APPLICATION: This application seeks lifting of a development moratorium imposed for clearing and grading on two parcels, including clearing and grading within a regulated wetland and buffer. The clearing and grading work was done without a permit from Island County or a Forest Practice Permit from the Washington Department of Natural Resources.

The applicants seek to lift the moratorium on permits imposed as a result of the Forest Practice Act violations. The applicants are also seeking a Clearing and Grading Permit which would allow or approve work on the easement off of Fox Road and allow the work needed to restore the wetland areas disturbed by the unpermitted work which lead to the Code violation. The applicant has also requested the retention of some of the roadway constructed within a regulated wetland and its’ buffer pursuant to the Reasonable Use exception allowed by ICC 17.02.040.D.

DECISION: The request to lift the Forest Practices Moratorium is granted subject to conditions. The request to maintain a roadway through an onsite wetland and buffer as a Reasonable Use exception to the Critical Areas Ordinance is denied. The Clearing and Grading Permits are approved subject to conditions. The Wetland Restoration Plan is approved.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on December 4, 2008.

I.

PRELIMINARY INFORMATION

Applicant: Janusz & Joanna Topor-Madry
Property Location: Northerly of Saratoga Road and westerly of Fox Spit Road in the SE ¼ of Section 13, TWP 30N, Range 2E on South Whidbey Island, Washington.

Applicable Ordinances, Statutes and Regulations: Chapter 11.02 Clearing and Grading Ordinance, Chapter 11.03 Stormwater and Surface water Ordinance Chapter 17.03, Zoning Ordinance; Chapter 17.02, Critical Areas, Chapter 16.19, Land Use Review Process, and Chapter 16.14C, County Environmental Policy.

SEPA: A Mitigated Determination of Non-Significance was issued on November 18, 2008 pursuant to WAC 197-11-355 and ICC 16.19.150.D.

Publication of Hearing: November 19, 2008

Mailing of Notice of Hearing to Applicant: November 14, 2008

Sign Posted: August 13, 2008

Mailing of Staff Report: November 19, 2008

Date of Application: August 1, 2008

Hearing Date: December 4, 2008

Exhibit Log:
1. Staff Report
2. Clearing & Grading/Timer Harvest Permit, received 4/21/08
3. Before & After cut and fill measurements maps 1 of 2 and 2 of 2 and attachments, received 4/21/08
4. Clearing & Grading Plot Plan, received 4/21/08
5. Small version of Exhibit # 4, Clearing & Grading Plot Plan, received 4/21/08
6. Technical Memorandum (Wetland Delineation) from Stephanie Smith to Janusz Topor-Madry, received 4/21/08
7. Wetland Site Assessment from Patricia Bunting to Janusz & Joanna Topor-Madry, received 4/21/08
8. Field Data Forms, (Wetland Site Reconnaissance), received 4/21/08
9. Reasonable Use document from Graham-Bunting Associates, received 4/21/08
10. Quarter Section Maps, received 4/21/08
11. Application for Access to County Road Right of Way, received 4/21/08
12. Vicinity Map, received 4/21/08
13. Permit to Construct a Sewage Disposal System As Built #507-07, received 4/21/08
14. Permit to Construct a Sewage Disposal System As Built #538-07, received 4/21/08
15. Site Registration, received 4/21/08
16. Application for Site Address, received 4/21/08
17. Environmental Checklist, received 4/21/08
18. Application to Perform Work on County Road Right-of-Way, received 7/28/08
19. Road Maintenance Agreements, received 7/28/08
20. Site Data Materials and pictures, dated 8/1/08
21. Affidavit of Mailing to property owners within 300 ft of parcels R23013-233-2950 and R23013-286-3360, dated 8/8/08
22. Affidavit of Mailing to Janusz Topor-Madry, dated 8/8/08
23. Island County Notice of Application with SEPA, dated 8/13/08
24. Affidavit of Publication, received 8/18/08
25. Affidavit of Posting Public Notice Sign, received 8/19/08
26. Notice of Incomplete Application from Cindy White to Janusz Topor-Madry, dated 4/30/08
27. Notice of Complete Application from Andreana Richardson to Janusz Topor-Madry, dated 8/1/08
28. Letter of the public notice sign from Bill Poss to Janusz Topor-Madry, dated 8/8/08
29. Letter of complete application from Bill Poss to Janusz Topor-Madry, dated 9/25/08
30. Memorandum from Justin Craven to Bill Poss, dated 9/25/08
31. Email from Bill Poss to Janusz Topor-Madry and Justin Craven, dated 11/7/08
32. Email from Loren Wheeler to Bill Poss and Matt Kukuk, dated 5/20/08
33. Emails between Bill Poss and Janusz Topor-Madry, dated 11/12/08
34. Acknowledgment letter from Paula Bradshaw, Office of the Island County Hearing Examiner to Janusz & Joanna Topor-Madry, dated 11/14/08
35. Affidavit of Mailing, dated 11/17/08
36. Letter from Paula Bradshaw to Janusz & Joanna Topor-Madry, dated 11/19/08
37. Affidavit of mailing Staff Report, dated 11/19/08
38. Affidavit of Publication, dated 11/19/08
39. Reduced copy of the Site Plan with the preferred homesite on parcel A

HEARING TESTIMONY

Bill Poss
Island County Public Works
P.O. Box 5000
Coupeville, WA 98239

Justin Craven
Island County Planning & Community Development
P.O. Box 5000
Coupeville, WA 98239
II.

