March 15, 2024

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

SUBJECT: Department of Local Services file no. **ENFR230996**

DANIEL COOK
Code Enforcement Appeal

Location: [redacted] Carnation

Appellant: **Daniel Cook**
[redacted]
Carnation, WA 98014
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
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RECOMMENDATIONS/DECISION:

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

FINDINGS AND CONCLUSIONS:

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 the appeal in part.

Notice and Order and Appeal

2. Linda M. Cook is the record owner of property located at 10503 268th Ave NE, Assessor's Parcel 3626069008, located in the A-35 zone.

3. The Department of Local Services – Permitting Division (Permitting) opened this enforcement case based on an August 28, 2023, complaint of unpermitted racing events. Based on research and inspections, Permitting determined that the complaint was well founded. Inspections also revealed what Permitting believes to be clearing and grading in critical areas (to create the racetrack) and an accumulation of inoperable vehicles. Ex. D1-001.

4. Permitting issued a Notice and Order on December 18, 2023, alleging the violations described in Finding 7 below. The Notice and Order does not specify the type of events allegedly being held, although the Staff Report, Exhibit D1, and testimony of Officer Hossienzadeh, describe them as racing events. Exs. D1-001, D2; testimony of Ofc. Hossienzadeh.

5. Daniel Cook (Appellant) timely appealed on behalf of himself and Linda Cook. Appellant does not contend that he did not hold events, clear, grade, store inoperable vehicles, or park vehicles on pervious surfaces. Rather, he argues that he is a farmer and that these are activities in which farmers typically engage. His appeal does not address racing but does state that he will discontinue "after hour" concerts as he recognizes that they are a "public nuisance." At the hearing Officer Hossienzadeh confirmed that concerts are no longer part of this case. Exs. D1-001, D3-001; testimony of Ofc. Hossienzadeh.

6. Appellant alleged that Officer Hossienzadeh trespassed on his property when he took the photographs in Exhibit D5. Officer Hossienzadeh testified that he took these photographs "from the road leading to the house." Other than Exhibit D5-005, discussed under the section entitled "Filling in Excess of 3 vertical feet" below, the Examiner has not considered these photographs in rendering her decision. Testimony of Daniel Cook and Ofc. Hossienzadeh.

7. As stated in the February 5, 2024, Notice of Remote Hearing, the issues on appeal are as follows:

   Has the Department of Local Services shown by a preponderance of the evidence that Appellant:

   A. Operated events without the required permits and approvals in violation of enumerated provisions of the King County Code (KCC);

   B. Cleared vegetation exceeding an area of 7,000 square feet within environmentally critical areas and/or their buffers without the required permits, inspections and approvals in violation of enumerated provisions of the KCC;

C. Graded in excess of 100 cubic yards without the required grading permit, inspections and approvals, in violation of enumerated provisions of the KCC;

D. Filled in excess of 3 vertical feet in vertical depth without the required grading permit, inspections and approvals, in violation of enumerated provisions of KCC;

E. Excavated in excess of 5 feet in vertical depth without the required grading permit, inspections and approvals, in violation of enumerated provisions of the KCC;

F. Accumulated inoperable vehicles and vehicle parts on the external premises in violation of enumerated provisions of the KCC;

G. Parks or stores vehicles on non-impervious (unimproved) surfaces in violation of enumerated provisions of the KCC?

Events

8. Although he did not raise the issue in his appeal statement,[1] at the hearing, Appellant argued that the term "events" is ambiguous as it is not defined in the King County Code (referred to in this decision as KCC or Code). Testimony of Daniel Cook.

9. It is true that the Code does not define the term "event" or "events." KCC 21A.02.060.D provides in relevant part:

> …Except for words and terms defined in this title, all words and terms used in this title shall have their customary meanings.

10. The Code employs the term "event" or "events" 90 times with the meaning clear in the context. For example, KCC 21A.06.075 defines "auction house" as an establishment where property of others is sold by a broker or auctioneer to persons who attend scheduled sales periods or *events*. The definition of County fairground refers to agricultural shows and *events* as well as sporting *events*. KCC 21A.06.253. And KCC 21A.06.958 defines active recreation as:

> Structured individual or team activity that requires the use of special facilities, courses, fields or equipment. Active recreation requires a significant level of development, use and programming. Active recreation includes, but is not limited to, *organized sporting events*, such as baseball, football, soccer, golf, hockey, tennis and skateboarding, and to large-scale group picnics, gatherings and social *events*.

(Emphasis added in *italics*).

11. Cook's Farm Facebook page characterizes the activities at the farm as "events," stating: "Right now we are hosting five off road events/year." It also explains that more than

[1] In fact, he contended that he is not an "event center." Ex. D3-001.

550 people attended the 2023 Tour de Farm event (as evidenced by signing of waivers) and 94 contestants participated. Ex. D8-006, -007 (2023 Tour de Farm event), D8-021 (Summer Lovin' 2 event).

12. Further, the Staff Report and testimony made clear that the events remaining in question are limited to racing events. Ex. D1-001; testimony of Ofc. Hossienzadeh.

