April 4, 2024

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR230810**

WHERE IT'S GREEN LLC
Code Enforcement Appeal

Location: [redacted] Duvall

Appellant: Where It's Green LLC
represented by **Dave Beecher**
[redacted]
Redmond, WA 98053
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

RECOMMENDATIONS/DECISION:

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

FINDINGS:

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 in part and denies it in part.

Notice and Order and Appeal

2. Where It's Green LLC is the record owner of property located at 15717 West Snoqualmie Valley Road NE, Assessor's Parcel 14260690089008, located in the RA-10P (property specific development standards) zone. According to the Secretary of State's website, David Beecher is the Governor of Where It's Green LLC.

3. The Department of Local Services – Permitting Division (Permitting) opened this enforcement case based on the referral by the Health Department on July 12, 2023, of a complaint regarding a dog kennel. Based on research and a site visit, Permitting determined that the complaint was well-founded: there are two shipping containers that had been converted to dog kennels. After checking records back to 1987, Permitting determined that it has not issued permits for either the placement of the shipping containers or their conversion to dog kennels. During an August 17, 2023, site visit with Mr. Beecher and his tenants, Officer Hossienzadeh also observed approximately 10,000 square feet of clearing in a critical area. Exs. D1-001, -002. A15-004, A17-001; testimony of Ofc. Hossienzadeh.

4. Permitting issued a Notice and Order on December 11, 2023, alleging the violations described in Finding 6 below. Exs. D1-001, D2; testimony of Ofc. Hossienzadeh.

5. David Beecher (Appellant) timely appealed the Notice and Order. Appellant contended that the clearing constituted routine property maintenance by his renters (such as road upkeep, trash removal, and invasive plant removal), which he had authorized, and that Permitting had misclassified the critical areas and "overlooked pre-existing property features." Exs. D1-001, D3-001, -002, A32-007; testimony of Ofc. Hossienzadeh and David Beecher.

6. As stated in the February 20, 2024, Notice of Remote Hearing, the issues on appeal are as follows. Has Permitting shown by a preponderance of the evidence that Appellant:

    a. Cleared vegetation exceeding a cumulative area of 7,000 square feet within erosion hazard critical areas without the required permits, inspections, and approvals in violation of enumerated provisions of the King County Code (KCC);

    b. Cleared vegetation within steep slope and/or aquatic area critical areas and/or their buffers without the required permits, inspections, and approvals in violation of enumerated provisions of the KCC;

c. Placed cargo containers within environmentally critical areas (steep slopes, erosion hazard) and/or their buffers without the required permits, inspections and approvals in violation of enumerated provisions of the KCC and International Building Code;

d. Converted the cargo containers referenced in Issue C into dog kennels without the required permits, inspections and approvals in violation of enumerated provisions of the KCC and International Building Code?

Critical areas

7. King County iMAP indicates a potential landslide hazard area in the southern portion of the property; localized potential steep slope hazard areas throughout the property and a stream running west – east in the central portion of the property. Permitting testified that the stream is classified as a Type F stream requiring a 165-foot buffer. The entire site is mapped as an erosion hazard area. The northern edge of the site is mapped as a seismic hazard area. Permitting has not alleged violations within the seismic or landslide hazard areas. The critical areas at issue are steep slopes and aquatic areas and their buffers and erosion hazard areas. Exs. D2, D6-009, A54-002; testimony of Ofc. Hossienzadeh.

8. Appellant commissioned a critical area assessment by the Riley Group. It confirms:

a. The northern edge of the site is a seismic hazard area, primarily in the Tuck Creek drainage.

b. The site slopes are mapped as Alderwood and Kitsap soils, very steep, and Alderwood gravelly sandy loam, 15 to 30 percent, and meet the criteria for an erosion hazard area.

c. An unnamed stream descending east through the site, bounded by north- and south-facing slopes that descend to the stream valley at a gradient of 30 to 50 percent. Although it is not mapped on Exhibit A54-006 (Figure 2 to the Riley Group report), Mr. Beecher testified that the Riley Group drew the accurate location of the stream on Exhibit A13-001, which the Riley Group created. The Riley Group locates the stream a fairly significant distance south of the location shown on iMAP.

d. The southern portion of the property contains another unnamed stream that descends east of the site with north- and south-facing slopes the descend to the valley at a gradient of about 50 percent.

e. The southern portion of the site south of the central stream drainage is mapped as a potential landslide hazard area on iMAP and includes the alluvial fan as a central drainage. The Riley Group did not complete reconnaissance of this portion of the property.

f. Localized slopes in the northern portion of the property descend at gradients greater than 40% and are mapped as potential steep slope hazard areas. The

north – facing slope above Tuck Creek descends at gradients of about 80 percent and the east – facing slopes of a former sand and gravel pit in the northeastern portion of the site descend at about 75 percent. Localized south – facing slopes descend to the central drainage at a gradient of about 30 to 50 percent.