The applicants were subject to a Code Enforcement action under COV 462/07. In the latter part of 2007 the applicant cleared, graded and constructed approximately 2,000 feet of access roadway and established two potential home sites with installed septic systems on the subject properties. Portions of the clearing and grading for the roadway crossed two separate regulated wetlands and their 100 ft. buffers. No Clearing and Grading Permit from Island County and no Forest Practice Permit from the Washington State Department of Natural Resources was issued prior to performing the work. The two septic systems were approved by the Island County Health Department prior to the work. However the applications for each of these permits indicated there were no wetland areas on site.

In September of 2007 the Washington State Department of Natural Resources issued a Stop Work Order for the clearing done on the property. Island County followed up the Stop Work Order with the Enforcement Order described above.

The applicant is now seeking a Clearing and Grading Permit, a decision from the Island County Hearing Examiner lifting the development moratorium imposed pursuant to the Forest Practices Act and has further requested the Hearing Examiner to allow a portion of the roadway to cross the western wetland and its’ buffers in order to reach a cleared area in the northeast corner of the southern parcel. The Planning Department has rejected the request for the Reasonable Use exception based on the inability of the proposal to meet the criteria for a Reasonable Use exception as set forth in ICC 17.02.040.D.

III.

Island County Public Works and Planning & Community Development have reviewed the proposal and have set forth Findings of Fact and Conclusions in a Staff Report, Exhibit No. 1 in the Hearing Examiner file. The factual findings set forth in Exhibit 1 are supported by the record as a whole and are hereby adopted as factual findings by the Hearing Examiner through this reference. A copy of the Staff Report is attached hereto and incorporated herein by this reference.

IV.

The applicant has submitted a Restoration Plan prepared by OTAK, dated January 30, 2008. The Staff Report reflects staff’s conclusion that the Restoration Plan is adequate. Staff has proposed conditions that require implementation of the Restoration Plan, except
for required ongoing maintenance and monitoring by April 1, 2009. Staff proposed conclusion would allow a single extension. The Hearing Examiner has reviewed the Restoration Plan and, as required by ICC 17.03.260.I(1)(c) hereby approves the Restoration Plan submitted.

V.

The applicant has requested to be allowed to leave the portion of the installed roadway which crosses the regulated western wetland and its’ 100 ft. buffers in place to allow the property owner to reach a proposed building site in the northeast corner of the southern parcel. The applicant argues that this wetland alteration is consistent with the criteria for a Reasonable Use exception to the Critical Areas Ordinance. Island County Planning has determined that the requested wetland alteration which would consist of leaving the roadway across the buffers and wetland to reach the applicants’ preferred building site does not meet the Reasonable Use exceptions and that the entire roadway within the two regulated wetlands and their buffers must be removed after the manufactured home is delivered to the building site on the east end of the northern parcel.

The record indicates that the applicants prefer the northeast corner building site on the southern parcel over another available building site located outside of the wetland and its’ buffers on the western 1/3 of the southern parcel. However, the record indicates that there is clearly sufficient room for a home site and accessory uses including the septic drainfield along the western 1/3 of the southern parcel and that reasonable single family use of this parcel can be obtained without encroaching on any regulated wetland or their buffers. In fact the Plot Plans indicate that there is over 100,000 square feet of space available along the western boundary and outside of the western wetland and its’ 100 ft. buffers.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

A six year Forest Practices moratorium was appropriately placed on this property for violations of the Forest Practices Act, Island County Clearing and Grading Permit requirements, and unpermitted alteration of regulated wetlands and their buffers.

II.

The applicant proposes the establishment of two single family residences, one on each parcel, along with associated clearing and grading in order to gain access to the building sites. Approval of this proposed development is within the jurisdiction of the Hearing Examiner pursuant to ICC 17.03.270.E. Furthermore ICC 17.03.260.I(1)(c) requires Hearing Examiner approval of all Wetland Restoration Plans. The decision of the Hearing

Island County Hearing Examiner
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Examiner in regards to lifting of the moratorium and conditions applicable thereto may be appealed to the Board of County Commissioners within the timeframe set forth in ICC 16.19.

III.