13. Exhibit D8 is replete with evidence of events drawing crowds. Ex. D8.

14. The off-road racing events constitute racing and the oval track, cross track, and related tracks discussed below constitute a racetrack under the KCC. A racetrack is not a permitted use in the A-35 zone. KCC 21A.06.944C, 21A.08.100; testimony of Ofc. Hossienzadeh.

15. It may be possible to permit racing as a temporary use. KCC 21A.32.100, cited in the Notice and Order, governs temporary uses. It requires a temporary use permit to authorize a use not otherwise permitted in a zone. The temporary use must be capable of being made compatible and is limited to sixty days a year. KCC 21A.32.100; testimony of Ofc. Hossienzadeh.

Critical areas

16. Appellant's property is constrained by at least two types of critical areas (formerly environmentally sensitive areas): floodplain (a type of flood hazard area), which covers the entire property and two wetlands, a larger one in the northern portion of the property and a smaller one in the southeast portion. Ex. D6-002 (floodplain), Ex. D6-001 (wetlands shown in green hatch marks); testimony of Ofc. Hossienzadeh.

Clearing of vegetation

17. KCC 16.82.020.D defines "clearing" as:

> Cutting, killing, grubbing or removing of vegetation or other organic material by physical, mechanical, chemical or other similar means. KCC 16.82.020.D.

18. The cumulative clearing of less than 7,000 square feet within a flood hazard area does not require a clearing and grading permit. This exemption is not available for clearing within a wetland or its buffer. KCC 16.82.051.C.3 (flood hazard area); KCC 16.82.051 (NP 3 not applicable to wetlands and their buffers).

19. Exhibit D6-003 depicts the state of the property in September 2017, prior to the racing events. It shows an oval track that appears somewhat overgrown by vegetation in the southwestern portion of the property. The aerial photographs in Exhibits D6-005 and -006 show the property in August 2023. In the 2023 photographs, the oval track is free of vegetation and four tracks bisecting it (cross tracks) have been added, as well as an exterior half-loop running from the area of the barn to the west around the oval then

south connecting to an existing east-west track at the southern portion of the property (evident in the 2017 photograph). Exs. D6-003, D6-005.

20. The creation of cross tracks and half loop highlighted on Exhibit D6-005 in blue required grading within the floodplain. Permitting estimated that the exterior loop alone required 23,455.26 square feet of grading, exceeding the available exemption. Ex. D6-005.

21. For reasons which are not clear in the record, Exhibit D6-006 highlights in blue somewhat different areas than Exhibit D6-005. This Finding address three areas of those highlights:

    A. The highlights omit the portion of the half loop extending from the barn area to a point northwest of the oval track. As indicated in the previous Finding, the Examiner finds that Appellant cleared this area.

    B. They include areas which appear to have been graded in 2017: the existing east-west track at the southern portion of the property running from the half loop to a north-south track to the barn area. The Examiner finds this area had been graded in 2017.

    C. A track extending east from the loop described in Finding 20.B to the southeast corner of the property. The Examiner finds this area was graded sometime between 2017 and 2023.

    Exs. D6-005, -006.

22. Permitting contends that Exhibit D8-016 demonstrates clearing within the buffer of the southeastern wetland. There is indeed a track proximate to the wetland evident in this exhibit and the 2023 aerial photographs in Exhibits D6-004 through -006. However, a close comparison of the 2017 aerial photograph with the 2023 aerial photographs indicates that this track existed in 2017, albeit somewhat overgrown. Exs. D6-004 through -006, D8-016; testimony of Ofc. Hossienzadeh.

<u>Grading in Excess of 100 cubic yards</u>

23. KCC 16.82.020.O defines "grading" as "any excavating, filling or land-disturbing activity or combination thereof."

24. 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.

25. Exhibit D8-006, a screenshot taken from Cook Farm's Facebook page, shows a number of vehicles airborne at a July 28, 2023, off-road racing event. Indeed, the description

posted is, "Big air on the farm!" Ex. D8-006; testimony of Ofc Hossienzadeh (regarding the date of the event).

26. Grading to create a jump is evident in Exhibit D8-17. Ex. D8-17; testimony of Ofc Hossienzadeh.

27. The fill discussed in the following section of this decision also constitutes grading in excess of 100 cubic yards.

Filling in excess of three vertical feet

28. Exhibit D5-005 depicts a berm which Appellant testified he constructed by depositing spoils from periodic dredging of a ditch. Officer Hossienzadeh took the photograph standing at ground-eye level, chest height, or approximately 4.5 feet. He estimated that it was at least 10-feet wide. Testimony of Ofc. Hossienzadeh and Daniel Cook.

29. The depositing of dredge spoils falls within the definition of fill and exceeds 3 feet in vertical height.

Excavation in excess of five feet in vertical depth

30. Permitting contends that Exhibit D8-015 depicts two areas of 5-6 foot excavations. Appellant testified that these depressions have been there for "eons." They do appear to be present in the 2017 aerial photograph in Exhibit D6-003. Ex. D8-015; testimony of Ofc. Hossienzadeh and Daniel Cook.

