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, 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: WAIVER OF SIX-YEAR MORATORIUM WV 00 0300

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: WHALEN & COMPANY, INC. proponent of CHARLES MOON

ASSESSOR PARCEL NO: P18161

ABBREVIATED LEGAL DESCRIPTION: located within the E 1/2 of the NE 1/4 of Section 19, Township 33 North, Range 4 East, W.M., Skagit County, Washington.

**SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON**

In the Matter of:

Application No. PL-00-0300
of Whalen & Company, Inc, proponent of
Charles Moon,

Waiver of 6-year Moratorium.

**FINDINGS OF FACT
ENTRY AND ORDER**

This matter having come regularly before the Skagit County Hearing Examiner for a public hearing on August 30, 2000 under an application filed with the Skagit County Department of Planning and Community Development by the applicant requesting waiver of a 6-year forest practice moratorium, as described and located in the Report and Findings of the Skagit County Department of Planning and Permit Center, which property is located at the northeast corner of the subject parcel (P18161). The subject parcel is located east of Highway 9 between Lake McMurray and Big Lake within a portion of the east half of the northeast quarter of Section 19 Township 33 north, Range 4 east, W.M., Skagit County, WA.

ASSESSOR'S ACCOUNT NUMBER: 330519-1-001-0200

PARCEL ID NUMBER: P18161

FINDINGS OF FACT

1. The subject property is zoned as Rural and the Comprehensive Plan also designates the area as Rural Resource.
2. Per Section 14.01.033 of the Skagit County Code, a letter of completeness was issued on July 14, 2000. A Notice of Development Application for the application was posted on the subject property (14.01.040) and published in a newspaper of general circulation on July 20, 2000. The public hearing has been advertised in accordance with the requirements of Chapter 14.01.042 of the Skagit County Code.
3. The property owner, Mr. Charles Moon, obtained a forest practice permit to harvest the trees on the subject site in September 1999. As per section 14.06.094(4), the subject parcel has been placed in a 6-year development moratorium (FPA # 2803100), thru 09/16/2005.
4. Pursuant to Skagit County Code 14.06.094(6), Whalen & Company, Inc., proponent for Mr. Moon, has filed an application for a waiver of the 6-year development moratorium. The waiver of the development moratorium would support a proposal for development of the northeast corner of the subject site as a wireless telecommunications tower.



5. Whalen & Company, Inc. proposes to lease a rectangular shaped 1,200 square foot portion of the northeast corner of the parcel and develop the area into a 150 foot monopole wireless communications facility. The development would include the construction of a 315-foot access road from the abandoned railroad grade, near the western boundary of the subject site, to the proposed location of the communications facility.
6. The subject parcel was reviewed with the respect to the Skagit County Critical Areas Ordinance 14.06.094(6)(i) and a site visit was performed on June 21, 2000. The critical area review identified that the proposed lease area is located on slopes exceeding 30% grade with greater than 30 feet of relief, which under SCC 14.06.410(1)(a)(ii) may represent a suspected landslide hazard. In addition, the site visit observed the presence of wetland indicators within 200 feet of the proposed development. The wetland indicators were observed at the base of the slope, adjacent and east of the former railroad grade (currently a north-south trending gravel road on the western boundary of the subject site). Field observations of the wetland indicated it was created with development of the railroad grade/gravel road and it appears less than 2,500 square feet in size. Under SCC 14.06.230, category II,III,IV wetlands are exempt and not subject to the provisions of Article 2 of the Critical Areas Ordinance if less than 2,500 square feet.
7. Based on the presence of a suspect landslide hazard area under SCC 14.06.410(1)(a)(ii), the applicant submitted a Geologically Hazardous area site assessment to evaluate the proposed development area for the presence of geological hazards and determine if the forest harvest has had an impact on the suspect land slide hazard area. The "Geological Hazard Review and Geotechnical Engineering Investigation" prepared by Edison Engineering, dated July 13, 2000 was received by the Skagit County Planning and Permit Center on July 14, 2000. The report satisfies the criteria for a Geological Hazardous Area Site Assessment as required by CAO 14.06.420(1). The geotechnical report indicated that the proposed development area is not on or adjacent to a geologically hazardous area, and the proposed development would not result in development of a geologically hazardous area provided that the geotechnical report recommendation are implemented.

