

Notice to Parties of Record

Project Name: Henry Meadows

Case Number: FPA-2020-00004

The attached decision of the Land Use Hearing Examiner is final unless a motion for reconsideration is filed or an appeal is filed with Superior Court.

See the *Appeals* handout for more information and fees.

Motion for Reconsideration:

Any party of record to the proceeding before the hearings 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 the rights of the moving party:

- a. Procedural irregularity or error, clarification, or scrivener's error, for which no fee will be charged;
- b. Newly discovered evidence, which the moving party could not with reasonable diligence have timely discovered and produced for consideration by the examiners;
- c. The decision is not supported by substantial evidence in the record; or,
- d. 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 the motion for reconsideration.

Mailed on: June 2, 2020

DS1333

Revised 7/15/13



Community Development
1300 Franklin Street, Vancouver, Washington
Phone: (360) 397-2375 Fax: (360) 397-2011
www.clark.wa.gov/development



For an alternate format,
contact the Clark County
ADA Compliance Office.
Phone: (360)397-2322
Relay: 711 or (800) 833-6384
E-mail: ADA@clark.wa.gov

**BEFORE THE LAND USE HEARINGS EXAMINER
FOR CLARK COUNTY, WASHINGTON**

In the matter of a Type III application for a waiver to a Forest Practices Act moratorium to allow conversion to a non-forest use (3-lot short plat) on a ~30 acre parcel zoned R-10 in Clark County, Washington.

FINAL ORDER

**Henry Meadows
Moratorium Waiver
FPA-2020-00004**

I. Summary:

This Order is the decision of the Clark County Land Use Hearings Examiner approving with conditions this application for a waiver of a 6-year Forest Practices Act development moratorium to allow conversion of an ~30-acre forest parcel to a non-forest use (a 3-lot residential short plat) zoned R-10 (FPA-2020-00004).

II. Introduction to the Property and Application:

Owner/Applicant RVHB LLC
Attn: Ron Veach
P.O. Box 1683
Brush Prairie, WA 98606

Contact..... Minister & Glaeser
Attn: Chris Avery
2200 E Evergreen Blvd.
Vancouver, WA 98661

Property..... Legal Description: Tax Lot 96 (Parcel No. 9860427-000), in the Southeast quarter of Section 01, Township 4 North, Range 2 East of the Willamette Meridian.

Applicable Laws..... Clark County Code (CCC) §40.510.030 (Procedures); §40.260.080 (Forest Practices); RCW Ch. 76.09 (Forest Practices); WAC Div. 222.030 (Forest Practices Board).

This application involves a single ~30-acre R-10 zoned parcel in rural Clark County that was logged sometime after the Class III Forest Practices Act permit (FPA 2928927) was issued on July 23, 2014 (Ex. 1). The property is encumbered with a Type Ns stream and associated 75-foot riparian buffer that was supposed to be protected from damage, *i.e.*, no logging, under the County's Habitat Conservation Ordinance (CCC Ch. 40.440), at least not without a permit and mitigation. However, the logging operator ignored this prohibition, logged the riparian buffer, and then apparently failed to notify the subsequent buyer of the continuing forest land obligations associated with the FPA permit when he sold it to the applicant. The buyer and current owner of the property applied for a 3-lot short plat for the property, and during the permit review process, was alerted to the continuing forest land obligations associated with the FPA permit, including the existence of the 6-year moratorium, and the apparent violation of the riparian preservation requirement.

The present application is by the current owner to lift the 6-year moratorium imposed on the property by the Forest Practices Act pursuant to CCC 40.260.080 for purposes of developing the land with a non-forest use, in this case a 3-lot residential short plat. The application, however, has also triggered review by the County's Habitat Biologist who noted the probable Habitat Conservation Ordinance violation (Ex. 8), which must be remedied through the short-plat process.

III. Summary of the Local Proceeding and the Record:

The applicant's short-plat application is driving the present proceeding, but none of the documents associated with the short plat are part of the record of this application. As such, the record of this request to lift the 6-year development moratorium is thin, consisting only of the application form and questionnaire and an existing conditions diagram (Ex. 1). A preapplication conference was held January 4, 2018 (PAC2017-00175), and the application was submitted January 7, 2020 and deemed fully complete February 18, 2020. The applicant executed a preapplication waiver because the earlier conference had expired. Notice of the Type III application and a May 14, 2020 public hearing was mailed to property owners within 500 feet and to the County's Neighborhood Associations Council on April 9, 2020 (Exs. 3 & 4). Notice was also posted on the site and in the vicinity on April 14, 2020 (Ex. 5). The County received no public comments in response to the notice.