Figure 2 to the Riley Group report is a LIDAR map obtained from King County iMAP on which the Riley Group has highlighted the seismic, steep slope, and potential landslide hazard areas in green, orange and magenta, respectively. Exhibit A54-006; testimony of David Beecher (regarding the source of his LIDAR exhibits).

Exs. A54, A13-001.

9. Permitting offered no testimony regarding the Riley Group report. Because the Riley Group report is based on site-specific analysis, the Examiner accepts Exhibits A54-006 and A13-001 as the most probative evidence of the location of the steep slopes and the stream.

Clearing generally

10. Clearing is regulated by both the clearing and grading code, Chapter 16.82 KCC, and the critical areas code, Chapter 21A.24 KCC.

11. KCC 16.82.020.D and 21A.06.195 define "clearing" as, "Cutting, killing, grubbing or removing of vegetation or other organic material by physical, mechanical, chemical or other similar means."

12. The cumulative clearing of less than 7,000 square feet outside of critical areas and their buffers or within certain types of critical areas, including erosion hazard areas, does not require a clearing and grading permit. Clearing exceeding 7,000 square feet does require a permit. The 7,000 square-foot exemption is not available for clearing within a steep slope hazard area, aquatic area or their buffers. KCC 16.82.051.C.3 (erosion hazard area); KCC 16.82.051 ("N[o] P[ermit] 3" not applicable to steep slope hazard area, aquatic areas, or their buffers).

13. Activities which do not require a clearing and grading permit, such as the normal and routine maintenance of a private access road, do not count toward the 7,000 square-foot exemption. Testimony of Ofc. Hossienzadeh.

14. With exceptions not relevant to this case, clearing on steep slopes and in aquatic areas and their buffers is not allowed. Removal of invasive vegetation is discussed under "Clearing of vegetation within steep slope and/or aquatic area critical areas and/or their buffers," below. KCC 21A.24.045.

15. Permitting contends Appellant conducted or authorized clearing within erosion hazard areas and steep slope hazard areas and *may* have touched an aquatic area (stream) buffer. Ex. D2; testimony of Ofc. Hossienzadeh.

16. Permitting has estimated the area of the clearing to be 9,441 square feet. Ex. D6-011.

17. Appellant does not question this calculation but contends that clearing on the property was limited to trash removal, maintenance of existing roads, and invasive and/or noxious plant eradication. Ex. A32-008, -010, -015; Testimony of David Beecher.

Clearing of vegetation within steep slope and/or aquatic area critical areas and/or their buffers

18. There are several white spots in the LIDAR map contained in Exhibit A13-001. Appellant's uncontested testimony is that the southernmost white spot represents the area of clearing. A comparison of Exhibit A13-001 with Exhibit A56-006 demonstrates that this white spot is not within a steep slope area.

19. As stated in Finding 15, Permitting testified that clearing *may* have touched an aquatic area buffer. This supposition is insufficient to support an enforcement action. Further, Exhibit A13-001 demonstrates that the stream is located to the south of the location shown on iMAP, i.e. further from the area cleared.

20. The Examiner cannot find that the clearing took place within a steep slope, aquatic area, or their buffers. The question, then, is whether clearing within the erosion hazard areas (which cover the entire property) exceeded 7,000 square feet, after taking into account available exemptions.

Trash removal/removal of noxious weeds

21. Appellant acquired the property in 2017. Under the prior owner, a tenant had operated an automotive business on the property for 16 years. Appellant and/or his tenants have substantial evidence of the automotive business, including buried oil filters. There are also several dump sites on the property. Appellant and his tenants have taken actions to clean up the trash and buried debris, using both hand labor and a track hoe. Permitting acknowledges their good intentions, but contends that, because these activities occurred within steep slopes or its buffer or possibly within an aquatic area buffer, they had to have been conducted with hand labor only. Exs. D1, A32-005; testimony of David Beecher and Ofc. Hossienzadeh.