The applicant has requested the granting of a Reasonable Use exception to the protection of the wetlands onsite pursuant to ICC 17.02.040.D. This section gives the Director authority to modify or waive requirements pertaining to critical areas when the Director concludes that the request is consistent with all seven of the criteria set forth in ICC 17.02.040.D(1-7). The Director has concluded that the request for a Reasonable Use exception to allow the applicant to retain that portion of the driveway that crosses the western wetland and its’ buffers in order to allow the applicants access to their preferred building site on the southern parcel does not meet these criteria. Planning has recommended conditions of approval which require full removal of the roadways and restoration of both wetlands and their buffers as a condition for lifting the moratorium and resolving the enforcement action. The section cited refers to a Reasonable Use exception for residential use. All other Reasonable Use exceptions would require approval of an alteration through the public hearing process pursuant to ICC 17.02.250. Procedurally the applicant should have been required to appeal the Director’s determination denying the Reasonable Use exception requested by the applicant including payment of the necessary appeal fee. In this case resolution of this issue is appropriately part of the determination of the request to lift the moratorium and the determination of the acceptability of the proposed Restoration Plan.

The Hearing Examiner concurs with the Planning Director’s determination that the requested wetland alteration to allow Reasonable Use for single family purposes is inconsistent with the applicable criteria and that the request should be denied.

No encroachment on regulated wetlands or their buffers are necessary to allow single family development on either of these parcels. The applicant is not entitled to alter wetlands and their buffers in order to access the applicants’ preferred building site. Such alterations are only allowed when they are necessary to allow a reasonable residential use of the property. In this case the applicant has approximately 100,000 square feet of building site available outside of the regulated wetland and buffer on the southern parcel. For this reason the applicant’s Reasonable Use request fails to meet the requirements of ICC 17.02.040.D(1-3).

IV.

RCW 76.09.460 and .470 sets forth the criteria that must be met before a local government can lift a Forest Practice Moratorium. These requirements include, in this case, completion of the restoration work set forth in the Wetland Restoration Plan prior to the issuance of any new development permits. In this case the building permits required for the construction of the single family residents on each of the two parcels cannot be issued until the restoration work set forth in the Restoration Plan, except for ongoing
monitoring and maintenance has been completed. The Hearing Examiner should include a condition of approval which does not allow the issuance of building permits for either site until the Island County Planning Department has confirmed the restoration work requiring the removal of the roadbeds, the re-establishment of the wetlands and buffers disturbed in their natural state and the completion of any planting required under the Plan has been completed.

V.

Subject to the conditions of approval attached by the Hearing Examiner to this decision the application to lift the moratorium on the two parcels can be lifted and the requested Clearing and Grading Permit can be granted.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

**DECISION**

For the reasons set forth above the Hearing Examiner hereby denies the applicants’ request for a Reasonable Use exception which would allow ongoing encroachment into a wetland and its’ regulated buffers in order to access the applicants’ preferred building site on the southern parcel.

The Hearing Examiner hereby approves the granting of Clearing and Grading Permit CGP 132/08, the lifting of the moratorium and the proposed Wetland Restoration Plan set forth in the Wetland Assessment, Exhibit No. 7 in the Hearing Examiner file, subject to the following conditions:

1. No building permits for either parcel shall be issued until the restoration work required by the Restoration Plan, with the sole exceptions of ongoing maintenance and monitoring, have been completed and approved by Island County’s Critical Areas Planner.

2. The applicant shall provide a copy of this approved permit and SEPA Determination to the Department of Natural Resources (DNR) with an application for a State Forest Practices Permit. No additional timber harvest or road construction or timber removal from the sites may commence until an approved forest practices permit is obtained from the DNR.

3. As noted above, the existing road approach onto Fox Spit Road is of limited width appropriate only for a single residential use. The approach onto Fox Spit will need to be improved to a two car width at the edge of the County Road as more than one developed parcel will be utilizing the approach. Prior to improving the easement off Fox Spit Road an updated common approach Access Permit from the County Roads Department will be required.
4. An Approved Building Permit shall be obtained prior to placement of the manufactured home on a foundation or prior to any other residential construction activity that requires a Building Permit. Contact the Island County Building Department for any questions regarding Building Permits.

5. A copy of this permit, the approved plans, and the approved DNR Forest Practices Permit shall be kept on site at all times until completion of the work on the site.

6. Within 30 days from completion of the proposed access road off Fox Spit Road inspection of road construction and associated drainage facilities shall be requested of Island County Public Works. Such inspection shall confirm the road was constructed and will perform in substantial compliance with the submitted road plan.

7. Applicant bears the full responsibility of locating easement boundaries and construction roadway within the limits of applicable easements.

8. Applicant bears the full responsibility of notifying site crews of the permit conditions and shall be held fully accountable for any activity which results in on- or off-site hazards or damages.

9. This permit expires twenty-four (24) months after date of issuance.

10. Hours of operation shall be limited to those associated with normal business hours (8:00 a.m. to 6:00 p.m. Monday through Saturday).

11. Appropriate fire control practices shall be adhered to on this site.

12. In case of any damage to any roads, streets, public places, structure or public property of any kind as a result of the work approved under this permit, you must repair such damage at your own cost and expense.

13. Clearing boundaries and work areas shall be clearly flagged prior to the start of any clearing activities.

14. No grading or placement of materials shall take place within any setback areas unless shown on the approved plans. Side-casting or deposition of slash, site debris, or any materials into the wetland/buffer or on a steep slope is prohibited.

