

October 3, 2023

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

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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR221196**

HENRY LEE AND NORRENA YIM
Code Enforcement Appeal

Location: [REDACTED] Kent

Appellants: **Henry Lee and Norrena Yim**
[REDACTED]
Kent, WA 98042
Telephone: [REDACTED]
Email: [REDACTED]

King County: Department of Local Services
represented by **Jeri Breazeal**
Department of Local Services
919 SW Grady Way Suite 300
Renton, WA 98057
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RECOMMENDATIONS/DECISION:

Department's Recommendation: Deny appeal
Examiner's Decision: Grant appeal in part; deny appeal in part

FINDINGS:

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 in part and denies the appeal in part.

Notice and Order and Appeal

2. Henry Lee is the record owner of King County Assessor Parcels Nos. 0322059248 and 0322059124 (Lee Parcels). Norrena Yim is the record owner of King County Assessor Parcel No. 0322059243 (Yim Parcel). Mr. Lee and Ms. Yim have the same mailing address. Brennan Villa is the record owner of King County Assessor's Parcel No. 0322059077 (Villa Parcel). The Parcels are located in the RA 2.5 zone. Ex. D1-001; testimony of Ofc. Breazeal.
3. The Department of Local Services – Permitting Division (Permitting) opened case ENFR180812 on the Lee Parcels based on a September 2018 complaint that filling occurred within a critical area. Permitting held a pre-application meeting with Mr. Lee in March 2019; however, Mr. Lee did not subsequently submit a permit application. Ex. D1-001.
4. Permitting posted a stop work order on the Lee Parcels on April 13, 2021, after receiving more complaints. The order directed Mr. Lee to immediately install erosion control measures and to apply for and obtain the required permits. Mr. Lee did not appeal the stop work order. Nor did he obtain the required permits. Exs. D1-001, D5; testimony of Ofc. Breazeal.
5. The Stop Work Order is visible in the photographs Officer Breazeal took in November 2022. Ex. D6-004.
6. Permitting opened the current case, ENFR221196, in October 2022 based on complaints regarding clearing and grading within an aquatic area buffer, steep slope, and erosion hazard area. It replaces case ENFR180812 due to the expansion of the violation onto parcels not included in the 2018 case (the Yim and Villa Parcels). Ex. D1-001; testimony of Ofc. Breazeal.
7. Permitting issued a notice and order in January 2023, alleging grading in excess of 100 yd.³ and/or excavation in excess of 5 feet in vertical depth and/or creation of 2000 ft.² or more of new impervious surface; clearing of vegetation which exceeds a cumulative area of 7000 ft.² without the required permits, inspections and approvals, within steep slope, erosion, aquatic and critical aquifer recharge areas and/or their buffers in violation of identified provisions of chapters 16.82 and 21A.24 of the King County Code (KCC). Exs. D1-001, D2.
8. Mr. Lee (Appellant) timely appealed, contending that similar activities had taken place at a number of other locations within a mile with no consequences, that he had submitted a permit application in August 2021 but Permitting did not act on it, and that “we are

submitting for clearing and grading as we speak.” He did *not* contend that he had not committed the alleged violations. Exs. D1-001, D3.

9. The issues on appeal are those set forth in the August 2023 Notice of Remote Hearing. King County Hearing Examiner Rules of Procedure and Mediation, Rule VIII.D.
10. Mr. Lee testified that he brought in fill to level out the slope in his back yard to “beautify” his property. He believed that his property extended to the stream located at the bottom of the slope. He placed riprap at the top of the slope to secure the slope. A number of riprap retaining walls are visible on the Lee Parcels in the 2023 aerial photographs in Exhibit D7-001. Exhibit D7-001; testimony of Henry Lee.

Critical Areas

11. Ex. D9-001 depicts, in the darker green, steep slopes on the northern portions of the Lee and Yim Parcels and the southern portion of the Villa Parcel. The entire Lee and Yim Parcels as well as the southern portion of the Villa Parcel are erosion hazard areas, shown in the lighter green. The overlap of steep slopes and erosion hazard areas is of particular concern because the soil type is easily erodible. Ex. D9-001; testimony of Ofc. Breazeal
12. A stream, shown in blue on exhibits D9-001, crosses the southern portion of the Villa parcel. Officer Breazeal was not able to provide the classification of the stream. Buffers for streams outside of the urban growth area range from 25 feet for a Type O stream to 165 feet for a type S or F stream. Ex. D9-001; KCC 21A.24.358; testimony of Ofc. Breazeal.