County Staff issued a comprehensive report on the proposal dated April 29, 2020 (Ex. 6) recommending approval with the condition that subsequent actions comply with the applicable Forest Practices Act requirements. Then, the County Habitat Biologist made a site inspection, noted the probable habitat buffer violation (Ex. 8), and recommend that the applicant obtain a Habitat permit and comply with all permit conditions before proceeding with the short plat.

Due to the COVID-19 pandemic, the May 14th hearing was held through a Zoom video conference platform; wherein, anyone could request the opportunity to testify, and everyone who participated could hear the testimony of everyone else. At the commencement of the May 14th video hearing, the Examiner explained the procedure and disclaimed any ex parte contacts, bias, and conflicts of interest. Present in the hearing were Melissa Curtis, County Planning staff, Hunter Decker, County Forester, and Brent Davis, County Habitat Biologist, who collectively provided verbal summaries of the proposal and explained the legal and factual basis for staff's recommendation. The applicant was represented by its design consultant, Chris Avery of Minister & Glaeser, who accepted staff's proposed findings and condition and responded to questions about the project.

No one else requested the opportunity to testify, and no one objected to the process or challenged the Examiner's jurisdiction or ability to impartially decide the case. At the conclusion of hearing, the Examiner kept open the record for an additional 2 weeks (until May 28, 2020) to allow anyone to submit any written comments on any subject relevant to the proposal. Following the May 14th hearing, no new comments were received into the record; the applicant waived final rebuttal, and the record closed at the end of the day on May 28, 2020.

IV. Findings:

Only issues and criteria raised in the course of the application, during the hearing and before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no

argument regarding these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The Examiner adopts the following findings in response to the approval criteria addressed in the staff report (Ex. 6) and the application materials (Ex. 1).

Forest Practice

Finding 1 – Development Moratorium following logging operation. CCC 40.260.080 (C)(2)(b) lists the logging operations that require a 6-year development moratorium imposed on a timber parcel, which 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 COHP approval."* Clark County received notice of an approved DNR Class II forest practice permit (FPA/N No. 2928927) dated July 23, 2014 and applied the moratorium to the harvest area described in the forest practice permit.

Finding 2. Grounds for lifting the 6-year moratorium – review criteria. CCC 40.260.080(C)(3) provides that any development moratorium established pursuant to CCC 40.260.080(C)(2) may be lifted by the hearing examiner through the following procedure:

1. *Public Hearing Required.*
2. *Review Criteria.*
3. *Approval.*
4. *Required Written Finding and Determinations.*

The first requirement is satisfied with the public hearing associated with this Type III process. In this process, the hearing examiner considers the following review criteria when deciding a request to lift a development moratorium established under CCC 40.260.080(C)(2):

1. *The forest practices conducted on the site meet the standards set forth in CCC 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.*

Finding 3. Analysis of the review criteria. As a starting point, the original permittee for FPA 2928927 does not appear to have complied with the procedural requirements by submitting a Notice of Transfer for Landowner form under WAC 222-20-010(6) or by notifying the purchaser of the continuing forest land obligations. With that observation, the Examiner adopts the following findings regarding each of the approval criteria in CCC 40.260.080(C)(2) for lifting the 6-year moratorium:

1. To assess if the first review criterion was met, staff reviewed the Informal Conference Note (ICN #19-121008) from the DNR Forest Practice Forester stating that, "All forest practice requirements for FPA/N 2928927 have been met." Presumably this conclusory statement is based on the applicant meeting the reforestation requirements in WAC 222-34-010 and FPA No. 2928927. Based on the County Forester's on-site inspection and

favorable recommendation that this is the case, the Examiner concludes that the first criterion in CCC 40.260.080(C)(2) is satisfied.

2. As for the second criterion (corrective actions), County Forestry staff made a site inspection and confirmed that the first review criterion was met through reforestation consistent with forest practice standards under WAC 222-34-010. Accordingly, County staff recommended that no corrective actions were needed, and this satisfies the second review criterion.
3. The third criterion is more problematic because the County Habitat Biologist confirmed a likely violation of the riparian buffer associated with the on-site stream (Ex. 8). Staff recommended that the Examiner require mitigation under the third criterion for this likely habitat violation. DNR FPA 2928927 Q31 states that, "All streams within the harvest unit are Type Ns (Non-Fish Seasonal). Crossings will be limited to when the channel is dry and as few as possible crossings. The stream remains Type Ns for more than 200' from the West property line." The Type Ns stream buffers that were thinned under FPA No. 2928927 are considered damaged because the county would have imposed a 75-foot no-cut buffer to protect this Type Ns stream and would not have allowed logging within the buffer under a Class IV-General Forest Practice Application. CCC 40.260.080(A)(5)(b)(1)(b).