15. Stormwater/drainage and erosion control plans have been submitted with the application and are approved by Island County. The measures proposed in these plans shall be installed and maintained as approved, in addition to any other requirements contained in this permit.

16. Clearing to bare earth shall be limited to that shown in the approved plans. Any areas cleared to bare earth (i.e., dozing stumps, clearing underbrush, and grading topsoil) shall be stabilized by application of Best Management Practices (BMPs), including but not limited to sod or seeding or other vegetation, hydro-seeding, plastic covering, mulching, or application of gravel on areas subject to heavy traffic immediately following clearing. Applicant is
responsible to ensure site development activity does not impact neighboring properties, critical areas or the adjacent county road system from the uncontrolled transport of sediment.

17. Compaction of exposed earth material shall not result in the diversion of surface water, or create new drainage channels, increasing runoff and hazard to regulated critical areas or down slope properties.

18. Consideration should be given to potential windfall damage to adjacent properties and appropriate action taken to minimize blow-downs.

19. From October 1 through April 30, in areas where work has been completed or will not undergo additional disturbance for a period of 30 days or greater, no soils shall remain unstabilized for more than 2 days. From May 1 through September 30, in areas where construction has been completed or will not undergo additional disturbance for a period of 30 days or greater, no soils shall remain unstabilized for more than 7 days.

20. Cut or fill slopes shall be graded/finished to a maximum 1.75H:1V slope and seeded/stabilized immediately following completion of grading unless revised and approved via anticipated engineered road plans.

Conditions associated with Critical Areas:

A. No permanent disturbance to any wetland or buffer is allowed. All disturbed wetlands and buffers shall be restored.

B. Following moving of the manufactured home onto the northern parcel (parcel B on the site plan), all disturbed wetlands and buffers shall be restored pursuant to the restoration plan prepared by OTAK and dated January 30, 2008. All recommendations stated in said report shall be followed unless modified herein. This condition allows moving of the manufactured home onto parcel B over the existing roadway illegally placed in regulated wetlands and their buffers. However no building or occupancy permit is to be granted to allow final installation and use of the manufactured home until all restoration work, except for ongoing monitoring and maintenance, has been completed and approved.

C. At least 3 inches of clean mulch, bark, or wood chips shall be placed on all disturbed soil within a wetland buffer.

D. Restoration shall be completed by April 1, 2009. A single extension may be allowed.

E. Installed plants shall be flagged or otherwise marked to aid in monitoring of the restoration areas.

F. At least 80% of the installed plants must survive for 3 years following planting. If said survival rate is not achieved, dead plants must be replaced and the monitoring period will be extended.

G. Non-native plants shall be removed from the restoration areas using hand tools during the monitoring period.

H. A yearly monitoring report shall be submitted by October 31 during the monitoring period. Said report must include the number of alive
plants, amount of non-native species in the restoration areas, general condition of the restoration areas, and any other pertinent information.

I. A biologist shall be onsite during any excavation or other dirt work within a wetland.

J. If these conditions are not followed, the applicant shall receive monetary penalties for non-compliance with Island County Code.

It is the property owners’ responsibility to identify and appropriately protect wetlands, streams, and their buffers. No clearing or grading, brush removal, construction, logging activity or roads are allowed within any wetlands and streams or within the buffers of any such features unless approved by Island County. *Should the applicant encounter any saturated areas or areas suspected to be wetlands or streams during the work on this site, all work shall immediately cease and Island County Community Development contacted for a site evaluation. Alteration or disturbance to regulated wetlands, streams or their buffers may have serious consequences, including fines and denial of any and all permits for up to 10 years.*

Entered this 22\textsuperscript{nd} day of December, 2008, pursuant to authority granted under the laws of the State of Washington and Island County.

\begin{flushright}
\textbf{MICHAEL BOBBINK } \\
Island County Hearing Examiner
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**APPEAL PROCESS:**

This decision of the Hearing Examiner shall be a final and conclusive decision unless within fourteen (14) days following the mailing of such decision a written statement of appeal is filed with the Island County Board of Commissioners by the applicant, a Department of the County, or Party of Record, who is also an Aggrieved Person. Said statement shall set forth any alleged errors and/or the basis for appeal and shall be accompanied by a fee pursuant to the fee schedule adopted by the Board; provided that such appeal fee shall not be charged to a department of the County or to other than the first appellant ICC 16.13.100.b; ICC 16.19.190.
ISLAND COUNTY PUBLIC WORKS/PLANNING
STAFF REPORT

Clearing and Grading Permit
and Reasonable Use Determination

Proposal, Findings, Analysis,
Conclusions and Recommendations

SUMMARY

Application No: CGP 132/08

Applicant: Janusz and Joanna Topor-Madry
Assessor’s Parcel Numbers: R23013-233-2950 and R23013-286-3360

Abbreviated Application Description:

This proposal consists of two related components:

First is to lift a development moratorium related to previous clearing and grading activity within a wetland and buffer without required permits from Island County, Washington Department of Natural Resources and other applicable agencies. Application includes wetland area restoration and mitigation.