22. Removal of noxious weeds does not require a clearing and grading permit. KCC 16.82.051.B. However, removal of noxious weeds or invasive vegetation in certain kinds of critical areas, including steep slope hazard areas and aquatic areas and their buffers, absent a forest management, farm management, or rural stewardship plan, must be conducted with hand labor, the cleared area must be stabilized to avoid regrowth and regeneration of noxious weeds, and the cleared area must be revegetated with native vegetation and stabilized against erosion. In response to questions from the Examiner, Permitting confirmed that these restrictions do not apply to erosion hazard areas. As provided in Finding 20, the Examiner has determined that the clearing occurred only in an erosion hazard area. KCC 21A.24.045.C.23; testimony of Ofc. Hossienzadeh.

23. KCC 21A.06.815 defines noxious weeds as: a plant species that is highly destructive, competitive or difficult to control by cultural or chemical practices, limited to any plant

species listed on the state noxious weed list in chapter 16-750 WAC, regardless of the list's regional designation or classification of the species.

24. Himalayan blackberry is a Class C noxious weed. WAC 16-750-015.

25. Appellant presented evidence from several individuals who observed trash piles overgrown by blackberries and pointed out an area in Exhibit A55-011 where blackberries had grown over a pile of tires. Exs. A35 - A39, A55-001; testimony of David Beecher.

26. The clearing was not limited to removal of blackberries. Other vegetation is evident in Exhibits D6-007 and D6-008 (2021 aerial photographs), A6- 001 (2013 iMAP image), A30- 001 (2015 iMAP image), and A29-001 (2021 iMAP image).

27. Exhibits D5-002 through -009, are photographs taken by Permitting during the site visit. The area photographed is located to the west of the track hoe shown in Exhibit D6-001. These photographs make evident that most of the cleared area was cleared to bare dirt, as do Exhibits D6-002, D6-004 through D6-006, and D6-010. Exs. D5-002 through -009, D6-001 , -002, -004 through -006 and -010; testimony of Ofc. Hossienzadeh.

Private road maintenance

28. Appellant contends that the clearing area is the junction of the property's roads dating to at least 1998. Exs. A7-001, A8-001, A32-015; testimony of David Beecher.

29. No permit clearing and grading permit is required for normal and routine maintenance of a private access road if:

    a. there is no alteration of a ditch or aquatic area that is used 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. KCC 16.82.051.C.13. (Emphasis added in *italics*).

30. While there may have historically been informal access roads crossing some portions of the area of clearing, there is no evidence in the record that the roads were constructed in accordance with the Code. Further, Appellant conceded that the roads had been "neglected for a while" and not maintained. Moreover, the oval shaped area clearing exceeds the area of potentially historic access roads. Consequently, the clearing does not fall within the exemption for normal and routine maintenance of a private access road. Testimony of David Beecher.

Clearing of vegetation exceeding 7,000 square feet within an erosion hazard area

31. The area clearing within the erosion hazard area exceeded 7,000 square feet. Ex. D6-011.

Clearing limits versus clearing exemptions

32. KCC 16.82.150 establishes clearing limits for RA zoned property. It does not establish exemptions from the need to obtain a permit for the clearing; those are found in KCC 16.82.051. As Appellant points out, the 35% clearing limit for lots larger than 5 acres could theoretically allow clearing of up to 7.74 acre on the property with a clearing and grading permit, assuming that amount of clearing could be permitted under Chapter 21A.24 KCC.

33. Appellant cites KCC 16.82.150.F.6. This provision allows removal of invasive or noxious species within the areas outside of the 35% clearing limits. Unless exempted by KCC 16.82.051, such removal, while allowed, would still require a clearing and grading permit. Ex. A32-010 through -011.

Placement of cargo containers within environmentally critical areas (steep slopes, erosion hazard) and/or their buffers

34. Appellant's appeal statement does not address the cargo containers. Ex. D3.

35. Appellant's exhibits and testimony offered varying arguments regarding the cargo containers. In his exhibits, he does not contest the placement of the cargo containers, but rather argues variously that they are not within critical areas or their buffers or that the areas on which they were placed had been previously developed. At the hearing he seemed to suggest that the cargo containers were present when he acquired the property in 2017, but, in response to direct questions from the Examiner and Permitting asking whether that was his testimony, he evaded the question. Ex. A32-018, -019; testimony of David Beecher.

36. A comparison of the 2019 and 2023 aerial photographs in Exhibit D7-001 through D7-003 indicate that the cargo containers were placed on the property sometime between 2019 and 2013.

37. A cargo container constitutes a structure if it is placed on the property on more than a temporary basis. Testimony of Ofc. Hossienzadeh.

38. An accessory structure smaller than 200 square feet does not require a building permit; structures exceeding 200 square feet do require a building permit. https://mybuildingpermit.com/sites/default/files/TS-00_Permits%20Not%20Required.pdf.

