

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Ray Koenig
844 Petersen Road
Burlington, WA 98233

Agent: David McLaughlin
Skagit Surveyors and Engineers
806 Metcalf Street
Sedro-Woolley, WA 98284

File No: PL07-0862

Request: Waiver of Development Moratorium

Location: On Alger CCC Road, within a portion of Sec. 4, T36N,
R4E, W.M.

Parcel Nos: P48814, P48815, P48822

Land Use Designation: Rural Reserve

Summary of Proposal: To obtain a waiver of the six-year development moratorium on 33.18 acres of land to the allow the applicant to proceed with an application for subdivision of the property into three parcels for potential residential development.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on February 27, 2008.

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

FINDINGS OF FACT

1. Ray Koenig (applicant) seeks a waiver of the six-year development moratorium imposed by virtue of a Forest Practices Application approval issued on December 22, 2006. The subject timber harvest has been completed.
2. The application for waiver was deemed complete on November 13, 2007. A Notice of Development Application was posted and published on November 22, 2007. No comment letters were received during the comment period. There was no public testimony at the hearing.
3. The site consists of 33.18 acres located on the Alger CCC Road, within a portion of Sec. 4, T36N, R4E, W.M. The zoning is Rural Reserve. Parcel numbers are P48814, P48815, and P48822.
4. The surrounding lands are a patchwork of widely spaced single family residences in Rural Reserve and Secondary Forest-Natural Resource Lands zoning.
5. The property rises at 35%+ in places to the west. The central section is heavily forested. There are wetlands and a stream in the eastern portion. A Wetland and Fish and Wildlife Assessment, dated October 5, 2007, was prepared by Wetlands, Inc.
6. The wetland is a 1.96 acre Category II forested wetland. Silver Creek, a Type 3 fish bearing stream, traverses the property through the wetland from northeast to southwest. A pre-existing entry road crosses Silver Creek and the wetland and buffer via a pre-existing culvert. The 100-foot wetland buffer has been delineated and marked. It includes the buffer for the stream.
7. The forested area has been selectively logged. Site observations show that the timber harvest did not occur within any critical area or buffer. These areas remain as they were before the harvest and can be protected for the future by placement into a Protected Critical Area Easement at the time of subdivision.
8. 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 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.
 - (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.

9. Because no regulated critical area or buffer was affected by the forest practice, no time is needed for recovery and there is no need for a mitigation plan.

10. The Staff recommends approval of this application, subject to the creation of a Protected Critical Area (PCA), incorporating wetlands, streams and associated buffers.

11. 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 on the subject property.

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

DECISION

The application is approved, subject to the following condition.

The critical areas and associated buffers on the subject site shall be placed into a Protected Critical Area Easement with subdivision of the parcel, according to SCC 14.24.170.



Wick Dufford, Hearing Examiner

DONE this 17th day of March, 2008.

Transmitted to Applicants: March 17, 2008

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.