A2.1 – 002 is from the record in Code Enforcement Case E07G0042. Mr. Roth did not appeal Code Enforcement Case E07G0042 and cannot now challenge Permitting’s finding that approximately 10,000 ft.<sup>2</sup> of impervious surface existed as of July 7, 2007. Ex. A2.1 – 002; testimony of Ofc. Sawin.
29. This approximately 10,000 ft.<sup>2</sup> of impervious surface present in 2007 would have required clearing. Thus, *any amount* of additional clearing would require a clearing and grading permit. Ex. A2.1 – 002; KCC 16.82.051.C.3.
30. The alleged clearing violation is based on the assumption that Appellant cleared vegetation for the alleged new impervious surfaces (gravel areas and ABC construction). The question is then, is whether Permitting has demonstrated that Appellant cleared vegetation for the gravel areas and ABC construction.
31. A comparison of the May 2011 and May 2023 aerial photographs in Exhibit D13 – 001 indicates that, at some point between 2011 and 2023, grassy areas in the southeastern portion of the property outside of the critical area buffer were cleared and that clearing occurred to the north of the boulders demarking the critical area buffer (i.e. within the critical area buffer) in several locations to the east of the residence. The area of the clearing is indicated by the turquoise lines in the aerial photograph drawn by Officer Sawin. This area north of the turquoise lines in these aerial photographs is also within the Drainage Easement and Native Growth Protection Easement shown on the face of the Maplewood Plat. Exs. D5 – 002, D5 – 004, D13 – 001; testimony of Ofc. Sawin.
32. The Examiner addresses clearing of Himalayan blackberry for the construction of the deck in Finding 40.A below.
33. Appellant cites a bulletin Permitting issued following the Court of Appeals decision in *Citizens Alliance* for the proposition that Permitting has advised the

public that it will not enforce the Clearing and Grading Code in the rural area. Appellant misreads the bulletin. It expressly states that the County will not enforce identified regulations that impose *maximum clearing limits* on rural zoned properties. Further, it specifically notes that a property owner must still apply for a clearing permit if the property owner is proposing to clear beyond the thresholds allowed under King County’s regulations or in areas where clearing always requires a permit. Ex. D2 – 010.

34. The Court of Appeals framed the issue before it in *Citizens Alliance* as follows:

“The primary issue on appeal is whether King County Ordinance 15053 § 14 (KCC 16.82.150), which limits clearing on properties zoned rural area residential (RA) to a maximum of 50%, depending on the size of the parcel, violates RCW 82.02.020.”

*Citizens Alliance*, 145 Wn. App. at 653. The Court found that the clearing limits in KCC 16.82.150 constituted an in-kind indirect “tax, fee or charge” on new development prohibited by RCW 82.02.020 and that the County had failed to show that the ordinance fell within any exception to that prohibition. *Id.*

35. In response, as stated in the bulletin, the County stopped enforcing the specific regulations that impose *maximum clearing limits* on rural zoned properties. The alleged violations in this case do not pertain to maximum clearing limits.

#### Decks and Accessory Structures

36. Appellant constructed a large deck, with multiple structures on top of it extending out over the hillside and into the stream and wetland buffers and into the Drainage Easement and Native Growth Protection Easement. This fact is particularly evident in exhibits D9 (in which several of the boulders demarking the edge of the critical area buffer are visible) and D12 (in which the entire deck is located to the north of several boulders, i.e. into the critical area buffers and the Drainage Easement and Native Growth Protection Easement). Exs. D9, D11, D12, D13.
37. The Examiner also notes that the face of the Maplewood Plat prohibits decks, outbuildings, or overhangs beyond 18 inches beyond the building setback line and within the NGPE. Ex. D5 – 001.

#### New Impervious Surfaces

38. KCC 16.82.020.O defines grading as “any excavating, filling or land – disturbing activity, or combination thereof.”
39. KCC 16.82.051.C.2 exempts from the requirement for a clearing and grading permit the “grading that produces less than 2000 two thousand square feet of new impervious surface on a single site added after January 1, 2005... For

purposes of this subsection C.2 ‘new impervious surface’... is defined in K.C.C. 9.04.020.”