Secondly, additional clearing and grading is proposed to complete access road improvements and site preparation for use of two residential building sites on two adjacent ten acre parcels under same ownership.

Recommendation: Approval with conditions.

Property Owner: Janusz and Joanna Topor-Madry, 7802 Ingram Lane SE Snoqualmie, WA. 98065.

Property Location: Located Northerly of Saratoga Road and westerly of Fox Spit Road in the SE ¼ of Section 13, TWP 30N, Range2E, on South Whidbey Island, Washington.

Applicable Island County Ordinances: Chapter 11.02 Clearing and Grading Ordinance, Chapter 11.03 Stormwater and Surface water Ordinance Chapter 17.03, Zoning Ordinance; Chapter 17.02,

**SEPA:** A Mitigated Determination of Non-Significance was issued on November 17, 2008 pursuant to WAC 197-11-355 and ICC 16.19.150.D.

**Procedural Requirements:**
Decision Type: Type III (Lifting of Development Moratorium per ICC 17.03.270.D)
Community Meeting Date: Not required
Pre-Application Conference Date: *Not required per determination of Planning Director pursuant to ICC 16.19.070*

**Notice of Complete Application:** August 1, 2008
Notice of Application:
- Sign Posted: August 13, 2008
- Whidbey Record: August 13, 2008
- Mailed Notice: August 08, 2008

Public Comment Period: August 13, 2008 to August 27, 2008

**Notice of Hearing in South Whidbey Record:** August 19, 2008
**Hearing Date:** December 4, 2008

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**ISLAND COUNTY PUBLIC WORKS/PLANNING STAFF REPORT**
Clearing and Grading Permit
Proposal, Findings, Analysis, Conclusions and Recommendations

**Application No:** CGP 132/08

**Applicant:** Janusz and Joanna Topor-Madry

Assessor’s Parcel Numbers: R23013-233-2950 and R23013-286-3360

Date of Report: November 17, 2008

**Proposal:**
Applicant had cleared vegetation and graded approximately 500 cubic yards of soil to improve and construct approximately 2000 feet of access roadway and establish two potential homesites and installed a septic system. Portions of the roadway clearing and grading impacted regulated wetlands and associated buffers. No Clearing and Grading Permit from Island County or Forest Practice application from the Washington Department of Natural Resources was issued prior to performing the work.

However, two Septic Permits were issued by Island County Health Department for an individual septic system on each parcel (Septic Permit No. 507-07 issued 6-26-07 for parcel R23013-233-
2950 and Septic Permit no. 538-07 issued 8-09-07 for parcel R23013-286-3360. The Septic permit applications were not routed to Island County Planning or Public Works Departments for review. Applicant has noted that he did attempt to determine what permits were necessary for road construction and clearing and thought he was in compliance with regulations.

The Washington Department of Natural Resources discovered the clearing activity and issued a Stop Work Order in September 2007 as no forest practice permit had been issued for the development activity on the two parcels.

Island County Planning Code Enforcement prepared an Enforcement Order No. 462-07 COV that will be resolved pending the outcome of this application and completion of successful restoration activity.

Two elements to this proposal as follows:

- Application to lift a development moratorium on 20 contiguous acres (parcels R23013-233-2950 and R23013-286-3360) for development of future single family residences. Lifting of the Development Moratorium is necessary to allow for development on the parcels encumbered by the moratorium. Proposed restoration and mitigation for previous un-permitted clearing and grading within regulated wetland and buffer will bring the property into compliance with Island County Code and allow for the moratorium to be lifted, pending successful completion and monitoring of the restoration efforts.

- Additional selective clearing of approximately 12-15 trees and minor grading is proposed to construct 350 feet of new access road (through a 15-25 foot wide access easement from Fox Spit Road to a proposed homesite on R23013-286-3360) and removal of an additional 20 trees around the perimeter of the proposed homesite. Proposal includes use of a previously cleared area for a potential future homesite in the northeastern corner of parcel R23013-233-2950. The issuance of a SEPA Determination and the approval of the Clearing and Grading Permit will allow for the applicant to apply to the Washington Department of Natural Resources for a forest practices permit to harvest additional timber and construct additional access roadway.

Findings

1. Project and Parcel History. A Clearing and Grading Permit application with an Environmental Checklist for the project was submitted on April 21, 2008. A Notice of Complete Application was sent to the applicant on August 1, 2008.

2. Site Description.
   a. Location. Located Northerly of Saratoga Road and westerly of Fox Spit Road in the SE ¼ of Section 13, TWP 30N, Range 2E on South Whidbey Island, Washington.
   b. Access. Access to both parcels is currently made off Saratoga Road (through on off-site access easement recorded under Auditor’s File Number 4171362) via an approved Access to County Right-of-Way Permit No.APW06-0165. Said access was utilized to construct a roadway from Saratoga Road northerly across the western perimeter of parcel R23013-233-2950 and then easterly across the northern perimeter of parcel R23013-233-2950.
The roadway was extended across the southeastern perimeter of parcel R23013-286-3360 to gain access to a cleared homesite in the far eastern area of parcel R23013-286-3360. The applicant intends to use said roadway to move a manufactured home to the building site on parcel R23013-286-3360. Said roadway will also provide access to a future building site on parcel R23013-233-2950.

