Forest Practice Review, Staff Report and Recommendation

Project Name: TYPE 3 MORATORIUM WAIVER

Case Number: FPA-2020-00064

Location: 35316 NE Gable Avenue

Request: Request Lifting of 6 Year Development Moratorium due to logging prior to the acceptance of any development permits.

Applicant: Trevor and Angie Wantaja
Po Box 496
Brush Prairie WA 98606
Phone - (360) 952-0237
E-mail - trevorw@mp-electric.com

Contact: Same as applicant

Property Owner: Same as applicant

Recommendation
Approved subject to Conditions

Land Use Review Manager’s Initials: [Signature]
Date issued: July 8, 2020

Public Hearing date: July 23, 2020
County Review Staff

<table>
<thead>
<tr>
<th>Community Development</th>
<th>Name</th>
<th>Phone</th>
<th>Email Address</th>
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<tbody>
<tr>
<td>Land Use Review Manager</td>
<td>Susan Ellinger</td>
<td>564.397.5122</td>
<td><a href="mailto:Susan.ellinger@clark.wa.gov">Susan.ellinger@clark.wa.gov</a></td>
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<tr>
<td>Land Use Review Planner</td>
<td>Melissa Curtis</td>
<td>564.397.5870</td>
<td><a href="mailto:Melissa.curtis@clark.wa.gov">Melissa.curtis@clark.wa.gov</a></td>
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<td>Public Works</td>
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<tr>
<td>Lands Manager</td>
<td>Kevin Tyler</td>
<td>564.397.6118</td>
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<td>Forester</td>
<td>Hunter Decker</td>
<td>564.397.4852</td>
<td><a href="mailto:Hunter.decker@clark.wa.gov">Hunter.decker@clark.wa.gov</a></td>
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Comp Plan Designation: Rural-5
Parcel Number: 266578-000

Approval Standards/Applicable Laws:
Clark County Code Section: 40.510.030 (Procedures); Chapter 40.260.080 (Forest Practices);
Revised Code of Washington 76.09 (Forest Practices); Washington Administrative Code 222
(Forest Practices Board)

Neighborhood Association and Contact
Neighborhood Associations Council of Clark county (NACCC)
Phone – (564) 574-3363
E-mail – abramson@lifescrippartners.net

Vesting
An application is reviewed against the subdivision, zoning, transportation, stormwater and other land development codes in effect at the time a fully complete application for preliminary approval is submitted. If a pre-application conference is required, the application shall earlier contingently vest on the date the fully complete pre-application is filed. Contingent vesting requires that a fully complete application for substantially the same proposal is filed within 180 calendar days of the date the county issues its pre-application conference report. Contingent vesting does not apply to stormwater or concurrency standards.

A pre-application conference was not held or required. The fully complete application was submitted on May 6, 2020 and determined to be fully complete on May 7, 2020. Given these facts, the application is vested on May 6, 2020.

There are no disputes regarding vesting.

Time Limits
The application was determined to be fully complete on May 7, 2020. Therefore, the code requirement for issuing a decision within 92 days lapses on August 6, 2020. The state requirement for issuing a decision within 120 calendar days, lapses on September 3, 2020.
Public Notice
Notice of application and public hearing was mailed to the applicant, Neighborhood Associations Council of Clark County (NACCC) and property owners within 500(rural) feet of the site on June 23, 2020. One sign was posted on the subject property and one within the vicinity on June 22, 2020.

Public Comments
No comments received.

Project Overview
Lifting of 6 Year Development Moratorium due to logging authorized under Department of Natural Resources (DNR) Forest Practices Application (FPA) No. 2934682, Dated 07/23/2014, and DNR FPA No. 2935538, Dated 09/19/2018 prior to the acceptance of any development permits.

<table>
<thead>
<tr>
<th>Compass</th>
<th>Comp Plan</th>
<th>Zoning</th>
<th>Current Land Use</th>
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<tbody>
<tr>
<td>Site</td>
<td>R-5</td>
<td>R-5</td>
<td>Single family residence</td>
</tr>
<tr>
<td>North</td>
<td>R-5</td>
<td>R-5</td>
<td>Single family residence</td>
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<tr>
<td>East</td>
<td>R-10</td>
<td>R-10</td>
<td>Single family residence</td>
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<tr>
<td>South</td>
<td>R-5</td>
<td>R-5</td>
<td>Single family residence</td>
</tr>
<tr>
<td>West</td>
<td>R-5</td>
<td>R-5</td>
<td>Single family residence</td>
</tr>
</tbody>
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Staff Analysis
Staff reviewed the proposal for compliance with applicable code criteria and standards in order to determine whether all potential impacts could be mitigated by the requirements of the code.

