

WHATCOM COUNTY HEARING EXAMINER

Administrative Appeal of)	File No. APL2008-0038
)	
<i>Tramf, L.L.C.</i>)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
)	AND DECISION

SUMMARY OF APPEAL AND DECISION

Appeal: The Applicant is requesting that Whatcom County remove a Six-Year Development Moratorium that was placed on the property after obtaining a Department of Natural Resources (DNR) Class III Forest Practice Application Permit without an approved Conversion Option Harvest Plan (COHP) through Whatcom County.

Decision: The Appeal to Remove the Six-Year Development Moratorium is granted.

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.

I.

PRELIMINARY INFORMATION

Applicant: Tramf L.L.C.

Property Location: NE / SE corners of junction at Heady and South Pass Roads
Maple Falls, Washington

Legal Description: THAT PTN OF NE ¼ DAF-S 90 FT OF NW NE LY NLY
OF CO RD 339-THAT PTN OF SW NE LY NLY OF SD
CO RD-W 600 FT OF SW ¼ LY SLY OF SD CO RD-LESS
RD

Assessor’s Parcel No. 400510-296332

Zoning: R5A Rural 1DU/5AC

Comprehensive Plan Designation: Rural

Subarea: Kendall

Authorizing Ordinances: WCC 20.92 Hearing Examiner
WCC 20.84.240 Appeals
WCC 20.80.738 Development Moratoria

Applicable Whatcom County Zoning Codes: WCC 20.80.738

SEPA Review: Determination of Non-Significance (DNS), issued February 10, 2009

Legal Notices: Published – January 12 and April 23, 2009
Mailed – April 17, 2009
Posted, April 23, 2009

Hearing Date: May 6, 2009

Parties of Record:

Aubrey Stargell
Neilson Bros. Inc.
P.O. Box 2789
Bellingham, WA 98227

Tramf LLC.
5320 W. El Cortez Tr.
Pheonix, AZ 85083

Cassandra Schoenmakers
Planning and Development Services

Exhibits

- 1 Land Use Application
 - 1-1 Summary of Information
 - 1-2 Supplemental Application
 - 1-3 Customer Receipt
 - 1-4 Letter of Complete Application, dated December 16, 2008
 - 1-5 Notice for Distribution List, dated January 6, 2009

1-6 Distribution List
1-7 SEPA Distribution List
1-8 Property Owners labels
1-9 Quit Claim Deed

- 2 Exhibit Maps for Removal of Forest Practices Moratorium
- 3 Staff Report dated March 13, 2009
- 4 Legal Notice, dated January 12, 2009
- 5 SEPA Legal, dated February 10, 2009
- 6 DNS, dated February 10, 2009
- 7 Certificate of Mailing, dated April 17, 2009
- 8 Legal Notice, dated April 23, 2009
- 9 Certificate of Posting, dated April 23, 2009
- 10 Correspondence with Department of Natural Resources, beginning with Letter from Whatcom County, dated January 22, 2007
- 11 Aerial Map
- 12 Google Aerial, showing scale 1-inch = 1,000-feet
- 13 Zoning Map
- 14 Assessor's Records

II.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the request for the Removal of the Six-Year Development Moratorium from an approximately 20.15-acre site located at the junction of Heady and South Pass Roads, Maple Falls, Washington, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #3, dated March 13, 2009, a copy of which is attached hereto and incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to the Conditions of Approval requested by Staff. There was no public comment on this matter.

III.

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 proposed Removal of a Six-Year Development Moratorium can be approved if it is consistent with the Criteria of WCC 20.80.738. Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Development Criteria. The Removal of the Six-Year Development Moratorium should be granted.

II.

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 requested Removal of the Six-Year Development Moratorium from an approximately 20.15-acre site is hereby granted to Tramf, L.L.C. The property is located on Assessor's Parcel No.400510 296332, at the NE and SE corners of the junction of Heady and South Pass Roads, Maple Falls, Washington.

NOTICE OF ADMINISTRATIVE APPEAL PROCEDURES
FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an Appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 6th day of May 2009.

Michael Bobbink, Hearing Examiner



March 13, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of Neilson Bros. Inc. on behalf of Tramf LLC. For removal of six-year development moratorium	APL2008-00038 FINDINGS, CONCLUSIONS, AND DETERMINATIONS
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I. SUMMARY OF APPEAL AND RECOMMENDATIONS

Application: The applicant is requesting the removal of a six-year development moratorium that was placed on the property after obtaining a Department of Natural Resources (DNR) Class III Forest Practice Application Permit without an approved Conversion Option Harvest Plan (COHP) through Whatcom County.