Another legal access to parcel R23013-286-3360 is via an off-site access easement (recorded under Auditor’s File Number 20019411) from Fox Spit Road. An approved Access to County Right-of-Way Permit No. A5391 was previously issued for the existing approach onto Fox Spit Road. Applicant intends to improve and use said easement for ingress/egress to the building site on parcel R23013-286-3360 after transporting the manufactured home to the building site as described above.

Said Access Permit appears to have been issued for a single residential use. The existing road approach onto Fox Spit Road is of limited width appropriate only for a single residential use. The approach onto Fox Spit will need to be improved to a two car width at the edge of the County Road as more than one developed parcel will be utilizing the approach. Prior to improving the easement off Fox Spit Road an updated common approach Access Permit from the County Roads Department will be required.

If the manufactured home must be moved across the county road a “Moving Permit” is required from the Roads Department prior to placing the home on the county roadway.

c. **Size and Condition.** The parcels are configured into 2-10 acre parcels via unregulated segregation processed via the Island County Auditor’s office. The parent parcel number was R23013-250-2950. The parcels are primarily forested with dense secondary regrowth with areas of secondary to mature conifer and deciduous species. The only developed areas are those cleared and graded by the applicant as shown on the submitted site plans.

d. **Surrounding Development.** Surrounding parcels are zoned Rural to the south and east and Rural Forest to the north and west with a few scattered single family residences in the vicinity.

e. **Natural Features.** Critical Areas (2 wetlands that bisect the properties in two low draws a north south direction) are located on portions of the subject properties and are shown on the site plans. According to the USDA Soil Survey for Island County - 1958, the predominant soil types found on this parcel are Whidbey gravelly sandy loam (Wb) with 5 to 15% slopes. Isolated areas of wetlands will exhibit hydric soils.

f. **Noise Zone.** The parcel is not within an AICUZ noise zone.

g. **Archaeological Sites.** According to the maps provided by the State Office of Archaeology and Historic Preservation, the project is not located on an archaeological site.

h. **Historic Sites.** The project is not within the boundaries of a historic district.

3. **Land Use Controls**
(1) A Stop Work Order from the Washington Department of Natural Resources was issued in September 2008 related to forest practice activity without a DNR forest practice permit. Therefore per RCW 76.09.460 a Six (6) year development moratorium became effective for six years. Additionally, the clearing and grading on the subject properties without an Island County permit is considered a violation of ICC 17.03. The Washington Department of Natural Resources forester (Loren Wheeler) has provided confirmation via e-mail to Island County Public Works Development Coordinator Bill Poss, dated May 20, 2008, indicating “Our department will not require an after the fact forest practice application on this site provided all timber harvesting, hauling of timber and road construction is completed. Should Mr. Topor-Madry want to sell the wood or construct or clear additional areas, we would require a forest practice application for the proposed work”. Therefore, given additional timber removal and access roadway construction is proposed a Forest Practice Permit from the DNR will be required prior to performing any additional timber harvesting, road construction or hauling of timber off-site. The manufactured home may be placed on the building site however, provided the DNR permit is obtained prior to performing any additional timber harvesting, road construction or hauling of timber off-site.  

(2) Per ICC Subsection 17.03.270.C Forest Practices Moratorium.

“Six (6) year moratorium per RCW 76.09.060(3)(b)(i). For any lands harvested under a non conversion forest practices permit, or for any lands harvested without a permit when a forest practices permit was required, no development permits or approvals incompatible with continued forest use or production on the land and which involve or include physical conversion of the land from continued forest growth, shall be issued for a period of six (6) years from the date of forest practice permit application, except as provided for in this policy”

(3) Per ICC Subsection 17.03.270.E

“Lifting of the moratorium for developments other than single-family residences per RCW 76.09.060(3)(b)(i)(D). For development other than one single family residences and appurtenances per section D which involve or propose conversion, the standards (including all critical area regulations) and processes applicable to such development shall be fully applied. The matter of lifting any applicable moratorium for such development shall be determined by the Island County Hearing Examiner through an open record hearing as prescribed in Chapter 16.19 ICC, after a complete application for the proposed development action has been submitted. The decision of the Hearing Examiner in such cases may be appealed to the Board of County Commissioners in a closed record appeal process”.
This Clearing and Grading permit proposes to lift the moratorium, pursuant to ICC Subsection 17.03.270.E, and per RCW 76.09.460.2 on the parcels so encumbered to allow for development activity (single family residences on individual 10 acre parcels). Restoration and mitigation for critical areas impacts will bring the property into compliance with Island County Codes. The SEPA Determination of Non-Significance and the approval of the Clearing and Grading Permit will allow for the applicant to apply to the Washington Department of Natural Resources for a forest practices permit to harvest additional timber and construct additional access roadway.