Staff's analysis also reflects review of agency and public comments received during the comment period, and knowledge gained through a site visit.

Major Issues
Only the major issues, errors in the development proposal, and/or justification for any conditions of approval are discussed below. Staff finds that all other aspects of this proposal not discussed below comply with the applicable code requirements.

Forest Practice

Finding 1 – Existing Permit
Clark County issued a Class I non-exempt forest practice permit (FOR2017-00064 Exhibit 1) for single family development New Home Construction permit (NHC-2017-02073). The forest practice permit conditioned reforestation and a habitat permit for clearing within riparian priority habitat.

Finding 2 – Clark County Code (CCC) section 40.260.080
According to Clark County Code (CCC) Section 40.260.080(C)(2)(b) actions that may result in a six (6) year development moratorium include, "the approval or notification by the Department of Natural Resources (DNR) of a Class II, III, or IV special forest practices permit that does not have an associated Conversion Option Harvest Plan (COHP) approval."
Clark County received notice for an approved DNR Class III forest practice permit (FPA/N No. 2934682) dated 04/26/2018 (See Exhibit 2). This approval does not have an associated COHP approval and applied the moratorium to the harvest area indicated in the forest practice permit.

**Finding 3 – Permit Infractions**
Clark County received notice of a Stop Work Order (SWO) (Pacific Cascade (PC)–SWO–18–120910) (See Exhibit 3). The reason for the order was:
- Deviation from approved application
- Violation of Forest Practice Act and or Rules
- Immediate action is necessary to prevent continuation of or to avoid material damage to public resources.

The description of the violation is that the FPA (No. 2934682) was approved for the designed installation of a 14’x40’ bridge at crossing identified as “F”. Instead, the road was built in a different location and a culvert was installed. Also shade trees have been harvested within the Riparian Management Zone (RMZ) of stream A. Grading and grubbing has occurred within 29 feet of stream A.

**Finding 4 – Site Visit**
Clark County received notice from the DNR Forest Practice Forester (DNR Forester) that an Inter Disciplinary Team (IDT) site visit would take place on 7/27/2018. An IDT brings representatives from other agencies together to discuss an issue and use their disciplinary expertise to find a solution to that issue. The Non-DNR agency representatives, including the county forester, provided comments regarding the field observations of the IDT meeting to the DNR Forester (PC - Informal Conference Note (ICN)-18-19866) (See Exhibit 4).

**Finding 5 – Notice to Comply**
Clark County received a copy of the Notice to Comply (NTC) (PC-NTC-18-120913) (See Exhibit 5). The reason for the order was:
- Deviation from approved application
- Violation of Forest Practice Act and or Rules
- Immediate action is necessary to prevent continuation of or to avoid material damage to public resources.

The description of the violation:
1. Deviation from an approved Forest Practice Application/Notification (FPA/N)
   a. Spur 1, as identified in question #18 on the approved FPA/N, was moved to a different location than shown on the Forest Practice Activity Map, See attached photos.
   b. Crossing Z, as identified in question #16 on the approved FPA/N and shown in attached plans, was replaced with an approximate ~72”x40” Corrugated Metal Pipe (CMP) and relocated upstream approximately ~500 feet. See attached photos.
2. Failure to comply with conditions of FPA/N Notice of Decision
   a. Landowner/Operator failed to provide notification to DNR Forest Practices, two business days before beginning actual operations near type S or F waters.

To which the landowner must complete the following:
1. Withdraw FPA 2934682, by contacting the Forest Practice Office
2. Submit a mitigation plan to DNR Forest Practices
3. Install erosion and sediment control measures on newly constructed road (Spur 1) by 08/31/2018. Road (Spur 1) must meet or exceed forest practice standards outlined in WAC 222-14-052 and Board Manual Section 3. Or abandon the road (Spur 1).
5. Removal of pipe must occur on/before 09/30/2019.
6. No timber harvest or road construction activities may occur without prior written approval from DNR Forest Practices.

Finding 5 – Field Review Results
Clark County received an informal conference note (ICN) from the DNR Forester (PC-INC-18-120914) (See Exhibit 6), which discussed the field reviews of both PC-SWO-18-120910 and PC-NTC-18-120913, as well as the IDT responses requested in PC-INC-18-19866 and the written mitigation plan for PC-NTC-18-120913.