The report also included a brief assessment of the wetland indicators present on the subject site. The wetlands assessment indicated that a category III wetland is present adjacent to the railroad grade on the northern portion of the subject site. The assessment indicated that the category III wetland encompasses approximately 300 square feet. Skagit County's Critical Areas Ordinance 14.06.230 exempts category III wetlands less than 2,500 square feet. Under this exemption, the category III wetland is not subject to the provisions of Article 2 (Wetlands) of the Skagit County's Critical Areas Ordinance and may not be considered as impacted by the forest practice that occurred on the subject site. Although categorically exempt under Skagit County's Critical Areas ordinance, any proposed alteration to the wetland may require notification and potential review by the United States Army Corp of Engineers.

9. Section 14.06.094(6) Waiver of 6-year moratorium indicates that certain items will be reviewed



when approving or denying 6-year moratorium waivers for subdivisions. Those items are as follows:

- a. **A critical areas site assessment must be prepared where warranted by the critical areas ordinance (CAO) following initial review and a site visit of the use proposed for the property subject to the moratorium. The site assessment shall determine the level of impacts to County regulated critical areas and associated buffers that have occurred due to logging and any associated conversion activity. The site assessment shall also include an estimated time needed for recovery of the critical area to a state comparable to what it was before the forest practice took place.**

Staff has completed a critical areas site assessment and determined that critical areas (including those classified as regulatory exempt) as defined by SCC 14.06 are not present on or within 200 feet of the proposed development area. Site assessments performed by a qualified professional has indicated that critical areas have not been impacted by the forest practice.

- b. **If, based on the prepared site assessment and comments received, the Hearing Examiner determines that recovery of the critical area(s) and associated buffers can be achieved within 6 years, then a mitigation plan shall be prepared and implemented consistent with the CAO and the waiver shall be lifted. If, however, critical areas and their buffers cannot be restored within a 6 year period to a level of critical area function comparable to what it was prior to the logging activity, the request for a waiver of the moratorium shall be denied and the County shall not accept applications for development permits for a duration of 6 years unless compensatory mitigation can be performed as approved by the County. For purposes of this section, compensatory mitigation shall mean compliance with 14.06.240(7), for wetlands; there are no compensatory mitigation options for fish and wildlife habitat conservation areas (14.06.500), including riparian areas, and none for geologically hazardous areas (14.06.400)-- the landowner must meet the mitigation standards under 14.06.530(2)(f) and/or 14.06.430 in order to be eligible for the waiver.**

Staff notes that forest harvest practices have had no direct impact on regulated critical areas.

CONCLUSIONS

The hearing examiner, having duly considered the matter and all testimony and evidence presented at the public hearing and submitted for the record, makes the following conclusions:

1. The applicant has met its burden of demonstrating that the moratorium should be waived.

DECISION



The hearing examiner **APPROVES** the application for a waiver of the 6-year forest practice moratorium, subject to the following conditions:

1. All required permits are obtained by the applicant prior to development.
2. In the event that the applicant proposes to alter the regulatory exempt category III wetland, the applicant shall notify the United States Army Corp of Engineers of the proposal to alter the wetlands and provide the opportunity for review, if necessary.
3. The waiver of the six year moratorium is specific to the proposed development site and not the entire parcel.
4. Developments of the subject site are compliant with all the recommendations included in the *Geological Hazard Review and Geotechnical Engineering Investigation* report prepared by Edison Engineering, dated July 13, 2000. The recommendation include, but not limited to, the following:
 - All construction at the site is constructed during the dry season (between the end of May and the end of September);
 - A drainage ditch shall be installed on the east side of the railroad grade, on the subject site, to reduce soil saturation;
 - All topsoil shall be stripped from the proposed development areas, stockpiled, and spread over the fill slopes upon completion of construction;
 - The 315 foot access road from the railroad grade shall not exceed 28% grade, cut slopes shall not exceed 66%, and fill slopes shall be compacted and not exceed 50%.

This decision shall become final fifteen (15) days from the date of this order unless appealed in accordance with Chapter 14.01.061 of the Skagit County Code.


C. THOMAS MOSER, PRO TEM
Skagit County Hearing Examiner

Signed August 31, 2000

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