

October 13, 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)

**REPORT AND DECISION**

SUBJECT: Department of Local Services file no. **ENFR230136**

**BRETT AND ELISABETH COFFMAN**  
Code Enforcement Appeal

Location: [REDACTED] Woodinville

Appellants: **Brett and Elisabeth Coffman**  
[REDACTED]  
Oroville, WA 98844  
Telephone: [REDACTED]  
Email: [REDACTED]

King County: Department of Local Services  
*represented by* **Ben Hossienzadeh**  
Department of Local Services  
919 SW Grady Way Suite 300  
Renton, WA 98057  
Telephone: (206) 263-2196  
Email: [bhossienzadeh@kingcounty.gov](mailto:bhossienzadeh@kingcounty.gov)

**FINDINGS AND CONCLUSIONS:**

Overview

1. In July 2023, the Department of Local Services served a notice and order on Brett and Elisabeth Coffman, asserting clearing and grading within critical areas/buffers triggering the need for a permit. Ex. D2. Mr. Coffman timely appealed. Ex. D3. After hearing witness testimony and observing demeanor, studying exhibits admitted into evidence, and considering party arguments and the relevant law, we deny the appeal but extend the timeline so Mr. Coffman can pursue selling the property versus applying for a permit.

### Background

2. We held an August 14 prehearing conference, where we discussed the issues for hearing and prehearing submittal deadlines, before agreeing on an October 10 hearing date. Our August 21 prehearing order set an initial exhibit deadline, along with a rebuttal exhibit deadline. Local Services mailed Mr. Coffman a hard copy of their staff report and exhibits, and we forwarded Mr. Coffman a link to an electronic version. Mr. Coffman did not submit any exhibits of his own.
3. At our October 10 hearing, Jeri Breazeal offered Local Services' main testimony, with Ben Hossienzadeh explaining his pictures. Brett Coffman testified on his own behalf.
4. Prior to the Coffmans' purchase, the then-owners of the subject parcel (192606-9031) and the property to the north (192606-9053) attempted to develop those properties. They began with a 2007 critical areas designation, which concluded that:

Both parcels are nearly covered by a large, **Category I** wetland area which extends off-site to the north, east, and south. The riverine wetland discharges into Bear Creek and much of the off-site wetland areas contain several wetland habitat types, including palustrine, forested, scrub-shrub, emergent and ponded wetland areas, which appear to be fed primarily from Bear Creek, high groundwater conditions, precipitation, and surface runoff. The wetland is described more completely in the Watershed Report dated July 29, 2005 and prepared for Blake and Karen Egenes. The Watershed report labels the wetland as "Wetland A" and rates the wetland as a Category I wetland.

Ex. D8 at 001.

5. The owner's consultant, Wetland Resources, Inc., helped them try to develop one single-family residence on each lot. Ex. D10 at 006. Wetland Resources, Inc.'s 2015 critical areas study and conceptual mitigation plan found that:

The subject site is entirely encumbered by the presence of the on-site wetland and its associated buffer. Any development of the site will result in wetland and/or buffer impact. Development of the site is further constrained by King County health codes requiring septic drainfields to be installed at least 100 feet from surface water. Since the entirety of the project site is wetland or associated buffer, the use of buffer averaging provisions outlined in KCC 21A.24.325(C) is not feasible. As the standard buffer modifications in the King County Code do not provide for usable areas on these properties, the applicant is requesting a wetland buffer alteration exception as outlined in KCC 21A.24.070.

Ex. D10 at 006.

6. If those owners had followed through with the project and applied for a development permit, they would have been required to—prior to the County's approval of that development proposal—record a notice on title informing the public of, among other things, the presence of critical areas or buffers on the property. KCC 21A.24.170. The owners, however, elected not to follow through with a development application, so they

were not required to record anything on their title. Instead, they sold the property to Mr. Coffman, who is a developer. It is not clear whether Mr. Coffman saw that ecologist's report prior to purchasing the property, but he noted that he bought it for a "great price," and any dispute about seller disclosures would be between him and the sellers.

7. Mr. Coffman mentioned talking to somebody at the County (he did not remember who) who showed him some documents (he did not say what) that showed no wetlands or buffers on the property, which agreed the title report. Again, because those owners did not follow through with a development permit, they never recorded a critical areas notice on their title. Mr. Coffman mentioned other documents, but he did not submit any exhibits. The record we base our decision on includes only the exhibits Local Services submitted two weeks before the hearing, plus hearing testimony.
8. It is not entirely clear why Mr. Coffman started his development efforts with the U.S. Army Corps of Engineers, versus with the County, but that is where he began. He said the Corps noted that the 2007 wetlands report is out of date. Mr. Coffman wanted to do test holes, which he dug. There is no showing that he submitted anything to the County at the time, but Local Services clarified that it has not cited Mr. Coffman for any test hole drilling.
9. Mr. Coffman explained that he cleared a space on the subject property to put a trailer he hoped to reside in while he tried to get a more permanent structure permitted and built. He denied he "cleared" anything, reasoning that because he did not cut down any trees there was no "clearing." He believes the lack of any critical areas recorded on the property is dispositive, and that the County has violated his constitutional rights.

#### Analysis

10. 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.
11. The code's default is that—unless specifically excepted—a person shall not do *any* clearing or grading without first obtaining a clearing and grading permit from Local Services. KCC 16.82.050.B. 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. The definition of clearing is broader still, including "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. There is no requirement that the vegetation cut be mature trees or even trees at all. Mr. Coffman removed at least some understory vegetation, disturbed some existing soil topography, and placed some gravel down; some of these activities were near the road (exhibits D5

and D6) and some were deeper into the property (exhibit D7). Thus, Mr. Coffman both “cleared” and “graded” the property, as those terms are defined in code.

