

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Rob Janicki
103 North Township
Sedro Woolley, WA 98284

File No: PL 05-0251

Request: Waiver of Development Moratorium

Location: 17523 State Route 9, within a portion of Sec. 36,
T34N, R4E and Sec 31, T34N, R5E, W.M.

Land Use Designation: Rural Village Residential (RV)

Summary of Proposal: To obtain a waiver of the six-year development moratorium to allow applicant to proceed with an application for land division and related permits and approvals.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on September 14, 2005.

Decision: The application is approved, subject to a condition.

FINDINGS OF FACT

1. Rob Janicki (applicant) seeks a waiver of the six-year development moratorium imposed by the County after a prior owner, Neil Hansen, received a forest practice permit and conducted a forest harvest. The moratorium was imposed on September 27, 2000.
2. The application was deemed complete on May 19, 2005. A notice of the application was properly posted and published. Proper notice was given of the public hearing.
3. The property consists of approximately 60 acres located to the east of Big Lake at 17523 State Route 9, within a portion of Sec. 36, T34N, R4E, and Sec. 31, T34N, R5E, W.M. The zoning is Rural Village Residential.
5. The property slopes from east to west and then levels off. It is adjacent to and above the Overlook Golf Course.
6. Removal of the moratorium is sought in order to move forward with subdivision of the property. About seven acres of the property were logged.
7. The property was reviewed under the Skagit County Critical Areas Ordinance. A site assessment report was prepared by Skagit Wetland and Critical Areas, Inc., and dated April 12, 2005. This assessment was supplemented on July 27, 2005. A Type 4 water (a ditch) and associated ponds were identified. In addition two Category 3 wetlands were found on the property and delineated.
8. There are also some man-made ponds dug from non-hydric soils. These were intentionally created from non-wetland sites and do not constitute wetlands.
9. After review of the narrative provided by Skagit Wetland, the Staff concluded that the timber harvest which occurred did not take place within any regulated critical area, and that there were no impacts to any critical area or buffer. The Hearing Examiner so finds.
10. Under the CAO, the applicable criteria for lifting a moratorium are as follows (SCC 14.24.110(6)(e)):
 - (i) A critical areas site assessment must be prepared. . . . The site assessment shall determine the level of impact to County regulated critical areas and associated buffers that have occurred due to logging and 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.

(ii) 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 six years then a mitigation plan shall be prepared and implemented, consistent with the CAO and the waiver shall be lifted.

11. Because no effect to any critical areas or buffers has occurred, there is no need in this case for a mitigation plan for recovery. The critical areas remain in a state comparable to their condition before the forest practice took place.

12. There were no public comment letters. There was no public testimony at the hearing.

13. The Staff recommended approval of the application with the addition of a condition relating to the designation and recording of a Protected Critical Area.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SCC 14.24.110(6).

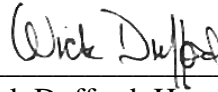
2. The facts support a conclusion that the applicants have met the criteria for waiver of the six-year development moratorium for the subject property.

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

DECISION

The requested waiver of moratorium is approved, subject to the following condition:

All wetlands and associated buffers shall be included in a Protected Critical Area (PCA) according to SCC 14.34.170 and the PCA shall be recorded with the County Auditor. The PCA may be completed in conjunction with approval of the proposed subdivision.



Wick Dufford, Hearing Examiner

Date of Action: September 19, 2005

Date Transmitted to Applicant: September 19, 2005

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.