This application arises from the applicant's proposed short plat of Parcel No. 9860427-000 into three 10-acre lots under the County's R-10 Zone standards. The short plat application is on hold pending the outcome of this proceeding and includes a habitat determination (WHR-2020-00004). Staff recommended the completion of the habitat determination and the promulgation of a reforestation plan as mitigation for the prior owner's unpermitted thinning in the 75-foot riparian buffer. The Examiner agrees but is not really in a position to determine the existence or extent of the habitat violation or what would be appropriate mitigation. Therefore, a condition is warranted requiring the applicant to obtain a Habitat Permit and to comply with or otherwise fulfill all conditions of that permit, including any required mitigation. See Conditions A-2 & A-3.

Finding 4. Conclusion. Based on the applicant's proposal, staff's review and recommendations, the foregoing findings, and the conditions referenced herein, the Examiner concludes that the applicant meets the requirements to lift the 6-year development moratorium in CCC 40.260.080(C).

V. Decision and Conditions:

Based on the foregoing findings and except as conditioned below, this request to remove the development moratorium (FPA-2020-00004) meets the applicable approval criteria in CCC 40.260.080(C) and is approved in general conformance with the proposed site plan and supporting materials (Ex. 1). This plan and moratorium waiver is approved as proposed, subject to the requirements that the developer, owner or subsequent developer (the "developer") shall comply with all applicable code provisions, laws and standards and the following conditions of approval. The following conditions shall be interpreted and implemented consistently with the foregoing findings:

| | |
|----------|--------------------------------|
| A | Subsequent Development: |
|----------|--------------------------------|

A-1 Code Compliance. All subsequent development on this property shall comply with all applicable code provisions, laws and standards, including the following:

- Chapter 40.210 (Resource and Rural Districts District),
- Chapter 40.260 (Forest Practices),
- Chapter 40.440 (Habitat Conservation),
- Chapter 40.510 (Procedures),
- Chapter 40.570 (State Environmental Policy Act (SEPA),
- Chapter 40.610 (Development Impact Fees – General Provisions),
- Title 24 (Public Health) and the Clark County Comprehensive Plan and RCW 58.17 (Plats, Subdivisions, Dedications).

A-2 Reforestation Plan. The applicant shall complete the approval process for WHR-2020-00004 including completion of a reforestation plan consistent with the standards of Chapter 40.440 (Habitat Conservation).

A-3 Habitat Permit. The applicant shall apply for and obtain a Type II Habitat Permit and shall comply with, or otherwise fulfill, all conditions attached to the permit.

Date of Decision: June 2, 2020.

By: 

Daniel Kearns,
Land Use Hearings Examiner

NOTE: Only the Decision and Conditions of approval, if any, are binding on the applicant, owner or subsequent developer of the subject property as a result of this Order. Other parts of the final order are explanatory, illustrative or descriptive. There may be requirements of local, state or federal law or requirements which reflect the intent of the applicant, county staff, or the Hearings Examiner, but they are not binding on the applicant as a result of this final order unless included as a condition of approval.

Motion for Reconsideration

Any party of record to the proceeding before the hearings examiner may file with the responsible County official a motion for reconsideration of the Examiner's decision within 14 calendar days of written notice of this decision. A party of record includes the applicant and those individuals who signed the sign-in sheet, presented oral testimony at the public hearing, or submitted written testimony prior to or at the Public Hearing on this matter. Any motion for reconsideration must be accompanied by the applicable fee and identify the specific authority in the 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 the rights of the moving party:

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

d. The decision is contrary to law.

Any party of record may file a written response to a Motion for Reconsideration if filed within 14 calendar days of the motion for reconsideration. In response to a timely Motion for Reconsideration, the Examiner will issue a decision on reconsideration within 28 calendar days of the date the motion was filed.

Notice of Appeal Rights

This is the County's final decision on this application. Anyone with standing may appeal any aspect of the Hearings Examiner's decision, except the SEPA determination, to Clark County Superior Court pursuant to the Washington Land Use Petition Act, RCW chapter 36.70C.

