APPLICATION: Application to lift a forest practices development moratorium resulting from previous approval by Washington Department of Natural Resources of a non-conversion forest practices permit on a 20-acre parcel. Applicant proposes removing the moratorium prior to the 6-year expiration date to allow for short-platting into four lots and conversion to residential uses thereon.

DECISION: A request to lift Forest Practice Moratorium is approved by the Hearing Examiner.

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 March 5, 2009.

I.

PRELIMINARY INFORMATION

Applicant: Jesse Welcome

Property Location: Milepost 22, State Route 525, R23028-168-2040

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: In accordance with the State Environmental Policy Act (SEPA) a Determination of Non-Significance was issued by Island County on January 29, 2009.
Publication: February 18, 2009

Mailing of Notice to Applicant: April 24, 2008

Sign Posted: May 7, 2008

Mailing of Staff Report: February 23, 2009

Hearing Date: March 5, 2009

Exhibit Log:
1. Staff Report
2. Clearing & Grading/Timber Harvest Application, received 2/19/08
3. Land Development Application, received 2/19/08
4. Environmental Checklist, received 2/19/08
5. Short Plat map 18x24, received 2/19/08
6. Dept of Natural Resources Notice of Decision, received 2/19/08
7. Statutory Warranty Deed, received 2/19/08
8. Site Assessment Wetland/Buffer Mitigation Plan, received 2/19/08
9. Letter from Jeff Tate to Dept of Natural Resources, dated 1/29/09
10. SEPA Threshold Determination, dated 1/29/09
11. Letter from Mattia Boscolo to John Bertrand, dated 7/29/08
12. Letter from John Bertrand to Jesse Welcome, dated 7/30/08
13. Emails between Justin Craven, Anthony Boscolo & Bill Cantrell, dated 10/6/08
14. Memo from Justin Craven to John Bertrand, dated 10/28/08
15. Letter of Revised Wetland Mitigation Plan to Anthony Boscolo from Bill Cantrell, received 11/24/08
17. Notice of Complete Application, dated 4/24/08
18. Notice Application with SEPA
19. Affidavit of Mailing of Application with SEPA, dated 5/2/08
20. Notice of Posting a Public Sign
21. Affidavit of Posting the Public Notice Sign, dated 5/7/08
22. Affidavit of Publication in Whidbey News Times/Record, dated 5/7/08
23. Letter of Hearing Notice from Paula Bradshaw
24. Hearing Notice Affidavit of Mailing
25. Site Data-Request for Comment, dated 4/25/08
26. Photo copy of map
27. Quarter Section map
28. Virtual Earth direction map
29. Account Summary Snapshot
30. Account Land Snapshot
31. Parcel Information
32. Critical area map
HEARING TESTIMONY

John Bertrand
Island County Public Works
P.O. Box 5000
Coupeville, WA 98239

Shane Thatcher
1796 Main St.
Freeland, WA 98249

II.

The applicant has requested that Island County lift a Forest Practices Development Moratorium, imposed by law automatically when the appellant obtained a Non-Conversion Forest Practice Permit on the subject property. The applicant is requesting lifting a Forest Practice Moratorium to allow short platting of the twenty acre parcel into four five acre parcels for residential use.

III.

Island County Public Works is recommending a lifting of the Forest Practices Moratorium. The Findings of Fact, Conclusions and Recommendation of Public Works is contained in the Staff Report, Exhibit No. 1 in the Hearing Examiner file.

There was no public comment or concern in regards to lifting this moratorium. The applicant has not undertaken work on the property in violation of the moratorium.

The Find of Fact set forth in the Staff Report filed by Island County Public Works, Exhibit No. 1 in the Hearing Examiner file, are support by the record as a whole and are hereby adopted by the Hearing Examiner as Findings of Fact herein. The Staff Report is attached to this decision and is incorporated herein by this reference.

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.