12. Outside of critical areas or their buffers, there are certain thresholds below which a clearing/grading permit is not required—including adding less than 2,000 ft.<sup>2</sup> of new or replaced impervious surface or clearing under 7,000 ft.<sup>2</sup> KCC 16.82.051.C.1.-.3. The problem is that none of those safe harbors apply in a wetland or its buffer. KCC 16.82.051.B. Thus, if Mr. Coffman’s activities were in a wetland or wetland buffer, he triggered the need for a clearing/grading permit, regardless of how much or how little vegetation he cleared or land he disturbed.
13. Mr. Coffman asserts that because there is no wetland/buffer recorded on title, there is no wetland/buffer on his property. However, we make our decisions based on the more-probable-than-not standard. And the best evidence in the record we have about critical areas—the 2007 analysis and especially the 2015 study—agree that the entire property, or nearly the entire property, is a wetland/wetland buffer. Mr. Coffman questioned those studies and how they were conducted. The ecologists the previous owners hired explained, over the course of their fifty pages of analysis, how they delineated the wetlands, including using the Corps’ manual. Exs. D10 (including page 011) & D11. Mr. Coffman did not produce any contrary studies, or even something like the results of his test hole sampling, which might have showed (or not showed) the presence of hydric study. Instead, his only evidence was his lay opinion that it *could* be that the area he worked was not in the buffer. Local Services has met its burden of proving that Mr. Coffman cleared and graded in what was, more likely than not, a wetland or wetland buffer, thus triggering the need for a permit.
14. As Mr. Coffman begins the application process, he may submit his own updated critical areas analysis if he disputes the earlier studies; Mr. Coffman is correct that wetland conditions and boundaries and classifications can change over time.<sup>1</sup> Typically, such studies only pencil out where one wants to keep or expand the work, as part of, say, a single-family home application. Conversely, a less expensive option would be pursuing a permit to restore the site through, say, removing the gravel he added, doing some soil amendments, and replanting. Local Services agreed that the clearing and grading violation here was not “huge.” Thus, the required restoration work may not be that extensive.
15. Those remedy issues are questions to work out *through* the permit process. The finding we make today does not prejudice the *outcome* of the permit process. It is simply that Mr. Coffman’s activities triggered the need *for* a clearing/grading permit, and thus that Mr. Coffman must apply for a permit, either to legalize his clearing/grading or to restore the property to close to what it was when he purchased it.

---

<sup>1</sup> He would want to start with the County, not with the federal government. What wetlands count as “waters of the United States” is in a state of flux, both as a matter of Executive Branch policy and of judicial interpretation. *See Sackett v. Environmental Protection Agency*, 598 U.S. \_\_\_, (May 25, 2023). The question a consultant (and then Local Services) would be reviewing is how much of the property qualifies as wetland/buffer under the *County* code, not whether any areas meet the higher threshold to qualify as “waters of the United States” under the Clean Water Act.

16. Mr. Coffman mentioned that he has been working with the Department of Natural Resources and Parks (Parks) to sell them the property. He thought that Parks should have their budget by November, and that he could work out a purchase and sale agreement with them a month or two after their budget is finalized. As with any property, if a sale occurs post-notice and order but prior to penalties being issued to the then-owner, Local Services closes out the notice and order and seek compliance from the new owner. We have no say over, or even an opinion on, how Parks spends its money. But we will push back Mr. Coffman’s permit application deadline to give him flexibility to pursue a sale and transfer responsibility to Parks.

DECISION:

1. We deny Mr. Coffman’s appeal.
2. Mr. Coffman shall apply for and obtain the required permits, inspections, and approvals by the following schedule:
  - A. By **February 16, 2023**, Mr. Coffman shall submit a complete permit prescreening meeting request to Local Services.
  - B. Unless otherwise determined at the pre-application meeting, within **90 days** after Local Services sends out its meeting follow-up email, submit a complete permit application.
  - C. 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.
3. No penalties shall be assessed against the Coffmans 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* a deadline expires.

ORDERED October 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 OCTOBER 10, 2023, HEARING IN THE APPEAL OF BRETT AND ELISABETH COFFMAN, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR230136**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal, Ben Hossienzadeh, and Brett Coffman. 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 July 3, 2023
Exhibit no. D3	Appeal, received July 27, 2023
Exhibit no. D4	Codes cited in the notice and order
Exhibit no. D5	Photographs of subject property, dated on February 15, 2023
Exhibit no. D6	Photographs of subject property, dated on June 9, 2023
Exhibit no. D7	Aerial photographs of subject property, dated 2021
Exhibit no. D8	Critical Area Designation, dated on October 2, 2007
Exhibit no. D9	Violation letter issued by Officer Sawin, dated on February 16, 2023
Exhibit no. D10	Wetland delineation report
Exhibit no. D11	Site map showing critical areas

October 13, 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. **ENFR230136**

**BRETT AND ELISABETH COFFMAN**  
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 October 13, 2023.



---

Lauren Olson  
Legislative Secretary

**Breazeal, Jeri**

Department of Local Services

**Campbell, Thomas**

Department of Local Services

**Coffman, Brett/Elisabeth**

Hardcopy

**Hossienzadeh, Ben**

Department of Local Services

**Whalen, LaDonna**

Department of Local Services