39. Cargo containers larger than 200 square feet are evident in Exhibits D5-001, D6-012, D6-013 and D6-014 (estimate of size).

40. Exhibits A7-001 and A8-001 provide Appellant's depiction of the location of the cargo containers and the "driveways" on which they were placed. Permitting did not contest his testimony. A comparison of Appellant's placement of the cargo containers with the steep slopes shown on Exhibit A54-006 indicates that they are outside of the steep slopes.

41. KCC 21A.24.045.A allows alterations in erosion hazard areas if the alteration complies with the development standards, impact avoidance and mitigation requirements established in chapter 21.24. However, a building permit is still required. Testimony of Ofc. Hossienzadeh.

Conversion of cargo containers into dog kennels.

42. Section 105.1 of the International Building Code (IBC) requires a building permit for the construction or change of occupancy of a building or structure.

43. Appellant variously acknowledges that the kennels are converted storage containers and that "the dog kennel in question has always functioned as a kennel." Exs. A19-001, A32-005, A32-024 through -025.

44. Appellant seems to argue (erroneously) that the kennels' "functionality" makes permits unnecessary. Exs. A32-018, -024 through -025, A40.

45. In the site visit Officer Hossienzadeh observed that the two cargo containers at issue each had an HVAC system on the back of the container. Testimony of Ofc. Hossienzadeh.

46. Exhibits D8-004 and D8-011 provide photographs of the interior of one of the containers obtained from FarmView Dog Boarding's website. They are consistent with Officer Hossienzadeh's observations of the inside of one of the kennels during the site visit. Testimony of Ofc. Hossienzadeh.

47. Any Finding of Fact which is more properly considered a Conclusion of Law is hereby adopted as a Conclusion of Law.

CONCLUSIONS

1. Any Conclusion of Law which is more properly considered a Finding of Fact is hereby adopted as a Finding of Fact.

2. Permitting has borne its burden of proof by a preponderance of the evidence that Appellant or his tenants:

    A. Cleared more than 7,000 square feet in erosion hazard areas without the required permits, inspections, and approvals;

    B. Placed cargo containers on erosion hazard areas without the required permits, inspections, and approvals;

    C. Converted the cargo containers into dog kennels without the required permits, inspections, and approvals.

3. Permitting has not borne its burden of proof by a preponderance of the evidence that Appellant or his tenants:

A. Cleared vegetation within steep slope and/or aquatic area critical areas and/or their buffers.

DECISION:

1. GRANT the appeal in part (clearing within steep slope and/or aquatic area critical areas and/or their buffers; placement of cargo containers on steep slopes).

2. DENY the appeal in part (clearing of more than 7,000 square feet within erosion hazard areas; placement of cargo containers on erosion hazard areas and conversion of the cargo containers to dog kennels).

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

   A. Submit a complete pre-screening meeting request to PERMITTING within 30 days of this decision. (This application can be combined with the submittal for violation # 2)

   B. Submit a complete permit application within 30 days of the pre-application meeting follow up email unless otherwise determined at the pre application meeting.

   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.

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

   A. A complete permit pre-screening meeting request shall be submitted within 30 days of this decision. (This can be combined with the pre application requirement for violation #1.)

   B. A complete application must be submitted to the Health Department for approval within 30 days of the permit pre-screening meeting; provide a copy of the Health Department application to Code Enforcement.

   C. A complete building permit application is to be submitted within 45 days of the permit pre-screening meeting follow up email or within 30 days of the Health Department's approval unless otherwise determined at the pre application meeting.

   NOTE: Application 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.

D. 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 permit issuance, make any required corrections and obtain final approval for occupancy within one year of permit issuance.

E. If the permit application or any required approvals including but not limited to Health Department approval is denied, apply for and obtain a demolition permit to remove the new construction within 30 days of final denial of any of the permit approvals. Demolition must be completed within 60 days of permit issuance even though a demolition permit is good for 1 year.

OR

1b. If an application to permit the structures is not pursued, apply for and obtain a permit to remove the new construction within 60 days of denial. Removal must be completed within 60 days of permit issuance even though a permit is good for 1 year.

5. No penalties shall be assessed against Where It's Green LLC or the subject property if the above actions are completed by the deadlines in Paragraphs 3 and 4, or by any reasonable deadline extension Permitting provides. If not, Permitting may issue penalties retroactive to today.

ORDERED April 4, 2024.