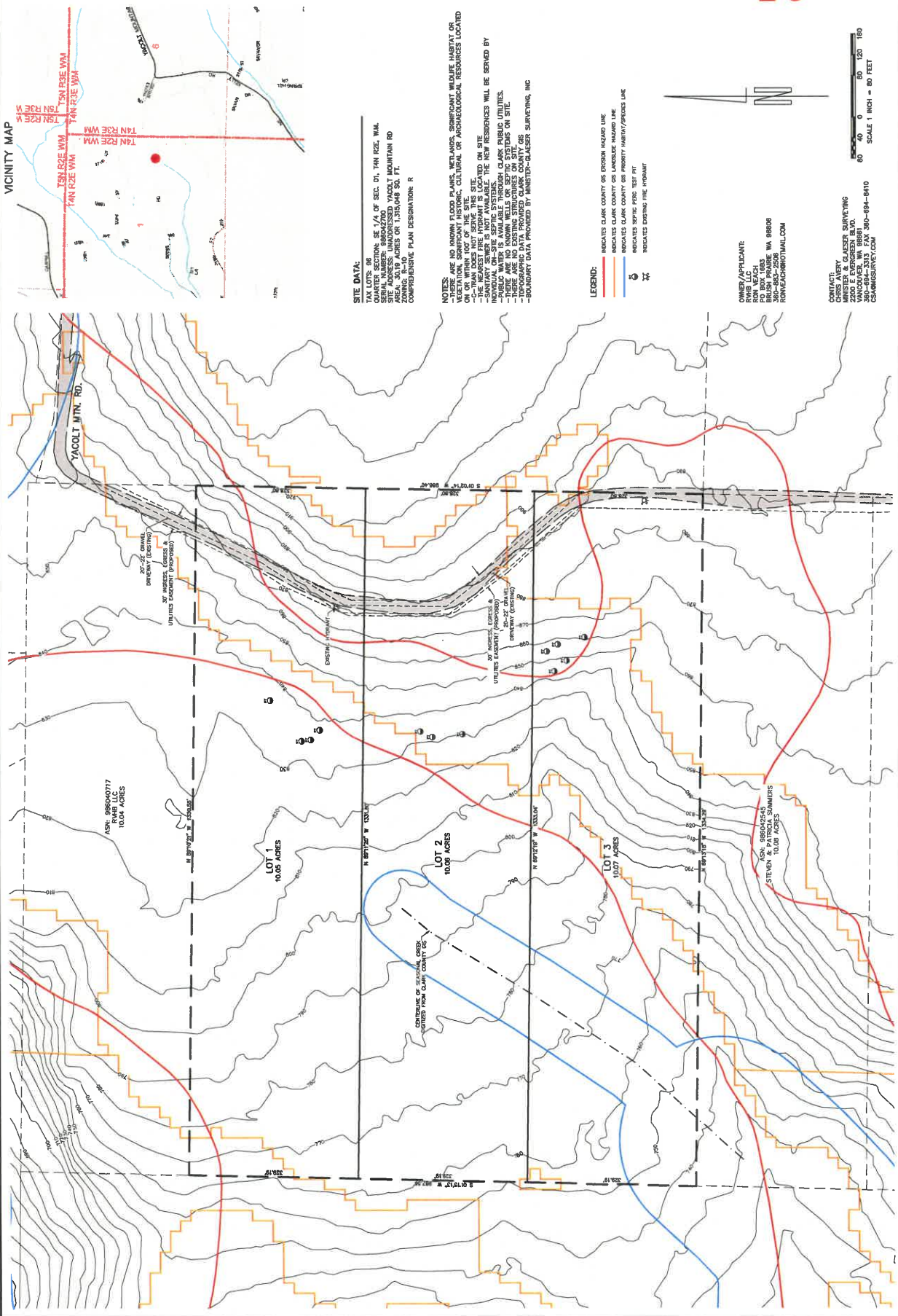


JOB # 15-355
 FILE:15355PR3
 DATE:02/04/20
 DRAWN BY: CSA

HENRY MEADOWS
 PROPOSED & EXISTING CONDITIONS
 PLAN FOR:

PROJECT DESCRIPTION:
 SHORT PLAT PARCEL #966042700
 (30 ACRES) INTO THREE (3) 10-ACRE LOTS
 OF THE R10 ZONE, CLARK COUNTY WA.