Accumulation of inoperable vehicles and vehicle parts on the external premises

31. KCC 21A.32.230.C, cited in the Notice and Order, makes it unlawful:

> for any person to keep, maintain or deposit on any property in the county a public nuisance including… abandoned vehicles, wrecked, dismantled or inoperative vehicles or remnant parts thereof except as provided in KCC 23.10.040.

32. KCC 23.10.040.A allows a wrecked, dismantled, or inoperative vehicle, or part thereof to be stored so long as it is completely enclosed within a building in a lawful manner where it is not visible from the street or from other public or private property.

33. An accumulation of vehicles not enclosed within a building is clearly evident in Exhibit D7-004. Permitting contends that these vehicles are inoperable. While his appeal statement appears to concede that these vehicles are inoperable, Appellant testified at the hearing that he uses them in operating the farm. The Examiner is not able to determine from Exhibit D7-004 whether any of the vehicles are operable or inoperable. Ex. D7-004; testimony of Ofc. Hossienzadeh and Daniel Cook.

Parking or storing of vehicles on non-impervious (unimproved) surfaces

34. KCC 21A,18.110.I, cited in the Notice and Order, requires that all vehicle parking and storage for single detached dwellings must be in a garage, carport or on an approved impervious surface. KCC 21A,18.110.I.

35. KCC 21A.06.625 defines impervious surface as:

> Impervious surface: A nonvertical 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 in *italics*.)

36. Exhibits D7-003 and D7-004 clearly depict a number of vehicles parked and/or stored on surfaces which do not fall within the definition of impervious surface.

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

CONCLUSIONS OF LAW

1. Any Conclusion of Law which is more properly 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 operated off-road racing events without the required permits and approvals.

   B. Appellant undertook clearing in the floodplain exceeding an area of 7,000 square feet without the required permits and approvals.

   C. Appellant undertook grading in excess of 100 cubic yards without the required permits and approvals.

   D. Appellant filled in excess of 3 vertical feet in depth without the required permits and approvals.

   E. Parked or stored vehicles (including those alleged but not proven to be inoperable) on non-impervious surfaces.

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

   A. Appellant undertook clearing within a wetland buffer.

   B. Appellant excavated in excess of 5 feet in vertical depth.

C. Appellant has an accumulation of inoperable vehicles or vehicle parts on the external premises.

DECISION:

1. GRANT the appeal in part (clearing in wetland buffer, excavation in excess of 5 feet vertical depth, and accumulation of inoperable vehicles);

2. DENY the appeal in part (remaining alleged violations).

3. Cease any, and all events **immediately**. If you intend to hold events at this location, apply for and obtain the required permits, inspections, and approvals with complete application to be submitted by the following schedule:

   A. A complete Temporary Use Permit (TUP) pre application packet is to be submitted **within 30 days** of issuance of the permit to resolve the clearing violations. (Approval of TUP may or may not be compatible with agricultural use.)

   B. The application for the TUP will not be accepted until the permit to resolve the clearing violations is issued.

   C. Meet all deadlines for requested information associated with the permit and pick up the permit within the required deadlines.

   D. Comply with all conditions of the Temporary Use Permit.

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

   A. Submit a complete prescreening meeting request to PERMITTING **within 30 days**. (This can be combined with submittal for violation #3 in the Notice and Order (grading) (Issues C-E in this decision).

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

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

A. Submit a complete prescreening meeting request to PERMITTING within **30 days**. (Can be combined with submittal for violation #2 in the Notice and Order (clearing) (Issue B in this decision).

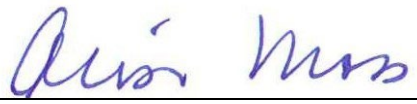
B. Submit a complete permit application within **30 days** of the pre application meeting follow up email unless otherwise determined at the pre application meeting.

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.

6. Cease parking/storage of vehicles on nonimpervious surfaces within **30 days**.

7. No penalties shall be assessed against Daniel Cook or the subject property if the above actions are completed by the deadlines above, or by any reasonable deadline extension Local Services provides. If not, Local Services may issue penalties retroactive to today.

ORDERED March 15, 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 6, 2024, HEARING IN THE APPEAL OF DANIEL COOK, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR230996

Alison Moss was the Hearing Examiner *pro tem* in this matter. Participating in the hearing were Ben Hossienzadeh and Daniel Cook. 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 18, 2023
Exhibit no. D3	Appeal, received January 11, 2024
Exhibit no. D4	Codes cited in the notice and order
Exhibit no. D5	Photographs of subject property, dated December 1, 2023
Exhibit no. D6	Aerial photographs of subject property with overlays showing critical areas, flood plain, and shorelines
Exhibit no. D7	Before and after aerials
Exhibit no. D8	Website information

March 15, 2024

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR230996**

DANIEL COOK
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 March 15, 2024.

Lauren Olson

Lauren Olson
Legislative Secretary

Breazeal, Jeri
Department of Local Services

Campbell, Thomas
Department of Local Services

Cook, Daniel
Hardcopy

Hossienzadeh, Ben
Department of Local Services

Whalen, LaDonna
Department of Local Services