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 MARCH 25, 2024, HEARING IN THE APPEAL OF WHERE ITS GREEN LLC, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR230810

Alison Moss was the Hearing Examiner *pro tem* in this matter. Participating in the hearing were Ben Hossienzadeh, and Dave Beecher. 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 December 11, 2023
Exhibit no. D3	Appeal, received January 3, 2024
Exhibit no. D4	List of codes cited in the notice and order
Exhibit no. D5	Photographs of subject property, dated August 17, 2023
Exhibit no. D6	Aerial photographs of subject property with overlays showing critical areas, steep slope, landslide and buffer
Exhibit no. D7	Before and after aerials ~~(D7-004)~~
Exhibit no. D8	Website information
Exhibit no. D9	Real property/Assessor information

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

Exhibit no. A1	HomeOwnerPermissionLetter
Exhibit no. A2	KingCountyiMAPImage2002
Exhibit no. A3	KingCountyiMAPImage2007
Exhibit no. A4	KingCountyiMAPImage2009
Exhibit no. A5	KingCountyiMAPImage2012
Exhibit no. A6	KingCountyiMAPImage2013
Exhibit no. A7	LIDARImageCleanedArea
Exhibit no. A8	LIDARImageHighlightingRoads
Exhibit no. A9	PhotoPreExistingKennel1
Exhibit no. A10	PhotoPreExistingKennel2
Exhibit no. A11	PhotoPreExistingKennel3
Exhibit no. A12	PhotoPropertyMapOnRecord
Exhibit no. A13	LIDARImageshowingStream
Exhibit no. A14	Section9WitnessRequest
Exhibit no. A15	WitnessRequest
Exhibit no. A16	CodeViolationFrom2012
Exhibit no. A17	InitialCodeEnfoInspection
Exhibit no. A18	HearingCoverLetter
Exhibit no. A19	PropertyOwnersPostInspReport
Exhibit no. A20	SepticTransferReport
Exhibit no. A21	ImageDriveway3AndDumpTruck
Exhibit no. A22	ImageDamagedContainer

Exhibit no. A23 ImageMainRoadToClearing
Exhibit no. A24 ImageDumpTruckContainers
Exhibit no. A25 ImageDriveway4And5Boat
Exhibit no. A26 ImageManiRoadDrivway345
Exhibit no. A27 ImageFromPurchaseGarage1
Exhibit no. A28 ImageFromPurchaseGarage2
Exhibit no. A29 KingCountyiMAPImage2021
Exhibit no. A30 KingCountyiMAPImage2019
Exhibit no. A31 KingCountyiMAPImage2015
Exhibit no. A32 Main_Appeal
Exhibit no. A33 AppealSummary
Exhibit no. A34 WitnessPhotoServic
Exhibit no. A35 WitnessLandCleaning
Exhibit no. A36 WitnessLandCleaning
Exhibit no. A37 WitnessLandCleaning
Exhibit no. A38 WitnessLandCleaning
Exhibit no. A39 WitnessLandCleaning
Exhibit no. A40 WitnessKennel
Exhibit no. A41 BoardingKCCheckListErr404
~~Exhibit no. A42 BoardingKCCheckList~~
~~Exhibit no. A43 BoardingSummary~~
Exhibit no. A44 CompalintKCSummary
Exhibit no. A45 ComplaintKCEmail
Exhibit no. A46 ComplaintKCEmail
Exhibit no. A47 ComplaintKCEmail
Exhibit no. A48 CriticalAreaSOA_Summary
Exhibit no. A49 CriticalAreaSOA_Streams
Exhibit no. A50 CriticalAreaSOA_MetaDataArea
Exhibit no. A51 CriticalAreaSOA_MetaDataArea
Exhibit no. A52 CriticalAreaSOA_Erosion
Exhibit no. A53 CriticalAreaSOA_AquifierRecharge
Exhibit no. A54 PropertyCriticalAreaReport
Exhibit no. A55 ImagesUpperLotBeforeCleaned
~~Exhibit no. A56 PropertySepticSummary~~
Exhibit no. A57 Definitions
Exhibit no. A58 PID Subscription Models
Exhibit no. A59 FlatRoofsForestedEnvironments
Exhibit no. A60 KCDrainageEngineering

April 4, 2024

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR230810**

WHERE ITS GREEN LLC
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, Quadient-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 April 4, 2024.

Lauren Olson

Lauren Olson
Legislative Secretary

Beach, Eric
Ombudsman's Office

Beecher, Dave
Hardcopy

Breazeal, Jeri
Department of Local Services

Campbell, Thomas
Department of Local Services

Hossienzadeh, Ben
Department of Local Services

Whalen, LaDonna
Department of Local Services

Where It's Green LLC