MINISTER & GLAESER
 SURVEYING INC.
 2200 E EVERGREEN BLVD
 VANCOUVER, WA 98681
 (360) 694-3313



SITE DATA:
 TAX LOTS: 08
 QUARTER SECTION: SE 1/4 OF SEC. 01, T4N R2E, W1A.
 COUNTY: CLARK COUNTY, WASHINGTON
 SITE ADDRESS: UNIMPROVED YACOLT MOUNTAIN RD
 AREA: 34.0 ACRES OR 1,315,048 SQ. FT.
 COMPREHENSIVE PLAN DESIGNATION: R

NOTES:
 -THESE ARE UN-KNOWN FLOOD PLAINS, WETLANDS, SIGNIFICANT WILDLIFE HABITAT OR VEGETATION, SIGNIFICANT HISTORIC, CULTURAL OR ARCHAEOLOGICAL RESOURCES LOCATED ON OR WITHIN 100' OF THE SITE.
 -THE NEAREST FIRE INCIDENT IS LOCATED ON THE SITE.
 -INDIVIDUAL ON-SITE SEPTIC SYSTEMS.
 -PUBIC AND PRIVATE DRAINAGE WELLS OR SEPTIC SYSTEMS ON SITE.
 -THERE ARE NO EXISTING STRUCTURES ON SITE.
 -BOUNDARY DATA PROVIDED BY MINISTER-GLAESER SURVEYING, INC

- LEGEND:**
- INDICATES CLARK COUNTY GAS SERVICE HAZARDOUS LINE
 - INDICATES CLARK COUNTY GAS SERVICE HAZARDOUS LINE
 - INDICATES CLARK COUNTY GAS PRIORITY HABITAT/PROCESSED LINE
 - INDICATES SPTIC TEST PIT
 - INDICATES EXISTING FIRE INCIDENT

OWNER/APPLICANT:
 RWB LLC
 2200 E EVERGREEN BLVD
 VANCOUVER, WA 98681
 360-694-3313
 RWB@RWBMAIL.COM

CONTACT:
 MINISTER & GLAESER SURVEYING
 2200 E EVERGREEN BLVD
 VANCOUVER, WA 98681
 360-694-3313 FAX 360-694-8410
 CS@MGSURVEY.COM



| Role | Company Name | Name | Address 1 | Address 2 | City | State | Zip Code | Email Address |
|-----------------|--------------------------------|------------------|-----------------------|-----------|---------------|-------|----------|--|
| Planner | Clark County | Melissa Curtis | | | | | | |
| Applicant/Owner | RVHB, LLC | Ron Veach | PO Box 1683 | | Brush Prairie | WA | 98606 | ronveach@hotmail.com |
| N/H Association | East Fork Alliance Nbhnd Assoc | | | | | | | eastforkalliancena@gmail.com |
| Contact Person | Minister-Glaeser | Chris Avery | 2200 E Evergreen Blvd | | Vancouver | WA | 98661 | csa@mgsurvey.com |
| Utility Contact | | | | | | | | |
| | Clark County | Desiree de Monye | | | | | | desiree.demonye@clark.wa.gov |
| | City of Vancouver | Kristin Lehto | | | | | | Kristin.Lehto@cityofvancouver.us |
| | | Nicole Daltoso | | | | | | nicole.daltoso@vansd.org |
| | | Jeff Roberts | | | | | | jeff@cranballgroup.com |



EXHIBIT LIST

Project Name: **Henry Meadows MORATORIUM WAIVER**

Case Number: **FPA-2020-0 004**

| EXHIBIT NUMBER | DATE | SUBMITTED BY | DESCRIPTION |
|----------------|---------|------------------------|------------------------------------|
| 1 | 1/7/20 | Applicant | Application Package |
| 2 | 2/9/20 | CC Land Use | Notice of Type III Application |
| 3 | 4/9/20 | CC Land Use | Notice of Type III Application |
| 4 | 4/9/20 | CC Land Use | Affidavit of Mailing - Exhibit 3 |
| 5 | 4/14/20 | Applicant | Affidavit of Sign |
| 6 | 4/29/20 | CC Land Use | Staff Report and Recommendation |
| 7 | 4/29/20 | CC Land Use | Affidavit of Mailing - Exhibit 6 |
| 8 | 5/1/20 | CC Wetland and Habitat | Memo |
| 9 | 5/13/20 | CC Land Use | Affidavit of Publication |
| 10 | 5/22/20 | CC Wetland and Habitat | Email on HAB2018-00063 |
| 10a | 5/22/20 | CC Wetland and Habitat | Habitat HAB2018-00063 |
| 11 | 5/27/20 | CC Wetland and Habitat | Email |
| 12 | 6/2/20 | CC Land Use | Hearing Examiner Decision |
| 13 | 6/2/20 | CC Land Use | Affidavit of Mailing - Examiner 12 |

Copies of these exhibits can be viewed at:
Department of Community Development
Development Services Division
1300 Franklin Street
Vancouver, WA 98666-9810