Recommendation: Whatcom County staff recommends approval of the request for removal of the six-year development moratorium.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Neilson Bros. Inc.
P.O. Box 2789
Bellingham, WA 98227

Owner: Tramf LLC.
5320 W. El Cortez Tr.
Phoenix, AZ 85083

Property Location/Address: NE and SE corners of junction at Heady Rd. and South Pass Rd.
Maple Falls, WA

Legal Description: APN: 400510-296332
THAT PTN OF NE ¼ DAF-S 90 FT OF NW NE LY NLY OF CO RD 339-THAT PTN OF SW NE LY NLY OF SD CO RD-W 600 FT OF SW ¼ LY SLY OF SD CO RD-LESS RD

Zoning: R5A Rural 1DU/5AC

Comprehensive Plan: Rural

Subarea: Kendall

B. PROCEDURAL INFORMATION

Authorizing Ordinances:

WCC 20.92	Hearing Examiner
WCC 20.84.240	Appeals
WCC 20.80.738	Development Moratoria

Applicable Whatcom County Zoning Codes:

WCC 20.80.738

SEPA Review:

Determination of Non-Significance (DNS) Issued on
February 10, 2009

III. FINDINGS AND CONCLUSIONS

The subject property is approximately 20.15 acres and is zoned Rural (R5A). The property was originally part of an 81-acre parcel. The property owner completed a series of three exempt subdivisions effectively dividing the 81 acres into approximately four 20-acre parcels. Initially, the property owner obtained a Class III Forest Practice Application, FPA 2808020 from Department of Natural Resources (DNR) permit on October 28, 2005 for the entire parcel that included approximately 81 acres. In accordance with WCC 20.80.738 six-year development moratoriums shall be placed on any property that has been harvested under a DNR forest practice application or notification without an associated COHP approval. When a harvest occurs and a forest practice permit is issued without an associated COHP, the six-year development moratorium shall extend to the harvest area including roads indicated in the forest practice application. After harvesting approximately 10 acres on the subject parcel through the FPA 2808020, the property owner, Gary Gabbato, requested the withdrawal of this permit. On October 5, 2006, DNR staff verified the applicant harvested approximately 10 acres and approved the withdrawal of FPA 2808020. A Class IVG FPA (FPA 2808957) was approved on February 2, 2007 for the conversion of the remaining 70 acres that were not previously harvested. The property owner also obtained a Land Disturbance Permit (LDP2006-00329) on January 10, 2007 and received a SEPA determination in association with the conversion of 70 acres. The moratorium remained on the area that was harvested under FPA 2808957.

Currently, the property has received preliminary approval for the proposed four-lot subdivision, Tramf Short Plat (SSS2008-00002). Final plat approval for the Tramf Short Plat is pending the removal of the six-year development moratorium.

Basis for Appeal

WCC20.80.738 Review Criteria:

Review Criteria. The examiner shall consider the removal of a development moratorium when the following criteria are met:

(i) The forest practices conducted on the site comply with requirements of Chapter 222-24 WAC, Road Construction and Maintenance, Chapter 222-30 WAC, Timber Harvesting, and any applicable county codes or regulations. When more than one rule, regulation, or code can be applied to a harvest, then the more stringent requirements shall be adhered to.

The property is in compliance with Chapter 222-24 WAC, Road Construction and Maintenance, Chapter 222-30 WAC, Timber Harvesting. As indicated in an Informal Conference Note, DNR Forest Practice forester (Scott Hanna) inspected the parcel on September 27, 2006 and confirmed the site was in compliance with DNR regulations. Whatcom County records indicated the property is also in compliance with the permit conditions associated with the Land Disturbance Permit (LDP2006-00329) issued on January 10, 2007 for the forest conversion. Staff did not identify any outstanding issues associated with the forest practices.

(ii) Any required mitigation plan has been completed or the performance thereof has been adequately bonded.

The harvested areas on the property were replanted to DNR standards and verified by a DNR Forest Practice forester on September 27, 2006. Critical Areas staff completed review and site inspection of the subject parcel, on November 15, 2006 associated with the Land Disturbance Permit (LDP2006-00329) for the 70-acre conversion and determined there were no critical areas located on the subject parcel. Critical Areas staff verified the previous determination and completed an additional review and site inspection for the 20-acre parcel in association with Tramf Short Plat (SSS2008-00002) on June 7, 2008. At which time, staff confirmed there were no critical areas located within 300-ft. of the proposed subdivision.

(iii) Any bonding required as part of a mitigation requirement has been established to county satisfaction.

The parcel has been reviewed and inspected by Critical Areas staff through two separate development applications on November 15, 2006 and again on June 7, 2008. Staff determined there were no critical areas located within 300-ft. of the subject parcel. Therefore, neither mitigation nor bonding is required for the removal of the six-year development moratorium.

(iv) The site, when required by WCC 20.80.736(3)(c)(i)(A) or 20.80.739, shall have been reforested in accordance with the requirements set forth in Chapter 222-34 WAC.

The property was replanted in March 2006 and a DNR Forest Practice Forester conducted a site visit on September 27, 2006 to verify the parcel was in compliance with the Chapter 222-34 WAC. The DNR forester verified the condition of the property to approve the withdrawal the original Class III FPA.

(v) Payment has been made of all other fees, penalties, liens, or taxes owed to the county which have been assigned to the subject parcel including reimbursement of any county expenses incurred relating to enforcement and/or preparation for the waiver hearing.