This application proposes additional development activity on the subject parcels (access road and driveway construction, additional clearing for single family residential development) to facilitate residential development of each parcel.

4. Applicant has cleared and graded portions of the subject properties to improve and construct access roadway and establish residential building sites on each parcel. Regulated wetlands and buffers were impacted by said development activity. A biological site assessment was performed by the owner to determine locations of wetlands, and flag the buffers.

5. SEPA. A Mitigated Determination of Non-Significance was issued on November 18, 2008 pursuant to WAC 197-11-355 and ICC 16.19.150.D. Reference attached memorandum and SEPA Determination from Justin Craven dated November 17, 2008.

6. Shoreline Designation. Not applicable to this parcel

7. Agency Comments.
   a. Island County Planning and Community Development Department. The Planning and Community Development Department Critical Areas Planner Justin Craven has reviewed all application materials for compliance with Island County Code Chapter 17.02, including the following: Technical Memorandum by OTAK Inc. dated 01-30-08 and Wetland Site Assessment by Graham-Bunting Associates dated 03-25-08. Justin Craven concluded that Planning has no objection to conditional approval of the application subject to conditions as described in the Reasonable Use Determination Findings and SEPA Determination from Justin Craven dated November 17, 2008. (attached). Conditions will be re-stated under “Recommendations” below.
   b. Island County Engineering Division. Public Works has reviewed all the application materials for compliance with Island County Clearing and Grading Ordinance (ICC 11.02) and the Island County Stormwater and Surface Water Ordinance (ICC 11.03). Recommended restoration includes restoration of historical drainage flow. The application describes drainage and erosion control methods already installed and additional measures to be employed during development. Said drainage narrative was reviewed and found to be substantially consistent with ICC 11.03. Clearing and grading activity already performed appears substantially consistent with code requirements (given wetland restoration is successfully completed) and additional clearing and grading, as described in the application, also appears consistent with ICC 11.02 provided conditions of approval are incorporated into site development.
Recommended conditions of approval related to Clearing, Grading and Drainage will be referenced under “Recommendations” below.

Transportation Concurrency and traffic impacts analysis was not performed for this application as single family residences in the Rural Forest zone are exempt from Concurrency review per ICC 11.04.050.2.a.

Fire Flow is not applicable to this application as no new lots are being created under this permit. However, per ICC 11.13.03A.100 Fire Flow Requirements subsection A. New water systems and expansion of existing water systems shall be designed and constructed to provide for fire flows in a manner consistent with the standards outlined in this chapter.

8. Public Comments. No public comments were received regarding this Clearing and Grading Permit application other than an inquiry from neighbors about the nature of the project. No written comments were provided.

Conclusions
1. The staffs of Island County Public Works and Community Development evaluated the proposed project for compliance with Titles 11 and 17 and with Chapters 16.14C, and 16.19 of the Island County Code according to the Type III Decision Process. Other county and/or state agencies were consulted as appropriate. Island County issued a Determination of Consistency according to ICC 16.19.120. The proposal that was evaluated was limited to a lifting a forest practices moratorium to allow for residential development, including wetland restoration, the construction of an access roadway and single family residences. No other uses were evaluated for consistency with Island County Codes, plans or policies.

2. The proposed Clearing and Grading Permit will be consistent with the criteria for approval listed in ICC 11.02 (Clearing and Grading Ordinance), ICC 11.03 (Storm water and Surface water Ordinance), ICC 17.02 (Critical Areas) and ICC 17.03 (Zoning) if the conditions described throughout the Recommendation sections of this staff report are adopted as conditions of approval.

Recommendations
Based on the foregoing Findings, Analysis and Conclusions, the Public Works and Planning and Community Development Departments recommend that Clearing and Grading Permit application number 132-08, submitted by Janusz and Joanna Topor-Madry be approved with the following conditions:

1. If this permit is approved by the Hearing Examiner, the applicant shall provide a copy of this approved permit and SEPA Determination to the Department of Natural Resources (DNR) with an application for a State Forest Practices Permit. No additional timber harvest or road construction or timber removal from the sites may commence until an approved forest practices permit is obtained from the DNR
2. As noted above, the existing road approach onto Fox Spit Road is of limited width appropriate only for a single residential use. The approach onto Fox Spit will need to be improved to a two car width at the edge of the County Road as more than one developed parcel will be utilizing the approach. Prior to improving the easement off Fox Spit Road an updated common approach Access Permit from the County Roads Department will be required.

3. An Approved Building Permit shall be obtained prior to placement of the manufactured home on a foundation or prior to any other residential construction activity that requires a Building Permit. Contact the Island County Building Department for any questions regarding Building Permits.

4. A copy of this permit, the approved plans, and the approved DNR Forest Practices Permit shall be kept on site at all times until completion of the work on the site.

5. Within 30 days from completion of the proposed access road off Fox Spit Road inspection of road construction and associated drainage facilities shall be requested to Island County Public Works. Such inspection shall confirm the road was constructed and will perform in substantial compliance with the submitted road plan.

