

WHATCOM COUNTY HEARING EXAMINER

Administrative Appeal of)	File No. APL2009-0007
)	
<i>M & G Farms, Inc.</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 imposed on the subject property as a result of a Class III harvest conducted under a Department of Natural Resources (DNR) Forest Practices Application Permit or Notification without completing a Conversion Option Harvest Plan (COHP) through Whatcom County.

Decision: The requested 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: Rangit Gill, M&G Farms, Inc.

Property Location/Address: 2330 East Badger Road
Custer, Washington

Legal Description: The southwest quarter of the southeast quarter of Section 12, Township 40 North, Range 3 East, W.M.; excepting therefrom the following described tract: A triangular tract of land in the northeasterly corner of the southwest quarter of the southeast quarter of said section measuring 20 feet along the north side and 20 feet along the east line thereof; and except right of way for East Badger lying along the south line thereof. Situate in Whatcom County, Washington.

The south 10 acres of the southwest quarter of the southeast quarter of section 12, Township 40 North, Range 3 East of W.M., except the East Badger Road. Situate in Whatcom County, Washington.

Zoning: (AG) Agriculture

Comprehensive Plan: Agriculture

Subarea: Lynden- Nooksack

Authorizing Ordinances:

WCC 20.80.738	Development Moratoria
WCC 20.84.240	Appeals
WCC 20.92	Hearing Examiner

Applicable Whatcom County Zoning Codes:

WCC 20.80.738

Legal Notices: Published – August 13 and 24 and November 19, 2009
 Mailed – November 10, 2009
 Posted – November 18, 2009

Hearing Date: December 2, 2009

Parties of Record:

Rangit Gill
M & G Farms, Inc.
P.O. Box 980
Sumas, WA 98295

Aubrey Stargell
Nielsen Brothers, Inc.
P.O. Box 2789
Bellingham, WA 98227

Elke Daugherty
Planning and Development Services

Exhibits

- 1 Land Use Application with attachments
 - 1-1 Staff Review Communication, dated August 6, 2009
 - 1-2 Supplemental Application
 - 1-3 Water Right Tracking System
 - 1-4 Moratorium Removal Submittal Requirements
 - 1-5 Vesting Purposes letter, dated March 31, 2009
 - 1-6 Complete application, dated July 27, 2009
 - 1-7 Receipt
 - 1-8 Information Summary Sheet
 - 1-9 WA State DNR Informal Conference Note: Forest Practices
 - 1-10 Deed History
- 2 Staff Report, dated November 12, 2009
- 3 Conservation Easement
 - 3-1 Revised Critical Areas Assessment Report: Wetland & Buffer Mitigation Plan, dated September 8, 2009
 - 3-2 Assignment of Savings
 - 3-3 Critical Areas Assessment Report: Wetland Delineation, dated June 9, 2009
- 4 Wetland Rating Form
- 5 Wetland Determination Data Form
- 6 Noticing of Application - PDS Requirements
 - Form Letter Property Owners, dated July 30, 2009
 - Legal Notices, dated August 13 and 24, 2009
 - SEPA Notice, dated July 30, 2009
 - Distribution List
 - Environmental Checklist
 - Assessor's Records – Property Owners
 - Vicinity Maps
- 7 Aerial Map
- 8 Site Plan
- 9 Office Review Checklist
- 10 Plat Map
- 11 Zoning Map
- 12 Certificate of Mailing, dated November 10, 2009

- 13 Legal dated November 19, 2009
- 14 Posting Notice, dated November 18, 2009

II.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the Request to Remove the Six-year Development Moratorium from an approximately 39-acre site located in the Agriculture zone of Whatcom County, Washington, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #2, dated November 12, 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 either in writing or at the public hearing.

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, subject to conditions.

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 is hereby granted to M&G Farms, Inc. for an approximately 39-acre site located on Assessor's Parcel Nos. 400312 331020 and 400312 331089, 2330 East Badger Road, Custer, 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 7th day of December 2009.

Michael Bobbink, Hearing Examiner

WHATCOM COUNTY
Planning & Development Services
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David Stalheim
Director

J.E. "Sam" Ryan
Assistant Director

November 12, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of M & G Farms Inc. For removal of 6 year development moratorium	APL2009-00007 FINDINGS, CONCLUSIONS, AND DETERMINATIONS
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I. SUMMARY OF APPEAL AND RECOMMENDATIONS

Application: The applicant is requesting that Whatcom County remove a 6 year development moratoria that was imposed on the subject property (parcels 400312331020 and 400312331089) due to a Class III harvest. WCC20.80.738(1)(a)(ii) states that harvest conducted under a DNR forest practice application or notification without an associated COHP approval shall result in a six-year development moratorium.