40. Clearing and grading permit exemptions are not available for grading within wetlands or aquatic areas or their buffers. KCC 16.82.020.
41. Exhibit D12 depicts Permitting’s estimate of the areas on new impervious surfaces which are comprised of: (1) the deck and an area to the east of the deck (2793.5 ft<sup>2</sup>); (2) an area between the deck and the residence (1053.4 ft<sup>2</sup>); and (3) a “J” shaped area to the east of the residence (6775.7 ft<sup>2</sup>). Ex. D12.
42. A comparison of the May 2011 aerial photograph in Exhibit D13 with the May 2023 photograph in exhibit D12 indicates:
  - A. Area (1) was clearly vegetated in 2011 and, with the exception of the deck, appears to be vegetated in 2023. Appellant testified that he only cleared 600-700 ft<sup>2</sup> of blackberries to construct the deck and that the deck was constructed with sufficient spacing between the boards to allow water to pass through. Testimony of Patrick Roth.
    - i. The blackberries would have been located within a critical wetland or aquatic area buffer. Removal of noxious weeds within a wetland or aquatic area buffer does not require a clearing and grading permit. Noxious weeds are those listed in Chapter 16 – 750 WAC. They do not include Himalayan blackberry. KCC 16.82.051.B, 21A.06.815; Chapter 16 – 750 WAC.
    - ii. Removal of invasive vegetation does not require a clearing and grading permit within a wetland or aquatic area buffer if the cumulative clearing is less than 7000 ft.<sup>2</sup> and the removal was conducted by hand labor. Invasive vegetation are plant species listed as noxious weeds on the noxious weed list adopted by King County Department of Natural Resources and Parks (DNRP). DNRP has listed Himalayan blackberry as a Class C noxious weed. However, the removal of the blackberries does not fall within this exemption as the cumulative clearing had already exceeded 7000 ft.<sup>2</sup> Ex. A 2.1 – 002; KCC 21A.06.641.C; <https://kingcounty.gov/services/environment/animals-and-plants/noxious-weeds/laws/list.aspx>; Findings 27 – 28.
  - B. The portions of area (2) to the east and west of the shed were vegetated in 2011, but not in 2023.
  - C. Appellant testified that Area (3) is comprised of “clear rock” that has not been compacted, deforms when walked on, and is comprised of a volleyball court with a number of picnic tables on top and a wide trail. Officer Sawin was unable to opine whether clear rock constitutes an



impervious surface under the King County Code, but characterized the material as gravel. Testimony of Patrick Roth and Ofc. Sawin.

The question, then, is whether areas that were vegetated in 2011 but not in 2023 constitute impervious surfaces.

43. KCC 16.82.051.B.2 refers to KCC 9.04.020 for the definition of “new impervious surface.” KCC 9.04.020.KK defines “new impervious surface” as: “[T]he creation of impervious surface or the addition of a more compacted surface such as the paving of existing gravel or dirt.” KCC 9.04.020.Z defines “impervious surface” as:

[A] hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions before development or that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions before development. Common impervious surfaces include, but are not limited to, *roofs*, walkways, patios, driveways, parking lots, storage areas, *areas that are paved, graveled* or made of packed or oiled earthen materials or other surfaces that similarly impede the natural infiltration of surface water or stormwater. For purposes of applying the impervious surface thresholds in this chapter, *permeable pavement*, vegetated roofs and underdrained pervious surfaces *are considered ‘impervious surface,’* while an open uncovered flow control or water quality facility is not.”<sup>1</sup>

44. The Examiner finds that the clear rock is akin to gravel or permeable pavement and is, therefore, an impervious surface.
45. A portion of this new impervious surface is located within the wetland and stream buffer and Drainage Easement and Native Growth Easement. Comparison of Ex. D12 with Ex. D13.
46. The deck itself is not an impervious surface; however, the structures constructed upon it are.

#### Placement of Fill

47. KCC 16.82.020.L defines “fill” as:

The deposit of earth materials or recycled or reprocessed waste material consisting primarily of organic or earthen materials, or any combination thereof, placed by mechanical means.