The ICN determined that:
1. The Landowner recognizes and plans to complete items in #16 of PC-NTC-18-120914, on or before the dates listed;
2. The Landowner acknowledges that written mitigation plan items to include, should address (and are not limited to) the following; stream bank stability, soil erosion, sediment delivery, logging debris and slash within the core zone of type F Riparian Management Zone (RMZ), shade trees that were felled in type F RMZ, reforestation, stocking targets, species mix, road maintenance, best management practices (BMPs), long-term monitoring, communication intervals with DNR and WDFW, grubbing stumps within core zone of RMZ, temporary equipment crossing on stream A, road abandonment, grading, recommendations from IDT written responses; and,
3. The Landowner agrees to keep DNR Forester informed of progress and conduct an on-site meeting on/or before 09/30/2018.

Finding 6 – DNR Forest Practice Permit
Clark County received notice for an approved DNR Class III forest practice permit (FPA/N No. 2935538) dated 09/19/2018 (See Exhibit 7), that does not have an associated COHP approval and applied the moratorium to the harvest area indicated in the forest practice permit.

Clark County then received a final ICN (PC-INC-19-120957 (See Exhibit 8), discussing the field review of FPA/N 2934682 and PC-NTC-18-120913. The decision made was that:
1. The Landowner had successfully completed items for PC-NTC-120913;
2. The Landowner had met requirements of FPA/N and completed reforestation; and,
3. The DNR Forester was closing out FPA/N per landowner request.
Finding 7 - Habitat

Clark County's Wetland and Habitat Review staff visited the site February 25, 2020 and determined that the site contains riparian priority habitat associated with a Type F (fish bearing) stream on the subject parcel (266578-000). Type F riparian priority habitat areas extend outward on each side of the stream from the ordinary high-water mark (OHWM) two hundred (200) feet or to the edge of the one hundred (100) year floodplain whichever is greater. In this case the two hundred (200) foot distance is greater. Staff observed a Type Np (non-fish bearing perennial) stream beginning in the southeast corner of the parcel. Type Np riparian priority habitat areas extend outward on each side of the stream from the ordinary high-water mark (OHWM) one hundred (100) feet or to the edge of the one hundred (100) year floodplain whichever is greater. In this case the one hundred (100) foot distance is greater (See Exhibits 9 & 10).

Staff also determined on their site visit that the site contains a Category III wetland with a Habitat Score of six (6) points on the Wetland Rating Form. The wetland requires a seventy-five (75) foot low intensity land use buffer for the ten (10) acre parcel with density at or lower than one (1) unit per five (5) acres (See Exhibit 9).

Clark County's Wetland and Habitat Review determined that approximately one hundred forty-five thousand (145,000) square feet (3.33 acres) of clearing and forest harvesting occurred within riparian priority habitat with an approved DNR forest practice permit (FPA2934682) which included an approved bridge location for crossing the Type F stream. The permit required re-forestation with Douglas-fir; however, no under-story planting was required (See Exhibit 9).

The bridge was constructed in an unapproved location requiring a new forest practice permit. As a result, the Applicant withdrew forest practice permit FPA2934682. A new forest practice permit (FPA2935538) was approved and issued conditioning reforestation and a mitigation plan. The reforestation plan required reforestation of all harvested areas (including riparian) with three hundred (300) conifer seedlings per acre. Staff concludes that three hundred (300) tree species per acre is appropriate mitigation. The mitigation plan included native shrub under-story planting within twenty (20) feet of stream bank at two hundred shrubs (200) per acre. Staff will require all riparian areas to be reforested with native shrub species at a greater density per acre. Typical replanting ratios are ten (10) shrubs per one thousand (1,000) square feet. At this rate one thousand four hundred fifty (1,450) shrubs are required for mitigation within the riparian habitat zones of the DNR harvest areas (See Exhibit 9).

A Class I non-exempt forest practice permit (FOR2017-00064) was approved and issued for single family development NHC-2017-02073. The permit conditioned reforestation and a habitat permit for clearing within riparian priority habitat. Approximately fifty-four thousand (54,000) square feet of clearing occurred within riparian priority habitat with forest practice permit FOR2017-00064 (See Exhibit 9).

County wetland and habitat review Staff also observed on their site visit that reforestation had occurred for the tree species (Douglas-fir, Western Hemlock, and Western Red Cedar) within the DNR harvest area; however no under-story shrub species had been planted. Staff did not observe any reforestation efforts with the harvest area of forest practice permit FOR2017-00064. County wetland and habitat conclude that additional riparian reforestation and under-
story mitigation is required at ten (10) shrubs and five (5) trees per one thousand (1,000) square feet. At this rate five hundred forty (540) shrubs and two hundred seventy (270) trees are required for mitigation within the riparian habitat zone of forest practice permit FOR2017-00064) (See Exhibit 9).

