

September 13, 2023

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR221235**

ADRIANA ALCARAZ

Code Enforcement Appeal

Location: [REDACTED] Shoreline

Appellant: **Adriana Alcaraz**
[REDACTED]
Shoreline, WA 98155
Telephone: [REDACTED]
Email: [REDACTED]

King County: Department of Local Services
represented by **Holly Sawin**
Department of Local Services
919 SW Grady Way Suite 300
Renton, WA 98057
Telephone: (206) 477-0291
Email: holly.sawin@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Adriana Alcaraz appeals a Department of Local Services (Local Services) enforcement order for various alleged land-use-related violations. After hearing witnesses testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the violations but we extend the time periods for compliance. We also attempt to provide some clarity on Ms. Alcaraz's options, depending on whether or not she seeks to permit a legal dwelling.

Background

2. Local Services served a notice and order to Ms. Alcaraz for (1) placement of a mobile home and container in critical area or their buffers, (2) clearing and grading, and in critical areas or their buffers, (3) accumulation of inoperable vehicles and vehicle parts and parking/storage of even operable vehicles on non-impervious surfaces, and (4) accumulation of rubbish, salvage, and debris. Ex. D2. Ms. Alcaraz timely appealed. Ex. D3.
3. We held a prehearing conference on July 18, and hearing on August 29. In an enforcement case, Local Services bears the burden of proving, by a preponderance of the evidence, those matters raised in an appeal statement. Exam. R. XV.E.2 & F.1. Unless directed to by law—and no special directive applies to today’s case—the examiner does not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3.

Analysis

4. The subject property is a relatively challenging one to legally develop. It is almost entirely overlain by potential landslide hazards, steep slope hazards, and (near the street frontage) a seismic hazard. Exs. D5-D7. It does not appear to have ever had an established primary use, such as residential, agricultural, etc. It does not, for example, seem to even have an assigned street address.
5. That was not so problematic up through 2017, because the property remained relatively undisturbed, save for a driveway. Ex. D9. However, in about 2018, the then-owner cleared and graded a large swath of property without the required permits. Ex. D10. The code’s default is that—unless specifically exempted—a person may not do *any* clearing or grading without first obtaining a clearing and grading permit from Local Services. KCC 16.82.050.B. Normally, cumulative clearing of up to 7000 ft.² is exempt from needing a permit. KCC 16.82.051.C.3. However, such clearing in landslide or steep slope areas or their buffers is not exempt from a permit. KCC 16.82.051.B. Similarly, there is normally a one-time exemption for adding up to 2000 ft.² of new impervious on a single site post-January 1, 2005. KCC 16.82.051.C.3. However, it appears the then-owner added much more than 2000 ft.² of impervious surface (compare exhibit D9 with D10) and, regardless, such grading in landslide or steep slope areas or their buffers is not exempt from a permit. KCC 16.82.051.B.
6. The then-owner also placed an RV and a tiny home. Ex. D10. While an RV is allowable as an *accessory* use to a legally established primary use, such as a single-family residence, there is no legally established primary use of this property. And he did not obtain a permit for the home or any other structure.
7. Ms. Alcaraz then purchased the property in 2022 and compounded the problem.

8. She cleared and graded¹ at least a new area northeast of where the previous owner undertook his work, creating an access route to, building a foundation for, and then placing a structure. Ex. D11 (“shed” at right edge); Ex. D15. The previous owner had already used up the 2000 ft.² of post-2005 impervious surface and, again, there has never been that exemption in landslide or steep slope areas or their buffers. So even if Ms. Alcaraz just changed the soil topography to, under, and around the structure she added in the northeast corner, that alone triggered the need for a grading permit. And while we believe her when she says that she did not cut down any big trees, clearing includes “the cutting, killing, grubbing or removing of *vegetation* or other organic material by physical, mechanical, chemical or any other similar means.” KCC 16.82.020.D. It is not limited to only cutting down trees.
9. In addition to the area on the northeast hillside, Ms. Alcaraz also added a blue shed on the hillside in the northwest corner, a red cargo container at the southwest corner, and a mobile home. Exs. D13-D15. Again, those are not allowed without an established primary legal use, and they all created additional impervious surface.²
10. Thus, Local Services has met its burden of showing, by a preponderance of the evidence, (1) the placement of a mobile home and containers without the necessary permits, and (2) clearing and grading without a permit. There does not appear to be a major (3) “accumulation” of inoperable vehicles and vehicle parts or vehicle storage or (4) “accumulation” of rubbish, salvage, and debris, where we would uphold the violation if those items were adjacent to a legally-established home.³ But again, without a legally established primary use, Ms. Alcaraz is not allowed to store much of anything on the property.
11. Ms. Alcaraz essentially has two options. Both will start with submitting a prescreening meeting request at MyBuildingPermit.com. (Ms. Sawin explained that she had already provided Ms. Alcaraz with the application form, and Ms. Sawin re-sent that material on September 6.) Regardless of what she does with the home, Ms. Alcaraz will need to address the clearing and grading violations—both hers and the owner’s she purchased the property from.
12. If she thinks constructing a home might be financially feasible, she can submit a prescreening meeting request to address both the clearing and grading and also a home. Conversely, if she decides she does not want to even try to start on the home-building process, she can submit a prescreening meeting request limited simply to clearing and grading. There is no harm, however, in including a single-family home component in her initial meeting request, so at the meeting Local Services can go over options, steps, and