Grading in excess of 100 yd.³/ Fill in excess of 3 feet in vertical depth

13. KCC 16.82.020.O defines grading as:

[A]ny excavating, *filling* or land – disturbing activity, or combination thereof. (Emphasis added in *italics*).
14. 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.
15. KCC 16.82.051.C.2 exempts from the requirement for a clearing and grading permit fill of less than 3 feet in vertical depth that, cumulatively over time, does not involve more than 100 yd.³ on a single site. This exemption is not available in steep slope hazard areas or their buffers or in aquatic areas or their buffers. Thus, a clearing and grading permit is required if the fill (a) equals or exceeds 3 feet in vertical depth *or* (b) is less than 3 vertical feet in depth but exceeds 100 yd.³ on a single site *or* (c) takes place within a steep slope hazard area or its buffer or in an aquatic area or its buffer.

16. Officer Breazeal took the photographs contained in exhibit D6 in November 2022. She observed, from the right-of-way, two dump trucks entering the eastern Lee Parcel (Parcel 0322059124). The lower photographs in exhibit D6-002, 3, 4 and upper photograph in exhibit D6-006 depict a dump truck backing into a driveway on the eastern Lee Parcel and proceeding northeastward to the top of the steep slope on the Yim Parcel, where it emptied its contents. The depth clearly exceeds 3 feet. Ex. D6; testimony of Ofc. Breazeal.
17. A comparison of the 2019 aerial photograph in exhibit D8-001 with the 2021 and 2023 aerial photographs in exhibit D8-001 and exhibit D7, respectively, demonstrate that between 2019 and 2023 fill was increasingly placed on the steep slopes on the western Lee parcel and entered (intentionally or either unintentionally as a result of erosion) the south-central portion of the Villa parcel, ultimately reaching and partially filling the stream. In addition, Melissa Villa personally observed the result of clearing and grading on the slope on the Lee and Villa Parcels leading down to the stream and the resulting reduction in streamflow. Exs. D7, D8; testimony of Ofc. Breazeal and Melissa Villa.
18. Thus, even if the stream were classified as Type O, the classification requiring the narrowest buffer, these aerial photographs indicate that fill was placed either intentionally or unintentionally both within the buffer and in the stream itself.
19. Both Appellant and his consultant, Joe Supersisky, testified that no clearing or grading occurred on the slope but then both conceded that “dirt did go onto the slope.” Testimony of Henry Lee and Joe Supersisky.
20. The Examiner takes notice of the fact that a standard dump truck holds 14 yd.³ Thus, the 2 dump trucks observed by Officer Breazeal would have contained approximately 28 yd.³ While it is quite likely that the extent of fill demonstrated in these aerial photographs substantially exceeds 100 yd³, the record does not contain any calculation of the amount of fill.

Excavation in excess of 5 feet in vertical depth

21. KCC 16.82.051.C.2 exempts from the requirement for a clearing and grading permit excavation of less than 5 feet in vertical depth that, cumulatively over time, does not involve more than 100 yd.³ on a single site. This exemption is not available in steep slope hazard areas or their buffers or in aquatic areas or their buffers. Permitting did not present evidence of excavation and the reference to excavation in the Notice and Order may have been an error. Testimony of Ofc. Breazeal.

Creation of 2000 ft.² of or more of new impervious surfaces

22. KCC 16.82.051.C.2 exempts from the requirement for a clearing and grading permit:

[G]rading 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.

23. 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. ... (Emphasis added in *italics*).

Similarly, KCC 21A.06.625 defines impervious surface as:

A non-vertical surface artificially covered or hardened so as to prevent or impede the percolation of water into the soil mantle at natural infiltration rates *including*, but not limited to, roofs, swimming pools and *areas that are paved, graveled* or made of packed or oiled earthen materials such as roads, walkways or *parking areas*... (Emphasis added in *italics*).

24. KCC 16.82.020 defines “site” as:

[A] single lot or parcel of land or 2 or more contiguous lots that are under common ownership or documented legal control used as a single parcel for a development proposal in order to calculate compliance with the standards and regulations of this chapter.