The Forest Practice Moratorium went into effect through operation of law when the applicant obtained a Non-Conversion Forest Practice Permit from the Washington Department of Natural Resources, allowing logging on the subject twenty acre parcel.
The applicant is now requesting a lifting of the moratorium pursuant to ICC 17.03.0270.D. If the lifting of the moratorium is approved the Island County Public Works will grant approval of Clearing and Grading Permit 057/08 subject to conditions and agreed to abide by the conditions attached to the Clearing and Grading Permit by Public Works. The applicant has reviewed the conditions and has signed the Permit agreeing to abide by the conditions.

II.

The proposed conversion use is a Short Plat of the twenty acres into four five-acre parcels to be used for residential purposes.

The applicant has complied with the terms of the Forest Practice Permit. The proposed clearing and grading for residential use for the lots to be created through the Short Plat will be consistent with all of the standards of applicable Island County Ordinance including all Critical Areas regulations.

Island County Public Works has recommended that the Forest Practice Moratorium be lifted. The Hearing Examiner concludes that the lifting of the moratorium is consistent with the applicable standards of ICC 17.03.270 and RCW 76.09.060. The request to lift the moratorium should 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

The Island County Hearing Examiner hereby lifts the development moratorium imposed on Assessors parcels number R23028-168-2040, as recommended by Island County Public Works.

Entered this 17th day of March, 2009, pursuant to authority granted under the laws of the State of Washington and Island County.

________________________________
MICHAEL BOBBINK
Island County Hearing Examiner
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
ROADS DIVISION
P.O. BOX 5000, COUPEVILLE, WA 98239
(360) 679-7331

William E. Oakes, P.E.,
Director/County Engineer

Randall C. Brackett, P.E., Asst. County Engineer

STAFF REPORT
Clearing and Grading Permit
Proposal, Findings, Analysis,
Conclusions and Recommendations

SUMMARY

Application No: CGP 057/08
Applicant: Jesse Welcome
Assessor’s Parcel Number: R23028-168-2040

Abbreviated Application Description:

Application to lift a forest practices development moratorium resulting from previous approval by Washington Department of Natural Resources of a non-conversion forest practices permit on a 20-acre parcel. Applicant proposes removing the moratorium prior to the 6-year expiration date to allow for short-platting into four lots and conversion to residential uses thereon.

Recommendation: Approval based upon relative compliance with the DNR Forest Practices Permit conditions and Island County Code.

Property Owner: Jesse Welcome, PO Box 804, Monroe, WA 98272.

Property Location: Located along the east side of State Route 525, south of its intersection with Classic Road, in the SW 1/4 of Section 28, Township, 30 North, Range 2 East, W.M.

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, Critical Areas, Chapter 16.19, Land Use Review Process, and Chapter 16.14C, County Environmental Policy.

SEPA: A Threshold Determination of Non-Significance has now been issued due to the level of compliance with existing regulations.

Procedural Requirements:
Decision Type: Type III (Lifting of Forest Practices Development Moratorium per ICC 17.03.270.D)
Community Meeting Date: Not applicable
Pre-Application Conference Date: Pre-application conference 937/07 held on November 8, 2007.

Notice of Complete Application: April 24, 2008
Notice of Application:
  Sign Posted: May 7, 2008
  Whidbey Record: May 7, 2008
  Mailed Notice: April 24, 2008


**ISLAND COUNTY PUBLIC WORKS**
**STAFF REPORT**

*Clearing and Grading Permit  
Proposal, Findings, Analysis, Conclusions and Recommendations*

**Application No:** 057-08 CGP  
**Applicant:** Jesse Welcome  
**Assessor’s Parcel Number:** R23028-168-2040  
**Date of Report:** June 13, 2008

**Proposal:** Application to lift a Development Moratorium prior to the 6-year period expiration on December 21, 2009.

The subject 20-acre parcel was partially harvested of timber under an approved Washington Department of Natural Resources (DNR) Forest Practice Permit No. 2808090 issued December 21, 2005. Therefore a “Moratorium on Non-Forestry Use of Land” is considered effective Per ICC 17.03.270.C: *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”.

The DNR Forest Practices permit is a Class III Non-Conversion permit wherein “reforestation must be completed within the first planting season after harvest is completed”.