Finding 8 – Moratoria Criteria
CCC section 40.260.080(C)(3) states:

3. Request for Lifting of Development Moratorium. Any development moratorium established pursuant to Section 40.260.080(C)(2) may be lifted by the hearing examiner when the following requirements are met:

a. Public Hearing Required.

(1) The responsible official shall set a date for public hearing before the hearing examiner after all the requests for additional information or plan correction have been satisfied.

(2) The public hearing shall follow the procedures set forth in Subtitle 40.5, Procedures.

b. Review Criteria. The hearing examiner shall consider the lifting of a development moratorium established pursuant to this section when the following criteria are met:

(1) The forest practices conducted on the site meet the standards set forth in Section 40.260.080(A)(5).

(2) Corrective actions are implemented which would bring the forest practices into compliance with this section.

(3) If critical areas or critical area buffers have been damaged, the hearing examiner may impose increased critical area buffer standards together with additional requirements to mitigate the damage, the cost of which shall equal at least twice the value of the timber harvested within a critical area and buffer.

c. Approval.

(1) The hearing examiner shall review all requests for removal of a development moratorium, any comments received, and applicable county regulations or policies and may inspect the property prior to rendering a decision.

(2) The hearing examiner may approve an application for a request to remove a development moratorium, approve the application with conditions, require modification of the proposal to comply with specified requirements or local conditions, or deny the application if it fails to comply with requirements of this section.
d. Required Written Findings and Determinations. Removal of a development moratorium shall be approved by the hearing examiner if the application meets the review and approval criteria in Sections 40.260.080(O)(3)(b) and (C)(3)(c).

The applicant has successfully scheduled a public hearing for 7/23/2020, which satisfies the requirement of a required public hearing.

To assess if the first review criterion was met, staff reviewed the final issued Informal Conference Note (PC-ICN-19-120957) from the DNR Forester stating that:
1. The Landowner has successfully completed items for PC-NTC-18-12093;
2. The Landowner has met requirements of FPA/N and completed reforestation; and,
3. The DNR FPF is closing out FPA/N per landowner request.

Staff then reviewed the standards set forth in Section 40.260.080(A)(5) and finds that the applicant meets the first review criterion for forest practice standards set forth in CCC Section 40.260.080(A)(5) by meeting the requirement of Reforestation per WAC 222-34-010.

To assess if the second review criterion was met, staff reviewed the corrective actions that were implemented under the mitigation plan for Trevor Wantaja in DNR FPA No. 2935538 which would bring the forest practices into compliance with this section.

The third review criterion applies to critical areas and/or buffers harvested under FPA No. 2928927 that are considered damaged under CCC. Under CCC 40.260.080(A)(5)(b)(1) a Class IV-G Forest Practice would have imposed non-harvestable buffers and would have not allowed for that activity to take place. The Class IV general, as defined by CCC 40.260.080(A)(2)(d)(1), are those forest practices occurring on lands which are being converted to a use other than commercial timber production. Therefore, reforestation is not required under a Class IV general forest practices permit as the property subject to the permit is being converted to a non-forestry use.

County wetland and habitat review staff have determined that the proposed plan under WHR-2019-00184 would be enough mitigation in order to bring the critical areas and/or buffers up to code with Clark County's Habitat regulations in Chapter 40.440 and the Wetland regulations in Chapter 40.450. The hearing examiner may impose increased critical area buffer standards together with additional requirements to mitigate the damage, the cost of which shall equal at least twice the value of the timber harvested within a critical area and buffer.

The approval process is subject to the hearing examiner reviewing this request for removal of a development moratorium, any comments received, and applicable county regulations or policies and may inspect the property prior to rendering a decision. The hearing examiner may approve the application for a request to remove a development moratorium, approve the application with conditions, require modification of the proposal to comply with specified requirements or local conditions, or deny the application if it fails to comply with requirements of this article.
Lastly, required written Findings and Determinations of the removal of this development moratorium shall be approved by the hearing examiner as long as the application meets the review and approval criteria.

Based on this information, the applicant has met all the requirements set forth in CCC section 40.260.080 (Forest Practices).

Conclusion
Staff finds that the proposed preliminary plan, subject to conditions identified above, meets forestry requirements of the Clark County Code.