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<sup>1</sup> Emphasis added. Appellant has provided a document from the DNRP archives entitled “Measuring Impervious Surface,” which addresses protocols for measuring impervious surface on a developed parcel that is subject to a prorated SWM fee based on the percentage of impervious surface on the parcel. This document appears to not only be out of date (it references KCC 9.04.020.P for the definition of impervious surface – the current version of KCC 9.04.020.P defines drainage review) but also appears to apply to commercial properties, not rural properties. Ex. A2 – 025 – 030.

48. Permitting presented no evidence or testimony supporting its allegation that Appellant had placed fill estimated at over 500 yd.<sup>3</sup>

### Notice

49. As found above, Permitting received a complaint on April 2, 2022, but did not post the Stop Work Order and Notice and Order on the Property until March 8 and March 15, 2023, respectively. Appellant contends that, by the time the Stop Work Order was posted, he had completed approximately 98% of the deck. Exs. D2 – 012 – 013, D3 – 001– 003; testimony of Patrick Roth.

50. Appellant requests leniency from the Examiner in any corrective action which may be required with regard to the deck due to the delay between receipt of the complaint and the Stop Work Order.

51. KCC 23.020.070 outlines the procedures Permitting should follow when it has identified a probable violation. Relevant subsections include:

A. ...As soon a Department has reasonable cause to determine that a violation has occurred, it shall document the violation and promptly notify the owner, occupant or other person responsible for \_\_\_\_\_ code \_\_\_\_\_ compliance.

H. ...As a guideline... notice and orders should be issued within one hundred twenty days from receipt of a complaint. Stop work order should be issued promptly upon discovery of the violation in progress.

52. A notice and order must contain a statement of the specific provisions of the regulations and permit conditions that were or are being violated. KCC 23.24.030.D.

53. The Notice and Order identified the following code provisions:

- A. Violation 1 (clearing, new impervious surfaces, and placement of fill): KCC 16.82.050, 16.82.051, 21A.24.045, 21A.24.318 – 325 and 21A.24.355 – 358.
- B. Violation 2 (construction of decks and possessory structures): KCC 16.02.240, 21A.24.045, 21A.24.200, 21A.24.318 – 325, 21A.24.355 – 358, and 21A.28.020 and Sections 105.1 and 114 of the International Building Code.

54. Permitting did attempt to notify Appellant that it had received a complaint alleging violations by letter dated April 25, 2022, 23 days after the complaint. However, Permitting addressed it to Appellant at 23528 266<sup>th</sup> Ave SE, Maple Valley rather than 23628 266<sup>th</sup> Ave SE, Maple Valley. The letter was returned to Permitting on May 3, 2022. Ex. D3 – 025.

55. On June 14, 2022, 42 days after the initial letter was returned as undeliverable and 73 days after receipt of the complaint, Permitting sent a letter to Patrick and Laura Roth at P.O. Box 1008, Black Diamond advising them that it had determined that clearing and grading with over 10,000 ft.<sup>2</sup> of new impervious surface and fill estimated to exceed 300 cubic yards with some disturbance within wetland and aquatic critical areas and/or buffers in the area of the Restoration Permit had occurred in violation of identified provisions of the KCC. It advised them of the necessary corrective steps. This letter was not returned to Permitting; however, while Appellant concedes that the P.O. Box is his business address, he contends that he never received it. Ex. D3 – 032; testimony of Patrick Roth and Ofc. Sawin.
56. The delay between Permitting’s receipt of the complaint and its issuance of the Stop Work Order is regrettable, but Appellant does not come to this case with clean hands. He was well aware of the location of the critical area buffer from the face of the Maplewood Plat map and Code Enforcement Case E07G0042 case which culminated in the removal of the boulders from the critical area buffer and the recording of the CANT. Indeed, he cites both the plat restrictions and the CANT in his appeal statement. Ex. D3 – 010 – 011.
57. While Appellant did stop work once he received the Stop Work Order, he has not otherwise taken any corrective action. Testimony of Patrick Roth.
58. Appellant conceded that he was able to prepare thoroughly for the appeal hearing in this matter. Testimony of Patrick Roth.
59. Any Finding of Fact which is more appropriately considered a Conclusion of Law is hereby adopted as a Conclusion of Law.