Island County Hearing Examiner  
CGP 057/08  
7
The site still contains a semi-improved logging road that will be upgraded for use by the proposed short plat to the north as well, to prevent additional crossing of the site’s wetland-stream complex. Although such improvements will be considered non-forestry conversion activities that are inconsistent with a Class III forestry permit, that road hasn’t yet been upgraded. Furthermore, except for the clearing and grading conducted for installing that road, all other logging and clearing was performed outside of the site’s Class A wetland and its regulated buffer area running north to south through the western half of the parcel. With the exception of grading for that logging road, the site has otherwise not been graded, in conformance with the Class III Non-Conversion permit requirements.

Property owner proposes to short plat the 20-acre parcel into four lots for development of four single-family residential sites on the logged and cleared eastern half and westernmost portion of the subject parcel. Lifting of the moratorium would allow for the parcel to be converted to residential uses prior to the expiration of the 6-year moratorium.

Findings

1. Project and Parcel History. A Clearing and Grading Permit application with an Environmental Checklist for the proposal to lift the moratorium was submitted to Island County Planning and Community Development on February 19, 2008. A Notice of Complete Application was sent to the applicant on April 24, 2008.

2. A Pre-Application Conference, PRE 937-07 was held on November 8, 2007. At said meeting and noted in the staff report, the applicant was advised that given the fact that there was no unpermitted conversion activity, Island County would likely be able to lift the moratorium. The following is an excerpt from the staff report:

As noted previously in a letter from Jeff Tate, Island County Planning Director to Bud Welcome dated July 25, 2007:

“Unauthorized Conversion of Forest Land

RCW 76.09.060.3.b.iii states “[c]onversion to a use other than commercial forest product operations within six years after approval of the forest practices without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had so stated.”

This statute is relevant because it impacts your ability to lift a moratorium when you conduct an unauthorized forest practice activity. As mentioned above, a moratorium is imposed whenever you harvest timber through a DNR Class II or III forest practice permit or when you harvest without a permit. While the moratorium is in effect a landowner is prohibited from converting the use of the land to nonforestry uses. Nonforestry uses include installing drainfields, grading for building pads, constructing roads, converting to pasture, installing utilities, and any other activity that is not related to forestry.

It is therefore really important for a landowner to avoid changing the use of land while the property is under moratorium. It will have an affect on the ability to lift a
because the county code standard for lifting a moratorium requires that it be approved “when found consistent with applicable adopted codes.” It would therefore be difficult to lift the moratorium since the state statute says that unauthorized conversions that occur while the moratorium is in effect constitute a violation of county code.”

3. Site Description.
   a. Location. Located directly east of State Route 525, south of its intersection with Classic Road, in the SW 1/4 of Section 28, Township, 30 North, Range 2 East, W.M.
   b. Access. The parcel accesses onto State Route 525 via what will become a private access & utility easement.
   c. Size and Condition. The parcel is approximately 20 acres in size (⅛ of a Quarter Section). The parcel is still primarily forested running north to south, with very dense secondary re-growth in the central to western portion of the parcel where the wetland and its buffer area are still located. Most of the eastern half, approximately 8 acres of the 20-acre site, has been cleared, but not yet de-stumped, graded and/or seeded with grasses. In contrast, about 2 acres have been cleared in the westernmost ¼ of the site, which has also not yet been de-stumped, graded and/or seeded with grasses. That existing logging road/future access roadway traverses the northern edge of the parcel from west to east. No additional access roads and driveways lead yet from that existing logging road/future access road to any of the four cleared areas being planned for new home-sites.
   d. Surrounding Development. Surrounding parcels are all zoned Rural to the north, east, south, and west, except for one parcel to the southwest that’s zoned Rural Forest. The parcel to the northwest is still undeveloped, as is the parcel to the north, but it is in the process of being short-platted. In contrast, the parcel to the south contains a single-family residence and the parcels to the east have been previously cleared and graded for single-family residential development as well.
   e. Natural Features. Critical Areas such as a wetland and stream complex are located on the west central portion of the subject property and are shown on the site plan. According to the USDA Soil Survey for Island County - 1958, the predominant soil type found on this parcel is Whidbey gravelly sandy loam (Wb) with 5 to 15% slopes. In contrast, the area of the site’s wetland-stream complex exhibits hydric soils instead.
   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 or within any archaeological site.
   h. Historic Sites. The project is not within the boundaries of an historic district.

