

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Greg Krabbe, Engineer
(for Windward Realty)
1726 Holbrook Avenue
Everett. WA 98203

File No: PL06-0551

Request: Waiver of Development Moratorium

Location: Immediately southwest of the intersection of Knapp Road and Baker Heights Road; with a portion of Sec. 23, T34N, R4E, W.M.

Parcel Nos: 27650 and 27611

Land Use Designation: Rural Reserve (RRv)

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

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing examiner conducted a public hearing on October 25, 2006. Subsequently, the Examiner made a site visit.

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

FINDINGS OF FACT

1. Greg Krabbe (applicant) seeks a waiver of the six-year development moratorium imposed by the Department of Natural Resources on May 28, 2002.
2. The application for waiver was deemed complete on July 19, 2006. A Notice of Development application was posted on the property and published on July 29, 2006.
3. Under the ownership of Herbert Wiseman, the property was the subject of a class III forest practice permit issued on May 21, 2002. The site consists of about 94.05 acres located immediate southwest of the corner of Knapp Road and Baker Heights Road within a portion of Sec. 23, T34N, R4E. W.M. The zoning is Rural Reserve (RRv).
4. The site slopes downward to the west from the Baker Heights Road on the east. Much of the land is heavily treed. On the western portion lie wetlands. Nookachamps Creek, a Type 1 water, is located on the western boundary.
5. A Site Assessment dated November 1, 2005, was prepared by Gribble Environmental Consulting Company (GECCO). The Assessment delineates the location, type and extent of County-regulated critical areas on the site. The initial determinations were confirmed by a second inspection by the consulting biologist. An Addendum was prepared dated August 31, 2006.
6. The Assessment, Addendum and site observations confirm that the only encroachment of the timber harvest on any County-regulated critical area was in wetland buffer. However the studies show that the buffer impacts were minimal and that vegetation has since re-grown there sufficiently to restore all buffer areas to their previous function and value.
7. Under the Critical Areas Ordinance (SCC 14.24.110(6)(c), the applicable criteria for lifting a development moratorium are as follows:
 - (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 6 years, then a mitigation plan shall be prepared and implemented consistent with the CAO and the [moratorium] shall be lifted.

8. The Examiner finds that the recovery from the impacts of logging to regulated critical area or buffers has already occurred through natural regeneration. Thus, no additional time is needed for recovery and there is no need for a mitigation plan.

9. The waiver is sought so that the applicant may pursue an application for a subdivision. The preliminary plans call for 14 residential lots of around an acre apiece, with the remainder of the property in protected open space, free from development. This plan would fully protect the wetland and stream areas and their associated buffers. The protected areas would be placed in a Protected Critical Area (PCA).

10. 15 letters of comment from local residents were received. Further, nine neighbors testified to their concerns about the eventual subdivision application. All are very fond of the existing rural setting and seek to avoid development that will significantly compromise the appearance of the area or reduce the habitat that the property now provides.

11. The development concept at present would group the residential properties along the east side of the property at the upper end of Knapp Road and along Baker Heights road. None of the lots encroach on critical areas or buffers. One neighbor suggested a 150-foot natural buffer along the roads. Another suggested a one-to-one replacement of trees cut down. Whether these measures could be accomplished consistent with protecting the critical areas and still leave developable lots was not demonstrated.

12. The neighbors were also concerned with the traffic impacts of increased development, with the configuration of driveways, and with water supply considerations.

13. Krabbe, as the developer's representative, welcomed the opening of dialogue with the neighbors and testified that the developers are very interested in working with the current residents to create a subdivision that will, insofar as possible, allay neighborhood concerns. He expressed doubt that the precise conditions suggested by the neighbors in this hearing would work, but emphasized that the developers want to preserve the character of the area and are not opposed to conditions to that end.

14. The Staff recommends approval of the waiver, with the creation of a PCA incorporating the wetlands, wildlife habitat conservation area and associated buffers.

15. 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 application has met the criteria for waiver of the six-year development moratorium for the subject property.
3. The concerns expressed about the subdivision development are not relevant to the waiver decision. They should all be carefully addressed in the subdivision approval process.
4. It was urged that the tree replacement and 150-foot buffer requirements should be included as conditions of approval for the waiver. The Code does not give the Examiner the latitude to take such action. The waiver process is limited to issues relating to the protection and restoration of County-regulated critical areas. These areas on the property have been restored and are adequately protected by the requirement for a PCA.
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The application is approved, subject to the requirement that a Protected Critical Area (PCA) be established and filed as required by law. The PCA shall include the stream, the wetlands and their buffers.



Wick Dufford, Hearing Examiner

Date of Action: December 20, 2006

Date Transmitted to Applicant: December 20, 2006

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.