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Kathy Hill, Skagit County Auditor

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AFTER RECORDING RETURN TO:  
SKAGIT COUNTY HEARING EXAMINER  
302 SOUTH FIRST STREET  
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON WAIVER OF SIX YEAR MORATORIUM WV 00 0014

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: GILBERT WALDEN

ASSESSOR PARCEL NOS: P49357; P49355

ABBREVIATED LEGAL DESCRIPTION: located within the NE 1/4 of the SE 1/4 of Section 17, Township 36 North, Range 04 East, W.M., Skagit County, Washington.

**SKAGIT COUNTY HEARING EXAMINER**  
**STATE OF WASHINGTON**

In the Matter of the Application of )	
<b>GILBERT WALDEN</b> )	PL00-0014
)	
For a Waiver of the Six-Year )	Findings of Fact,
Development Moratorium on Land )	Conclusions of Law
Where a Timber Harvest has Occurred )	And Decision
and Conversion was Not Contemplated. )	
)	

THIS MATTER concerns development on property where timber has been harvested but conversion of the land to another use was not contemplated. The application came on for public hearing on March 22, 2000, upon due notice. The Planning and Permit Center's Staff Report was presented by John Cooper, Associate Planner. Oscar Graham, consultant, appeared for the applicant. Members of the public were given an opportunity to be heard.

Testimony was taken, exhibits were admitted and argument was made. On the basis thereof, the following is entered:

**FINDINGS OF FACT**

1. Gilbert Walden (applicant) has filed an application for a waiver of the six-year development moratorium following a forest practice. The waiver would support a short plat application (PL99-0634) for dividing a 37 acre parcel of forest land into three (3) building lots.
2. The site is along the east side of Butler Creek Road, approximately one-half mile north of the intersection with Parsons Road, within a portion of the NE1/4SE1/4, Sec. 17, T36N, R4E, W.M. Except for some curvature along the road, the property is rectangular. It slopes downward from east to west. It encloses a six-acre area owned by the Washington Department of Transportation (WSDOT).
3. The property is designated Rural Reserve by the Comprehensive Plan and is zoned Rural Intermediate.
4. The applicant performed a forest harvest on the subject parcel in 1997. There was then no intention to convert the property to non-forest use and the property and was placed in a six-year development moratorium. The WSDOT parcel was not logged.
5. In general, the Forest Practices Act (Chapter 76.09 RCW) is administered by the State Department of Natural Resources. However, in the conversion of land from commercial timber



to another use, local government has a role. Where a forest practice precedes a proposed conversion of use, County land use regulations come into play.

6. If development is sought during the moratorium period, the land use code provides a process for seeking a waiver. SCC 14.06.094(6). A waiver of the moratorium may be granted when: (a) a critical areas site assessment determines the level of impacts to critical areas and buffers due to logging and associated conversion activity and estimates the time needed for recovery, and (b) when the Hearing Examiner determines that recovery can occur within six years. In such cases, a mitigation plan is to be prepared and implemented consistent with the Critical Areas Ordinance. Recovery in this context means recovery of a critical area to a state comparable to what it was before the forest practice took place.

7. The critical areas site assessment, prepared by Graham-Bunting and Associates, showed that the site includes a Class 3 wetland in the southwest corner and a Type 4 stream. Two branches of the stream flow into the property from the east, merge on-site, and then flow in one channel off site to the west. The impact analysis was that the forest practice had no effect on the wetland and associated buffer, but did encroach into the stream and stream buffer. The northerly branch of the stream was labeled Riparian Area A and the southerly branch called Riparian Area B.

8. The assessment concluded that the level of impact associated with timber harvest activities is relatively low and that complete recovery of the riparian corridors will occur within the next three years. Mitigation measures were recommended to accelerate the rate of recovery, as follows:

- (a) Installation of a properly-sized culvert beneath the road crossing of Riparian Area B.
- (b) Implementation of a planting plan in response to diminished buffer widths associated with Riparian Areas A and B.
- (c) Excavation of a shallow pond where hydrologic conditions and soil characteristics are appropriate.
- (d) Establishment of protected critical areas (PCAs) relative to all regulated critical areas within the property boundaries.

9. A staff inspection on January 26, 2000, identified geologic hazards on the property. Subsequently, a geotechnical evaluation letter report was prepared by J.B. Scott and Associates. These consultants found no surface expressions suggesting that slope failures, existing or potential, exist. The report evaluated hazards in a steeply sloped ravine adjacent to the stream in the east-central portion of the property (Riparian Area A) and concluded slope stability would be maintained by observance of a 50 foot setback for all development adjacent to the ravine.

10. The staff inspection noted that the effect of forest practices on adjacent parcels, added the harvest on the subject property, appears to be increased surface runoff into the Type 4 stream, causing an incised stream channel, erosion and subsequent deposition. The Type 4 stream runs into Butler Creek approximately 50 feet west of the subject property. Butler Creek



has both anadromous fish runs and resident fish. To protect these fish, the staff recommends mitigation measures to prevent further stream channel degradation.

11. The staff recommended approval of the application with conditions. There was no adverse testimony. The record reflects no opposition.

12. The Examiner finds that critical areas on the property can recover to a state comparable to conditions prior to the forest harvest in less than six years. Reasonable mitigation measures are likely to speed the recovery time.

13. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### CONCLUSIONS OF LAW

1. The examiner has jurisdiction over the parties and the subject matter of this proceeding. SCC 14.06.094(6)(b).

2. The proposal will meet the relevant criteria for the granting of a waiver to the six-year development moratorium under the provisions of SCC 14.06.094(c), if the following conditions are imposed and complied with:

- (a) All required permits and approvals must be obtained by the applicant prior to any construction.
- (b) A 50 foot buffer shall be established adjacent to each side of the Type 4 stream and the Category 3 wetland. A 50 foot buffer shall also be established from the top, toe and all sides of any slopes exceeding 30% on the site.
- (c) All wetlands, streams, slopes exceeding 30% and associated buffers shall be included in Protected Critical Areas (PCAs) according to SCC 14.06.145.
- (d) A mitigation plan for restoration of the critical areas and associated buffers on the subject site shall be submitted to the Planning and Permit Center for approval, and shall be fully implemented within six months of such approval. The plan shall, as a minimum, include the measures recommended in the Graham-Bunting Critical Areas Site Assessment, dated January 13, 2000.

3. Any finding herein which may be deemed a conclusion is hereby adopted as such.



## DECISION

The requested waiver of the development moratorium is **GRANTED**, subject to the conditions set forth in Conclusion 2 above.

*Wick Dufford*

Wick Dufford, Hearing Examiner

Date of Action: May 3, 2000

Copy transmitted to Applicant: May 3, 2000

## RECONSIDERATION/APPEAL

This decision shall become final unless a request for reconsideration or appeal is filed. A request for reconsideration shall be filed with the Hearing Examiner within ten (10) days from the date of this decision. An appeal to the Board of County Commissioners shall be filed with the Planning and Permit Center within fourteen (14) days from the date of this decision, or if reconsideration has been requested, within fourteen (14) days from the decision after reconsideration.