#### CONCLUSIONS OF LAW

1. Any Conclusion of Law which is more appropriately considered a Finding of Fact is hereby adopted as a Finding of Fact.
2. *Citizens Alliance for Property Rights v. Sims*, 145 Wn. App. 649, 187 P.3d 786 (2008), *pet. for rev. denied* (2009) (*Citizens Alliance*), did not relieve rural property owners of the need to obtain grading and clearing permits for activities requiring a clearing and grading permit.
3. Neither a deck nor the two structures on top of the deck (intended to be an entertainment stage and a playhouse/storage shed) are allowed alterations within a wetland or aquatic area or their buffers. Thus, the question of whether the deck and structures on top of the required building permits is moot. KCC 21A.24.045. Testimony of Patrick Roth.
4. Except as otherwise provided by law, in enforcement actions, Permitting bears the burden of proof by a preponderance of the evidence on those matters or

issues raised in the appeal statement. King County Hearing Examiner Rules of Procedure and Mediation, Rules XV.E and .F

5. Permitting has not borne its burden of proving the following alleged violations by a preponderance of the evidence:
  - a. The deck is an impervious surface.
  - b. Placement of fill.
6. Except as concluded in Conclusion 5, Permitting has borne its burden of proving the alleged violations by a preponderance of the evidence.
7. KCC 23.02.070.C provides that the guidelines in KCC 23.02.070 for warnings, notifications and reinspections are not jurisdictional, and failure to meet them in any particular case shall not affect the County's authority to enforce County code provisions with regard to that case.
8. Not only does the Examiner not have the authority to allow a deck within a critical areas buffer and Drainage and Native Growth Protection Easement, there is no basis for leniency in this case. Appellant knew or should have known that he was constructing the deck and accessory structures within the critical area buffer and Drainage and Native Growth Protection Easement.
9. Mr. Roth had adequate notice and opportunity to prepare for the appeal hearing.

DECISION:

1. GRANT the appeal in part (deck as impervious surface and alleged fill);
2. DENY in part (remaining allegations)
3. Apply for and obtain the required permits, inspections, and approval with complete application to be submitted by the following schedule:
  - A. Submit a pre-screening meeting request to Permitting by September 7, 2023.
  - B. Submit a complete 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.
4. No penalties shall be assessed against Patrick Roth or the subject property if the above actions are completed by the above deadlines, or by any reasonable

deadline extension DLS provides. If not, DLS may issue penalties retroactive to today.

ORDERED August 8, 2023.

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Alison Moss  
King County 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 JULY 25, 2023, HEARING IN THE APPEAL OF PATRICK ROTH, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR220402 (SWO)

Alison Moss was the Hearing Examiner pro tem in this matter. Participating in the hearing were Holly Sawin, Patrick Roth, and Stephen Plowman. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered and entered into the record by the Department:

Exhibit no. D1	DepartKing County Code Enforcement Staff Report
Exhibit no. D2	(A) Stop Work and Appeal form posted on March 8, 2023 (B) Stop Work Appeal received on March 31, 2023
Exhibit no. D3	(A) Notice and Order issued on March 16, 2023 (B) Notice and Order Appeal received on April 10, 2023
Exhibit no. D4	King County Codes cited in Notice and Order
Exhibit no. D5	Amended Maplewood Estates Division Plat II, approved May 31, 1989
Exhibit no. D6	(A) Site plan for permit R8915376, finalized on October 24, 1990 <del>(B) Health Department Drainfield As-Built approval, September 24, 1990</del>
Exhibit no. D7	Critical Area Notice on Title recording # 20100604000486

Exhibit no. D8	L08CG369 comments and conditions in the Accela permit record
Exhibit no. D9	Photos of ABC construction in critical area buffer and NGPE taken by Officer Sawin on March 8, 2023
Exhibit no. D10	iMap Hillshade Layer depicting approx. stream location
Exhibit no. D11	Connect Explorer 5-2-2023 of ABC deck and structures and new impervious graveled area
Exhibit no. D12	Connect Explorer 5-2-2023 estimate of new impervious (over 11,000 sf)
Exhibit no. D13	Connect Explorer 2011 and 2023 comparison of ABC work in NGPE and Critical Area Buffers

The following exhibits were offered and entered into the record by the Appellant:

Exhibit no. A1	(A) Original Maplewood Estates Division II Plat Map, approved May 7 <sup>th</sup> , 1985 (pages 130/78, 130/80 thru 130/84); showing no wetlands or critical areas on these lots only Native Growth Protection Easements (B) King County Department of Permitting & Environmental Review Case ENFR23-0402 Report to Hearing Examiner by Holly Sawin and draft version from public records request including List of Exhibits and Party of record List. (C) Code cited in Notice and Order provided per Department Exhibit D4
Exhibit no. A2	(A) Department of Local Services Permitting Division Compilation of all Comments of Record. Record No. LO8CG369. Status: Permit Completed (B) Department of Local Services Permitting Division Compilation of all Comments of Record. Record No. LO8CG369. Status: Closed. (C) Department of Local Services Permitting Division Compilation of all Comments of Record. Record No. LO8CG369. Status: Violation Notice Sent. (D) Roth Property Wetland/Aquatic Restoration Clearing Permit (Permit Approval Conditions Document) (E) Critical Area Notice on Title recording # 20100604000486 (F) King County Department and Environmental Services, FINAL CODE INTERPRETATION (L08CI004 August 12, 2008) (G) Department of Local Services Permitting Division Compilation of all Comments of Record. Record No. ENFR21-0713. Status: Closed. (H) King County: Measuring Impervious Surface 1.1, surface-mgt-fee/ pdf.
Exhibit no. A2.1	Aerial Photos: Impervious 7-7-2007, ENFR22-0402 connect explorer 2007, ENFR22-0402 connect explorer 2021. King County iMap of parcel: 5126210290 Layers: 1) Environmental Sensitive Areas 2) Hydrography & Hydrology 3) Landslides 4) Stormwater Services.

- Exhibit no. A3 (A) King County Code: 23.02.270 Procedures when probable violation identified.  
(B) King County DLSPD March 16, 2023, Notice of King County Code Violation: Civil Penalty Order: Abatement Order: Duty to Notify  
(C) Notice of Complaint date April 25, 2023, from DLSPD to Patrick Roth 23528 266th AV SE Maple Valley, WA 98038, marked Not Deliverable as Addressed Returned 5/3/2023.  
(D) Various emails to and from Department and Maplewood Estates Homeowners Association confirming Appellant has not been given Notice of potential code infraction whereas the homeowners association is coercing the Department to take immediate action.  
(E) Mailing to 23528 266th AV SE Maple Valley, WA 98038 marked: “returned to sender no such number, unavailable to forward” by USPS.  
(F) Declaration of Service by Code Enforcement Officer II, Holly Sawin declaring under penalty of perjury that she mailed notice to Mailing to 23528 266th AV SE Maple Valley, WA 98038.  
(G) Various other notices sent to the incorrect address by the Department, incorrectly listing address as: 23528 266 Ave SE Maple Valley, WA 98038  
(H) Notice and Order posted and attached to correct property address at: 23628 266 Ave SE 3/15/2023.
- Exhibit no. A4 Appellants Appeal with exhibits dated April 10<sup>th</sup>, 2023.
- Exhibit no. A5 A) King County Code 16.02.240 Permits- Work exempt from permit.  
(B) King County Code 21A.24.200 Building setbacks.  
(C) King County Signature Report March 26, 2002, Ordinance 14309
- Exhibit no. A6 King County, Washington Ordinance 15053: “Is The Most Restrictive Land-Use Law in the Nation Constitutional?”
- Exhibit no. A7 Rebuttal

August 8, 2023

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

King County Courthouse  
516 Third Avenue Room 1200  
Seattle, Washington 98104  
Telephone (206) 477-0860  
[hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov)  
[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**CERTIFICATE OF SERVICE**

SUBJECT: Department of Local Services file no. **ENFR220402 (SWO)**

**PATRICK ROTH**  
Code Enforcement Appeal

I, Lauren Olson, 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.

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 August 8, 2023.



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Lauren Olson  
Legislative Secretary



**Breazeal, Jeri**

Department of Local Services

**Campbell, Thomas**

Department of Local Services

**Miller, Bernie**

Maplewood Estates HOA

**Plowman, Stephen**

Hardcopy

**Roth, Patrick**

Hardcopy

**Sawin, Holly**

Department of Local Services

**Whalen, LaDonna**

Department of Local Services