Recommendation: Whatcom County staff recommends approval of the request for removal of the 6 year development moratorium on parcels 400312331020 and 400312331089.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Aubrey Stargell
P.O. Box 2789
Bellingham, WA 98227

Owner: Rangit Gill
M & G Farms, Inc
P.O. Box 980
Sumas, WA 98295

Property Location/Address: 2330 East Badger Rd
Custer, WA

Legal Description: The southwest quarter of the southeast quarter of Section 12, Township 40 North, Range 3 East, W.M.; excepting therefrom the following described tract: A triangular tract of land in the northeasterly corner of the southwest quarter of the southeast quarter of said section measuring 20 feet along the north side and 20 feet along the east line thereof; and except right of way for East Badger lying along the south line thereof. Situate in Whatcom County, Washington.

The south 10 acres of the southwest quarter of the southeast quarter of section 12, Township 40 North, Range 3 East of

W.M., except the East Badger Road. Situate in Whatcom County, Washington.

Zoning: (AG) Agriculture
Comprehensive Plan: Agriculture
Subarea: Lynden- Nooksack

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

III. FINDINGS AND CONCLUSIONS

The property under review is 39.09 acre parcel with residential improvements on the southern portion. Squaw Creek, a fish bearing creek, and regulated wetlands exist on the parcel. The wetlands and their associated buffers were identified in an approved critical areas assessment performed by Cantrell and Associates, Inc.

Basis for Appeal

The following is a summary of the issues raised by the applicant:

The applicant is requesting removal of the 6 year development moratoria for both parcels. The timber on the parcels was harvested under the proper DNR permits (FPA 2808342). Because it was a Class III harvest, a development moratorium is automatically applied per WCC20.80.738(1)(a)(ii).

The property owner has complied with all stated DNR conditions for compliance and has received an Informal Conference Note from DNR stating compliance with stocking requirements per WAC222-34-10 (September 9, 2009). The property owner has complied with all pertinent regulations per the Critical Areas Ordinance (WCC16.16) and Zoning Code (WCC20.80).

WCC20.80.738 Review Criteria:

b) 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 land owners received an Informal Conference Note from DNR stating compliance with stocking requirements per WAC222-34-10 (September 2009).

The land owner submitted a wetland delineation and a mitigation plan for impacts to wetlands and associated buffers allowable per the Class III harvest. The land owner also submitted an assignment of savings to ensure the implementation of the mitigation plan. The delineation and mitigation plan were approved by staff. Therefore the land owner is in compliance with all county regulations at this time.

The land owner will be required to apply for a Land Disturbance Permit and a Class IV Forest Practices Application (FPA) for the conversion of the land into agricultural fields. A condition of the permit approval will be installation of the mitigation.

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

The mitigation plan was submitted and approved, and an assignment of savings in the amount of \$21,125 has been received.

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

The required assignment of savings has been submitted.

(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 owner has complied with all stated DNR conditions for compliance as noted in the notice from DNR dated September 2009.

(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.

All fees and penalties have been paid by the owner relative to the moratorium removal and SEPA application. The mitigation fees are owed at this time (\$1,200).

(vi) All permit conditions have been addressed.

The approved mitigation plan shall be monitored for 5 years. A Land Disturbance Permit application will be required for the conversion of the land into agricultural fields in the event the moratorium is removed.

A Memorandum of Agreement between Whatcom County and the property owner must be recorded with the Auditor's office that identifies the parcel is not subject to the six-year development moratorium.

(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

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

The clearing was completed in accordance within the requirements of a Class III Forest Practices Application (FPA).

d) 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.

Critical areas have been identified and protected through mitigation and a conservation easement. No other aspects of the removal indicate that a moratorium removal would be detrimental to the public health, safety and general welfare.

(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.

Adjacent properties are predominately agricultural. No injury to neighboring properties is expected to result from the removal of the moratorium.

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

Critical areas have been identified and protected through mitigation and a protective easement. Land will be converted from forestry to agricultural use.

(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.

The record suggests that the applicant has willingly complied with all applicable regulations and requirements.

(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 Comprehensive Plan has designated this area as agricultural use. The land will be converted from forested land to agricultural land in accordance with the Comprehensive Plan.

Public and Agency Comments

No comments were received from the public. One agency comment was received from the Department of Ecology (DOE) noting that water rights will be considered by DOE for subsequent development actions.

IV. DETERMINATION

Whatcom County staff recommends approval of the request for removal of the 6 year development moratorium. The applicant has complied with all conditions required by DNR and by Whatcom County, and has applied for all necessary permits from Whatcom County. The site is now fully compliant with all state and county regulations. Fees are owed for the mitigation plan (\$1,200). All other fees and penalties have been paid by the owner.

Report prepared by:

Elke Daugherty
Planner 2