25. Under this definition, the Lee parcels are a single “site.” The Yim and Villa Parcels are a closer call. However, given the fact that Mr. Lee and Ms. Yim share the same address and Mr. Lee testified that undertook the fill to beautify “his backyard,” the Examiner finds that the Lee and Yim Parcels are a single site. Further, Mr. Lee testified that he thought his property extended to the stream. Thus, he treated the southern portion of the Villa Parcel as his own. For this reason, the Examiner finds that the portion of the Villa Parcel effected is part of the single site for purposes of calculating whether Appellant conducted grading that produced more than 2000 ft.² of impervious surface on a single site since January 1, 2005.
26. The Lee and Yim Parcels are each 14,700 ft.² in size. A comparison of the 2019 aerial photograph in Ex. D8-001 with the 2023 aerial photographs in exhibit D7 indicates that substantially all of Lee Parcel 0322059248 was converted to impervious surfaces and that approximately three quarters of Lee Parcel 0322059124 was converted to impervious surfaces between 2019 and 2023. Significant portions of Parcels 0322059248 and

0322059124 are used for parking vehicles ranging from passenger vehicles to large trucks and outside storage. The non-vegetated areas on Yim Parcel 0322059243 were cleared between 2019 and 2023 and are used for driveway and parking. Consequently, they also fall within the definition of impervious surfaces. Exs. D8-001, D7; testimony of Ofc. Breazeal.

27. Appellant’s consultant further testified that approximately 3900 ft.² of the Lee Parcels are covered with asphalt. Testimony of Joe Supersisky.
28. Exhibits D7 and D8 demonstrated that Appellant conducted grading that produced more than 2000 ft.² of impervious surface on a single site since January 1, 2005.
29. Clearing and grading permit exemptions are not available for grading within steep slope hazard areas or their buffers or in aquatic areas or their buffers. Thus, the creation of impervious surfaces, including any graveled areas, on any of the steep slope areas of the Lee, Yim, and Villa Parcels required a clearing and grading permit. KCC 16.82.020.

Clearing of vegetation which exceeds a cumulative area of 7000 ft.²

30. 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.

It is not limited to the removal of trees. Testimony of Ofc. Breazeal; KCC 16.82.020.D.

31. The entirety of the Lee and Yim parcels and the slope down to the creek are within an erosion hazard area. The cumulative clearing of less than 7000 ft.² within an erosion hazard area does not require a clearing and grading permit. KCC 16.82.051.C.3.
32. From the aerial photographs contained in exhibit D8-001, it is apparent that approximately 40% of Parcel 0322059248 and more than 50% of Parcel 0322059124 were vegetated in 2019 and that these parcels had been completely cleared by 2021. The cumulative clearing on these Parcels alone substantially exceeded 7000 ft.² Ex. D8-001; testimony of Ofc Breazeal.
33. Clearing within steep slope and aquatic (stream) areas and the aquatic area buffer is discussed in the following section of this decision.

Clearing of vegetation within environmentally critical areas (Steep Slope, Erosion, Aquatic and/or Critical Aquifer Recharge Areas) and/or their buffers

34. Findings 11-12 discuss the steep slopes, erosion hazard, and aquatic (stream) areas and aquatic area buffer on the Parcels. Permitting did not provide evidence that a critical aquifer recharge area is present on any of the Parcels.

35. The following exemptions from the requirement of a clearing and grading permit are available within the relevant types of critical areas on the Parcels:

- a. Steep slopes or their buffers: no exemption. Any clearing requires a clearing and grading permit. KCC 16.82.051.C.

From the aerial photographs contained in Ex. D8-001 and D7, it is evident that Appellant cleared substantial areas on the steep slopes on the Lee Parcels and along the Villa Parcel to the south of the creek. Further, Appellant conceded that he had cleared steep slopes on the Villa property, believing that it was part of his property. Exs. D7, D8-001; testimony of Henry Lee.

- b. Erosion hazard areas and their buffers: the cumulative clearing of less than 7000 ft.² including, but not limited to, collection of firewood and removal of vegetation for fire safety. KCC 16.82.051.C.3.