¹ The definition of “grading” is broad, meaning “any excavating, filling or land-disturbing activity, or combination thereof,” with “land disturbing activity” itself defined as activity resulting “in a change in the existing soil cover, both vegetative and nonvegetative, or to the existing soil topography.” KCC 16.82.020.O & Q.

² Adding “new” impervious surfaces includes not only going from full pervious (like undisturbed dirt) to impervious, but also adding a more compacted surface to an area that was already somewhat impervious. KCC 16.82.020.O & Q; KCC 9.04.020.KK & .Z. Adding a roofed structure to a previously graveled area qualifies as adding more compacted surface, causing water to run off the roof at higher rates than the water was running off the underlying graveled area.

³ The area crowded with outdoor stuff at the western edge of the property gets a little closer to the line.

potential hurdles in trying to construct a legal dwelling unit on the property, giving her real-time information.

13. While Ms. Alcaraz is responsible for bringing hers, and the previous owner's, clearing and grading violations into compliance, the standard she will need to meet is different. KCC 23.02.130.B:

a property owner affirmatively demonstrates that the action which resulted in the violation was taken without the owner's knowledge or consent by someone other than the owner or someone acting on the owner's behalf, that owner shall be responsible only for bringing the property into compliance *to the extent reasonably feasible* under the circumstances.

Thus, there is some flexibility on how far Ms. Alcaraz has to go to correct the past-owner's clearing and grading violations. So, on the detailed site plan sheet she submits with her prescreening meeting request packet, she should sketch out and differentiate the specific contours of what was there when she purchased the property, versus the vegetation removal and land disturbing activity accomplished during her ownership. Any pictures she has of the site as it looked before she started her activities would be very helpful to include in her request packet.

14. In addition, Ms. Alcaraz mentioned removing some berry bushes. The code does make allowances for clearing invasive and noxious weeds. KCC 16.82.051.B. & C. So, on the detailed site plan sheet she submits with her prescreening meeting request, she should sketch out and differentiate exactly what type of vegetation she removed from where, and how she accomplished that (say, hand tools versus something else). Again, any pictures she has of the areas she cleared would be very helpful to include in her request packet.
15. If Ms. Alcaraz follows through on a building permit, then she can sketch out in those plans where, for example she intends to park vehicles or place storage sheds. If not, then she will need to remove virtually everything from the property.
16. Ms. Alcaraz asked about selling the property. If Ms. Alcaraz decides to cut her losses and she actually sells the property, the new owner would then be responsible for bringing the existing violations into compliance. (Because the notice and order is recorded on the title, one would think the sale price would be significantly lower than for a similar but unencumbered property, but that is a financial, not a code enforcement, issue.) If Ms. Alcaraz has *already* been assessed penalties for missing the below deadlines, those penalties would not evaporate when Ms. Alcaraz sells the property.
17. So, whatever course Ms. Alcaraz takes, she should work diligently, keep Local Services in the loop, and ask about any potential extensions well *before* a deadline runs out and she

finds herself saddled with penalties of \$140/per day for the first month, doubling to \$280/day for the second month.⁴

DECISION:

1. We uphold all four violations in the May 25, 2023, notice and order.
2. To bring the property into compliance, Ms. Alcaraz must stop work and apply for and obtain the required permits, inspections and approvals according to below schedules.
3. As to the clearing and grading, by **October 27, 2023**, submit a complete permit prescreening meeting request on MyBuildingPermit.com, using the form Local Services has provided. (Ms. Alcaraz should re-read paragraphs 13 and 14 above in terms of suggestions for what to include in her application related to clearing and grading.) Meet all deadlines for requested information associated with the permit(s) and pick up the permit(s) within the required deadlines.
4. As to the structures:
 - A. If Ms. Alcaraz at least thinks she *might* want to construct a home, then include this in her complete permit prescreening meeting she submits by **October 27, 2023**. If, after that meeting, and after reading the follow-up email Local Services sends out after the meeting, Ms. Alcaraz still wants to pursue constructing a home, then:
 - i. Within **90 days** after Local Services sends out its follow-up email, submit a complete application to the Health Department, to include the ABC structures. (Note: If a Critical Area Designation (CAD) letter is required by the Health Department, apply for the CAD on MyBuildingPermit.com within 90 days of prescreening meeting and apply to the Health Department within 90 days of receiving the CAD letter.)
 - ii. Submit a complete building permit application on MyBuildingPermit.com within **90 days** of receiving Health Department approval. (Note: Applying for a permit does not ensure that a permit will be issued. An applicant should also be aware that permit fees and/or site conditions and/or repair expenses may make the application cost prohibitive. The only alternative may be to demolish the non-permitted construction.)
 - iii. Meet all deadlines for requested information associated with the permit(s) and pick up the permit(s) within the required deadlines. Request a building inspection at time of building permit issuance, make any required corrections and obtain final approval for occupancy within one year of permit issuance.

⁴ The penalties are listed on page 3 of the notice and order. Ex. D2 at 003.

- iv. If permit application or any required approvals including but not limited to Health Department approval is denied, within **90 days** of final denial of any of the permit approvals remove everything from the property *except* for one structure for keeping tools and other items related to the clearing and grading restoration work on the property.
 - B. If, after prescreening meeting, and after reading the follow-up email Local Services sends out after the meeting, Ms. Alcaraz does not want to pursue constructing a home, or if at any time during the building permit process she decides a home is not feasible:
 - i. continue through with obtaining and finalizing a clearing and grading permit; and
 - ii. within **90 days** after Local Services sends out its follow-up email, or within **90 days** after Ms. Alcaraz sends written notice (email is fine) that she is not continuing on with the building permit process, remove everything from the property *except* for one structure for keeping tools and other items related to the clearing and grading restoration work on the property.
5. As to the inoperable vehicles/vehicle parts/vehicle parking and the rubbish, salvage, and debris:
 - A. Ms. Alcaraz can keep those items so long as she is diligently following through with the building permit process.
 - B. Within **90 days** after Local Services sends out its follow-up email, or within 90 days after Ms. Alcaraz sends written notice (email is fine) that she is not continuing on with the building permit process, remove everything from the property *except* for one structure for keeping tools and other items related to the clearing and grading restoration work on the property.
6. No penalties shall be assessed against Ms. Alcaraz or the subject property if the above actions are completed by the above deadlines, or by any reasonable deadline extension Local Services provides. If not, Local Services may issue penalties retroactive to today. Be sure to notify Local Services of progress and ask for any necessary deadline extensions well before the above deadlines expire.

ORDERED September 13, 2023.



David Spohr
Hearing Examiner

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 AUGUST 29, 2023, HEARING IN THE APPEAL OF ADRIANA ALCARAZ, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR221235

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin and Adriana Alcaraz. 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 May 25, 2023
Exhibit no. D3	Appeal, received June 15, 2023
Exhibit no. D4	Codes cited in the notice and order
Exhibit no. D5	iMAP Potential Landslide Hazard and Buffer for subject parcel
Exhibit no. D6	iMAP Potential Steep Slope Hazard for subject parcel
Exhibit no. D7	iMAP Potential Seismic Hazard and Stream for subject parcel
Exhibit no. D8	iMAP Potential Erosion Hazard for subject parcel
Exhibit no. D9	CONNECTExplore aerial dated, May 19, 2017– predisturbance with outline of current site disturbance
Exhibit no. D10	CONNECTExplore aerial dated April 18, 2021, site conditions pre-Ms. Alcaraz’s ownership
Exhibit no. D11	CONNECTExplore aerial dated April 26, 2023, expansion of clearing/grading, building and zoning violations post Ms. Alcaraz’s purchase of subject parcel
Exhibit no. D12	Statutory Warranty Deed for Ms. Alcaraz, dated June 17, 2022
Exhibit no. D13	Photograph taken by Officer Sawin on August 9, 2023, of subject mobile home, vehicles and household good
Exhibit no. D14	Photograph taken by Officer Sawin on August 9, 2023, of structure in area mapped steep slope hard-west of the mobile home
Exhibit no. D15	Photograph taken by Officer Sawin on August 9, 2023, of cargo container, tow truck and dilapidated structure on hillside

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR221235**

ADRIANA ALCARAZ
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, Quadiant-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 September 13, 2023.



Lauren Olson
Legislative Secretary

Alcaraz, Adriana

Hardcopy

Breazeal, Jeri

Department of Local Services

Campbell, Thomas

Department of Local Services

Sawin, Holly

Department of Local Services

Whalen, LaDonna

Department of Local Services