Staff Contact Person: Melissa Curtis, 564.397.5870
Hunter Decker, 564.397.4852

Responsible Official: Dan Young, Community Development Director

Recommendation
Based upon the proposed plan known as Exhibit A, and the findings and conclusions stated above, staff recommends the Hearing Examiner APPROVES this request, subject to the understanding that the application is required to adhere to all applicable codes and laws, and is subject to the following conditions of approval.

Conditions of Approval

<table>
<thead>
<tr>
<th>A</th>
<th>Subsequent Development:</th>
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<tbody>
<tr>
<td>A-1</td>
<td>Conditions that must be met prior to Final Plat approval; or if improvements are approved by the county for bonding or other secure method, such conditions shall be met prior to issuance of Occupancy Permits per CCC, Section 40.350.030(C)(4)(i) &amp; (j).</td>
</tr>
<tr>
<td>A-2</td>
<td>All subsequent development proposals shall comply with the following applicable provisions of the Clark County Code:</td>
</tr>
<tr>
<td>a.</td>
<td>Title 15 (Fire Prevention),</td>
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<td>b.</td>
<td>Chapter 40.210 (Resource and Rural Districts District),</td>
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<td>c.</td>
<td>Chapter 40.260.080 (Forest Practices)</td>
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<tr>
<td>d.</td>
<td>Chapter 40.460 (Shoreline Master Program),</td>
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<td>e.</td>
<td>Chapter 40.350 (Transportation and Circulation),</td>
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<td>f.</td>
<td>Chapter 40.386 (Stormwater and Erosion Control),</td>
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<td>g.</td>
<td>Chapter 40.430 (Geologic Hazard Areas),</td>
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<td>h.</td>
<td>Chapter 40.440 (Habitat Conservation),</td>
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<td>i.</td>
<td>Chapter 40.450 (Wetland Protection),</td>
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<td>j.</td>
<td>Chapter 40.510 (Procedures),</td>
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<td>k.</td>
<td>Chapter 40.540 (Boundary Line Adjustments and Land Divisions),</td>
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<td>l.</td>
<td>Chapter 40.570 (State Environmental Policy Act (SEPA)),</td>
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<td>m.</td>
<td>Chapter 40.610 (Development Impact Fees - General Provisions),</td>
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<td>n.</td>
<td>Title 24 (Public Health) and the Clark County Comprehensive Plan and RCW 58.17 (PLATS—SUBDIVISIONS—DEDICATIONS).</td>
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</table>
A-3 WHR-2019-00184 findings/conditions and any subsequent related reviews and/or approvals.

Note: Any additional information submitted by the applicant within fourteen (14) calendar days prior to or after issuance of this report, may not be considered due to time constraints. In order for such additional information to be considered, the applicant may be required to request a “hearing extension” or “open record” and shall pay the associated fee.

Hearing Examiner Decision and Appeal Process
This report to the Hearing Examiner is a recommendation from the Land Use Review program of Clark County, Washington.

The examiner may adopt, modify or reject this recommendation. The examiner will render a decision within 14 calendar days of closing the public hearing. Clark County will mail a copy of the decision to the applicant and neighborhood association within 7 days of receipt from the Hearing Examiner. All parties of record will receive a notice of the final decision within 7 days of receipt from the Hearing Examiner.

Motion for Reconsideration
Any party of record to the proceeding before the Hearing Examiner may file with the responsible official a motion for reconsideration of an examiner’s decision within fourteen (14) calendar days of written notice of the decision. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The motion must be accompanied by the applicable fee and identify the specific authority within the Clark County Code or other applicable laws, and/or specific evidence, in support of reconsideration. A motion may be granted for any one of the following causes that materially affects their rights of the moving party:

- Procedural irregularity or error, clarification, or scrivener’s error, for which no fee will be charged;
- Newly discovered evidence, which the moving party could not with reasonable diligence have timely discovered and produced for consideration by the examiners;
- The decision is not supported by substantial evidence in the record; or,
- The decision is contrary to law.

Any party of record may file a written response to the motion if filed within fourteen (14) calendar days of filing a motion for reconsideration.

The examiner will issue a decision on the motion for reconsideration within twenty-eight (28) calendar days of filing of a motion for reconsideration.

Appeal Rights
Any party of record to the proceeding before the hearings examiner may appeal any aspect of the Hearing Examiner’s decision, except the SEPA determination (i.e., procedural issues), to the Superior Court.
See the *Appeals* handout for more information and fees.

**Attachments**
- Copy of Site Plan