4. Land Use Controls
   a. Chapter 17.03 Island County Code.
Section 17.03.060, Rural Zone. The subject parcel is zoned Rural (R), and subject to the regulations listed in ICC 17.03.060.

(1) A Non-Conversion Forest Practice permit (FPA No. 2808090) was issued by the Washington Department of Natural Resources to Jesse James Welcome on December 21, 2005 for parcel R23028-168-2040 within the SW 1/4 of Section 28, Township, 30 North, Range 2 East, W.M. Therefore a Six (6) year moratorium became effective for six years and will expire on December 21, 2011.

(2) Per 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 residence 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 was submitted to lift the moratorium, pursuant to ICC Subsection 17.03.270.E, on the parcel so encumbered to allow for short-platting into four individual lots for single-family residential development activity thereon.

Approximately 10 acres of the 20-acre parcel was harvested under the referenced forest practice permit. The forest practice permit requires retention of stumps and re-planting to provide for continued forest production and management. In conformance with those requirements, the applicant hasn’t removed any stumps and graded outside of the logging road/future private access road area, and hasn’t yet constructed any residential building pads either within that 10-acre harvest area. The Washington Department of Natural Resources (DNR) forester, Loren Wheeler hasn’t needed to provide a Notice To Comply indicating any “violation of
forest practices act/rules”. It is again noted that the applicant did not convert any part of the 20-acre parcel by removing stumps and vegetation”, and does not deviate from an approved forest practice application” per WAC 222-20-040, WAC 222-20-060 and RCW 76.09.060.

5. **SEPA.** A Threshold Determination has now been issued due to the level of compliance with existing regulations, but should the Hearing Examiner overturn this recommendation, the SEPA Responsible Official will still need to issue a Threshold Determination. It is likely that his initial determination will be DNS.

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 has reviewed the application and provides the following comments:

   “The clearing and grading activity that occurred on this site is not in violation of Island County Code and the state forest practice regulations for non-conversion and conversion forest practices. Simply stated, the parcel was partially harvested under a DNR non-conversion forest practices permit in 2005, but the applicant did not proceed to convert the property without a forest practice conversion permit or County Clearing and Grading Permit.

   This Department supports the lifting of moratorium in those instances where a landowner demonstrates that they have harvested their property consistent with County rules even though it was conducted under a non-conversion permit. We also support lifting a moratorium when a landowner can show that while they may have agreed to the moratorium at the time of the application, something has changed during the 6-year period, that a hardship causing this change, and/or that any resource damage can be remedied.

   In this instance, while the landowner knowingly conducted this logging activity, he did not appear at the County for over a year after the activity occurred, to request the required paperwork for lifting of the forest practices development moratorium. This, and the fact that minimal resource damage/Critical Area impacts occurred from just crossing over that area with a logging road, are reasons enough for supporting this request to lift the moratorium”.

   b. **Island County Public Works Division.**

   I. **Transportation Concurrency (ICC 11.04)**

   Per ICC 11.04.050.2.a (Concurrency Exemptions) an approved Certificate of Transportation Concurrency is not required with the Clearing and Grading Permit application as single family residences are permitted uses in the Rural Zone. Review for Transportation Concurrency will be applicable to future land use permitting, specifically in association with this site’s proposed short-platting process.

II. **Entry Permits (ICC 12.12)**
Access to the subject parcel will continue to be from State Route 525 under an existing, approved Access Connection Permit issued by the Washington State Department of Transportation (WSDOT). It was issued for the site’s existing logging road, which will soon be converted into a private access road contained within a new access & utility easement. That Access Connection Permit already covers all eight new lots now planned for using this entry point, so no additional approved Access Connection Permit will be required from WSDOT in the future prior to obtaining any Building Permit approvals.

III. Land Development Standards (ICC 11.01)

The road and easement standards Per 11.01 are not applicable for applications to lift a moratorium for multiple single-family residences.