The Whatcom County Treasurer's Office and Auditor's Office do not have record of any taxes or liens owed on the property. According to Whatcom County Planning and Development Services records, all fees and penalties have been paid. All fees associated with the removal of six-year development moratorium and SEPA reviews have been paid.

(vi) All permit conditions have been addressed.

All permit conditions associated with the Class III FPA from DNR have been addressed and adhered to by the property owner. A DNR Forest Practice Forester conducted a site inspection to verify the conditions of the FPA had been met. An Informal Conference Note (ICN) was completed on October 6, 2006 that approved the withdrawal of the Class III FPA (FPA 28080020). The conditions listed in the Land Disturbance Permit (LDP2006-00329) have also been met.

(vii) Neither the applicant nor any person who acted in privity with the applicant:

(A) Intended to circumvent any requirement of this section or the Forest Practice Act or regulations by taking the actions for which the moratorium was imposed; or

The moratorium was placed on the property as a result of the property owner obtaining a Class III FPA (FPA 28080020), in accordance with 20.80.738(1)(a) as the property owner harvested without an associated COHP approval from Whatcom County. The applicant was in compliance with DNR requirements, Chapter 222-24 WAC Chapter 222-30 WAC Chapter 222-34 WAC as indicated in the Informal Conference Note from DNR dated October 5, 2006.

The application for both the Class IV FPA (FPA 2808020) and the Land Disturbance Application (LDP2006-00329) indicated approximately 70 acres would be converted. This excluded the additional 10 acres that were harvested under the Class III FPA through which the moratorium was placed on the property.

The applicant stated that he thought the moratorium was inapplicable to the proposed development for Tramf Short Plat as the LDP2006-00329 was issued on January 10, 2007 and the 20-acre exempt subdivision, EXE2007-00415 was approved on November 27, 2007. However, these two development activities did not impact the harvest area and road on which the moratorium was placed.

Therefore the previous applications would not be restricted by the six-year development moratorium.

Currently, the proposed Tramf Short Plat will be impacting the harvest area with the six-year development moratorium.

It does not appear the applicant intended to circumvent any requirements or regulations.

(B) Has engaged in a pattern or practice of violations of any applicable regulations.

According to Whatcom County records, neither the applicant, nor the property owner has engaged in a pattern or practice of violations of applicable regulations.

Required Written Findings and Determinations. Removal of a development moratorium may be approved by the examiner if the following findings can be made regarding the proposal and are supported by the record:

(i) The removal of the six-year development moratorium will not be detrimental to the public health, safety and general welfare.

The application for removal of the six year development moratorium included SEPA determination. A Determination of Non-Significance was issued on February 10, 2009 from Whatcom County PDS. The SEPA checklist is a mechanism for ensuring the proposed activity will not be detrimental to the public health, safety and general welfare.

The property owners within 1,000-ft. were notified of the application for the removal of the six-year development moratorium. Whatcom County did not receive any comments regarding the proposed action.

(ii) The removal of the six-year development moratorium will not be injurious to the property or improvements adjacent to and in the vicinity of the property.

The surrounding land uses include single family residential development and rural forestry. The removal of six-year development moratorium is consistent with the current land uses in the vicinity. As stated above, surrounding property owners within 1,000-ft. of the subject parcel were notified and did not provide any comments.

(iii) The removal of the six-year development moratorium will not result in significant adverse environmental impacts.

Critical Areas staff completed review and site inspection of the subject parcel, on November 15, 2006 associated with the Land Disturbance Permit (LDP2006-00329) and determined there were no critical areas located on the subject parcel. Critical Areas staff completed an additional review and site inspection for the Tramf Short Plat (SSS2008-00002) on June 7, 2008, and verified there were no critical areas located on the parcel.

A SEPA Determination of Non-Significance was issued on February 10, 2009.

(iv) The removal of the six-year development moratorium is consistent with the review criteria established in subsections (2)(b)(i) through (vii) of this section.

As outlined above, the removal of the six-year development moratorium is consistent with the review criteria provided in subsections (2)(b)(i) through (vii) of the applicable section.

(v) The removal of the six-year development moratorium is consistent and compatible with the goals, objectives and policies of the Comprehensive Plan, appropriate community plans or subarea plans, and the provisions of this section.

The parcel is located within the Rural comprehensive plan designation. The Rural designation encourages low-density residential development with the flexibility to practice agriculture and forestry. Removal of the six-year development moratorium would be consistent with the goals established in the Comprehensive Plan.

The criterion listed above in sections WCC 20.80.738 (2)(b)(i) through (vii) substantiates the removal of six-year development moratorium would be consistent with the provisions of this section.

Public and Agency Comments

There were no public or agency comments were received.

IV. DETERMINATION

Whatcom County staff recommends approval of the request for removal of the six-year development moratorium. The applicant complied with all conditions required by DNR and has applied for all necessary permits from Whatcom County. Currently, staff does not have any conditions for the removal of the six-year development moratorium.

Report prepared by:

Cassandra Schoenmakers
Planner I – Critical Areas