6. Applicant bears the full responsibility of locating easement boundaries and construction roadway within the limits of applicable easements.

7. Applicant bears the full responsibility of notifying site crews of the permit conditions and shall be held fully accountable for any activity which results in on- or off-site hazards or damages.

8. This permit expires twenty-four (24) months after date of issuance.

9. Hours of operation shall be limited to those associated with normal business hours (8:00 a.m. to 6:00 p.m. Monday through Saturday).

10. Appropriate fire control practices shall be adhered to on this site.

11. In case of any damage to any roads, streets, public places, structure or public property of any kind as a result of the work approved under this permit, you must repair such damage at your own cost and expense.

12. Clearing boundaries and work areas shall be clearly flagged prior to the start of any clearing activities.

13. No grading or placement of materials shall take place within any setback areas unless shown on the approved plans. Side-casting or deposition of slash, site debris, or any materials into the wetland/buffer or on a steep slope is prohibited.

Control of Runoff and Erosion

14. Stormwater/drainage and erosion control plans have been submitted with the application and are approved by Island County. The measures proposed in these plans shall be installed and maintained as approved, in addition to any other requirements contained in this permit.
15. Clearing to bare earth shall be limited to that shown in the approved plans. Any areas cleared to bare earth (i.e., dozing stumps, clearing underbrush, and grading topsoil) shall be stabilized by application of Best Management Practices (BMPs), including but not limited to sod or seeding or other vegetation, hydro-seeding, plastic covering, mulching, or application of gravel on areas subject to heavy traffic immediately following clearing. Applicant is responsible to ensure site development activity does not impact neighboring properties, critical areas or the adjacent county road system from the uncontrolled transport of sediment.

16. Compaction of exposed earth material shall not result in the diversion of surface water, or create new drainage channels, increasing runoff and hazard to regulated critical areas or down slope properties.

17. Consideration should be given to potential windfall damage to adjacent properties and appropriate action taken to minimize blow-downs.

18. From October 1 through April 30, in areas where work has been completed or will not undergo additional disturbance for a period of 30 days or greater, no soils shall remain unstabilized for more than 2 days. From May 1 through September 30, in areas where construction has been completed or will not undergo additional disturbance for a period of 30 days or greater, no soils shall remain unstabilized for more than 7 days.

19. Cut or fill slopes shall be graded/finished to a maximum 1.75H:1V slope and seeded/stabilized immediately following completion of grading unless revised and approved via anticipated engineered road plans.

**CRITICAL AREAS**

Planning and Community Development Critical Areas Planner has provided findings and conclusions as described in the attached memorandum and SEPA Mitigated Determination of Non-Significance dated November 17, 2008. Conditions of approval are restated below:

1. No permanent disturbance to any wetland or buffer is allowed. All disturbed wetlands and buffers shall be restored.
2. Following installation of the manufactured home on the northern parcel (parcel B on the site plan), all disturbed wetlands and buffers shall be restored pursuant to the restoration plan prepared by OTAK and dated January 30, 2008. All recommendations stated in said report shall be followed unless modified herein.
3. At least 3 inches of clean mulch, bark, or wood chips shall be placed on all disturbed soil within a wetland buffer.
4. Restoration shall be completed by April 1, 2009. A single extension may be allowed.
5. Installed plants shall be flagged or otherwise marked to aid in monitoring of the restoration areas.
6. At least 80% of the installed plants must survive for 3 years following planting. If said survival rate is not achieved, dead plants must be replaced and the monitoring period will be extended.
7. Non-native plants shall be removed from the restoration areas using hand tools during the monitoring period.
8. A yearly monitoring report shall be submitted by October 31 during the monitoring period. Said report must include the number of alive plants, amount of non-native species in the restoration areas, general condition of the restoration areas, and any other pertinent information.

9. A biologist shall be onsite during any excavation or other dirt work within a wetland.

10. If these conditions are not followed, the applicant shall receive maximum monetary penalties for non-compliance with Island County Code.

While reasonable means to determine the presence of critical areas, including wetlands and streams, were made during the review of this permit, it is possible that there are such features present on the subject properties that were not discovered by staff. It is the property owners responsibility to identify and appropriately protect wetlands, streams, and their buffers. No clearing or grading, brush removal, construction, logging activity or roads are allowed within any wetlands and streams or within the buffers of any such features unless shown on the approved plans. Should you encounter any saturated areas or areas suspected to be wetlands or streams during the work on this site, all work shall immediately cease and Island County Community Development contacted for a site evaluation. Alteration or disturbance to regulated wetlands, streams or their buffers may have serious consequences, including fines and denial of any and all permits for up to 10 years.

Prepared by

____________________________________
Bill Poss, Public Works Development Coordinator
for William E. Oakes, P.E., Public Works Director/County Engineer

Attachments: Application Findings and Conclusions memorandum and SEPA Determination of Non-Significance from Justin Craven dated November 17, 2008

cc: Michael Bobbink, Hearing Examiner

File CGP 344/07