IV. Stormwater and Surface Water Ordinance (ICC 11.03)

The proposed short-term development of the subject parcel, reconstructing an access road, creating a new one and establishing four building pads will likely create less than 5000 square feet of new impervious surfaces. In contrast the proposed long-term development will undoubtedly create over 5000 square feet of new impervious surfaces. Therefore while it may not apply in the short term, per ICC 11.03.030.N the long-term development is considered a “major development activity”, and per ICC 11.03 an engineered Drainage Plan or Drainage Narrative consistent with ICC 11.03 shall be prepared by a licensed engineer and submitted. While no such plan was included with this submittal packet, the applicant has also submitted a short plat application that bumps drainage review into the major development activity category. Therefore, the drainage review required will occur through that short-plat application process instead. The site appears relatively stable at present, and pre-existing drainage patterns and rates don’t appear to have been altered by the logging activities. Island County is unable to determine yet if reforestation will be required by the DNR.

V. Clearing and Grading Ordinance (ICC 11.02)

About 10 acres of timber was harvested and removed from the site. Otherwise, a minimal amount of clearing and grading occurred to establish a logging road for the site. Otherwise, no grading and minimal clearing, no stump removal and no construction of any building pads and additional roads and/or driveways have occurred at the site. Additionally, with the exception of the logging road’s area, no clearing, grading and/or timber removal has occurred within the site’s wetland and its regulated buffer area. **The applicant has also requested additional grading, of up to 1,000 cubic yards of material, as a part of this permit’s approval, in order to establish those four new home-sites for individual single-family residences and to reconstruct the logging road and establish a new private access road to serve them.**
VI. Fire Flow Requirements (ICC 13.03)

Per ICC 13.03A.100 Fire Flow Requirements subsection C. Minimum fire flows to be provided by new or expanding public water systems shall be determined as follows: 1. Nine or less lots and/or dwelling units, where all lots are greater than one acre in size No fire flow required. Unless the subject parcels are subdivided into lots one acre in size or smaller or into 9 lots or more fire flow is not applicable.

8. Public Comments.

No public comments were received regarding this Clearing and Grading Permit application.

Conclusions

1. The type of clearing that occurred on this site was limited to only removing trees across about 10 acres of the parcel and did not go beyond that. Stumps were not pulled, most under-story vegetation was not removed, and with the exception of installing its logging road, the land was not graded in order to create any other roads and home-sites. Also with the exception of that logging road crossing through it, no other work occurred within any critical areas or their regulated buffer areas, and none of it was performed in violation of the County’s clearing and grading rules and the state forest practice regulations.

2. The staffs of Island County Public Works and Planning and Community Development evaluated the proposed project for compliance with Titles 11 and 17 and with Chapters 16.15, 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. It was found that the timber harvesting and removal across about 10 acres of the site’s forestland with an approved non-conversion permit is consistent with county code and state regulations as referenced by the DNR. Therefore Island County recommends approval of the application.

3. The proposed application is consistent with the criteria for approval of lifting a moratorium as listed in ICC 17.02 (Critical Areas) and ICC 17.03.270 (Zoning).

Recommendation

Based on the foregoing Findings, Analysis and Conclusions, the Public Works and Planning and Community Development Departments recommends that Clearing and Grading application number CGP 057/08, submitted by Jesse James Welcome on February 19, 2008 for Parcel R23028-168-2040, be approved.

The applicant has also requested additional grading, of up to 1,000 cubic yards of material, as a part of this permit’s approval, in order to establish those four new home-sites for individual single-family residences and to reconstruct the logging road and establish a new private access road to serve them. Public Works also recommends approval of the request to now grade up to 1,000 cubic yards of material onsite to establish four new home-sites, and the two private access roads planned for serving them.
Therefore the development moratorium shall be lifted from the date the Island County Hearing Examiner approves this decision.

Prepared by

____________________________________
John Bertrand,
Development Coordinator for William E. Oakes, P.E., Public Works Director

cc: Paula Bradshaw, Hearing Examiner
    File CGP 057/08