As found in Finding 32, the cumulative clearing on the Lee Parcels alone substantially exceeded 7000 ft.²

- c. Aquatic areas and their buffers: cutting of firewood for personal use in accordance with a forest management plan or rural stewardship plan approved under KCC Title 21A and removal of vegetation for forest fire prevention in accordance with best management practices approved by the King County Fire Marshal. KCC 16.82.051.C.4, C.23.

From the aerial photographs contained in Exs. D8-001 and D7, it is evident that Appellant cleared through the regulatory buffer and to the creek either intentionally or unintentionally by allowing the fill material brought onto his property to erode. Further, Appellant conceded that he had cleared steep slopes on the Villa property, believing that it was part of his parcels. Exs. D8-001; D7; testimony of Henry Lee.

36. Any Finding of Fact which should more properly be considered a Conclusion of Law is adopted as a Conclusion of Law.

CONCLUSIONS

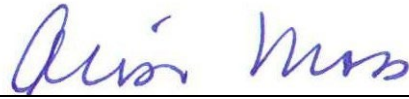
1. Any Conclusion of Law which should more properly be considered a Finding of Fact is adopted as a Finding of Fact.
2. Permitting has borne its burden of proof by a preponderance of the evidence that:
 - a. Appellant filled in excess of 3 feet in vertical depth.
 - b. Appellant placed fill within a steep slope hazard area and an aquatic area (stream) and its buffer.

- c. Appellant undertook grading that produced well in excess of 2000 ft.² of impervious surfaces on each of the Lee parcels (0322059124 and 0322059248) after January 1, 2005.
 - d. Appellant undertook cumulative clearing of more than 7000 ft.² within erosion hazard areas.
 - e. Appellant undertook clearing of steep slopes and an aquatic area buffer.
3. Permitting has not borne its burden of proof by a preponderance of the evidence that:
 - a. The fill exceeds 100 yd.³ on a single site or that excavation of more than 5 feet in vertical depth that, cumulatively over time, involving more than 100 yd.³ occurred on a single site.
 - b. Appellant cleared more than 7000 ft.² within a critical aquifer recharge area.

DECISION:

1. GRANT the appeal in part (fill in excess of 100 yd.³ a single site, excavation of more than 5 feet in vertical depth involving more than yards a single site clearing of more than 7000 ft.²);
2. DENY appeal 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:
4. Submit a complete pre-screening meeting request to Permitting by **November 15, 2023**.
5. Submit a complete permit application within **60 days** of the pre-application meeting unless otherwise determined at the pre-application meeting.
6. Meet all deadlines for requested information associated with the permit(s) and pick up the permit(s) within the required deadlines. Make any required corrections and obtain final inspection approval within one year of permit issuance.
7. No penalties shall be assessed against Henry Lee and Norrena Yim or the subject properties if the above actions are completed by the above deadlines, or by any reasonable deadline extension Permitting provides. If not, Permitting Services may issue penalties retroactive to today.

ORDERED October 3, 2023.



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 SEPTEMBER 20, 2023, HEARING IN THE APPEAL OF HENRY LEE AND NORRENA YIM, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR221196

Alison Moss was the Hearing Examiner *pro tem* in this matter. Participating in the hearing were Jeri Breazeal, Melissa Villa, Joe Supersisky, and Henry Lee. 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	Department of Local Services staff report
Exhibit no. D2	Notice and order, issued January 30, 2023
Exhibit no. D3	Appeal, received February 21, 2023
Exhibit no. D4	Codes cited in the notice and order
Exhibit no. D5	Stop Work Order, issued April 13, 2021
Exhibit no. D6	Photographs of subject property, dated November 2, 2022
Exhibit no. D7	Aerial photographs of subject property
Exhibit no. D8	2021 vs 2019 aerials
Exhibit no. D9	Critical Areas Overlays

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR221196**

HENRY LEE AND NORRENA YIM
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, Quaident-Impress, with sufficient postage, as **FIRST CLASS MAIL** in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED October 3, 2023.



Lauren Olson
Legislative Secretary

Breazeal, Jeri

Department of Local Services

Campbell, Thomas

Department of Local Services

Norrena Yim, Henry Lee

Hardcopy

Supersisky, Joe

Villa, Brennen/Melissa

Hardcopy

Whalen, LaDonna

Department of Local Services